BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION NO. 14 OF 2026

IN THE MATTER OF:

Dilip Kumar Samantaray …Applicant

-Versus-

State of Odisha & Others …Respondent (s)

COMPILATION OF JUDGEMENTS ON BEHALF OF M/s VEDANTA LTD. (RESPONDENT NO. 8)

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14. Proof of Service

Date: 14.05.2026
Place: Kolkata

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2013 SCC OnLine NGT 89

National Green Tribunal (Western Zone) Bench, Pune

(BEFORE V.R. KINGAONKAR, J.M. AND AJAY A. DESHPANDE, E.M.)

Bharatkumar K. Patel Post: Bhadeshwar, Tq. Mundra Kutch (Gujarat) ... Applicant;

Versus

1 Ministry of Environment & Forests, Union of India, through: Secretary, Paryavaran Bhavan, C.G.O. Complex, Lodhi Road, New Delhi — 110003

2 Department of Commerce through: Director, SEZ Section Ministry of Commerce and Industry, Udyog Bhavan, New Delhi 110107

3 Ministry of Shipping, Union of India, through: Secretary, Transport Bhavan, 1-Parliament Street New Delhi-110001

4 State of Gujarat, through: Chief Secretary, Gandhi Nagar, 382020, Gujarat

5 Gujarat Pollution Control Board, through: Member Secretary Paryavaran Bhavan, Section 10A, Gandhi Nagar 382010

6 Gujarat Coastal Zone Management Authority, Block No. 14/8th Floor, New Sachivalaya, Section 10A, Gandhi Nagar (Gujarat)

7 Chief Conservator of Forest, Bhuj, Kutch Circle, Bhuj, Opp: District Industrial Centre, Kutch-Bhuj 370001

8 M/s. Kandla Port Trust, Administrative Office Building, Annex Building, 1st Floor, Gandhi Nagar-370201, Kutch District (Gujarat). ... Respondents.

Application No. 55/2013(WZ)

Decided on December 13, 2013

Counsel for Applicants:

Mr. Sandeep & Associates, Adv.

Counsel for Respondent No. 2:

Mr. Krishna D. Ratnaparakhi, Mr. Arjun Garg, Adv. for Respondent No. 3

Mr. Viral K. Shah for Respondent No. 5.

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Mr. Sumit Goel Advocate for Respondent No. 8

JUDGMENT

1. The Applicant has filed this application under Section 14 read with Section 18 of National Green Tribunal Act, 2010 claiming to be the aggrieved person, being interested in the protection of environment and ecology. Admittedly, proposed 5000 Hectare port based multi-product SEZ in Kandla and Tuna area of Gandhidham, Bhuj, Gujrat is being developed. The Applicant submits that the CRZ Notification 2011 has declared the entire Gulf of Kutch as "Critical Vulnerable Coastal Area" due to its ecologically sensitive nature and as a result, any industrial development in the said area is prohibited. The Applicant alleges that the proposed development is in violation of CRZ Notification 2011, Environment (Protection) Act, 1986 as well as other environmental norms.

2. The Applicant further submits that the non obstante Clause as provided in Section 51 of SEZ Act, creates a separate class or area within the country itself, excluding application of all other Acts. The Applicants submit that despite the fact that due to prohibition under the CRZ Notification 2011, port based SEZ cannot be set up at the proposed location, the Ministry of Environment and Forest, Government of India, vide communication file No. 11-83:2011-IA-III dated 17th February, 2011, has issued Terms of Reference (ToR) of the proposed SEZ which is in clear violation of the CRZ notification 2011 read with provisions of the Environment (Protection) Act, 1986. The Applicant further submits that as the industrial development in the said area, which is classified as Critically Vulnerable Coastal Area is prohibited under the CRZ Notification of 2011, the process of setting up on Kandla Port multi Product SEZ which is carried on by all the Respondents is in violation of CRZ Notification 2011.

3. The Applicant has therefore, prayed as follows:

a) Quash the Terms of Reference granted by the Ministry of Environment and Forest vide communication bearing No. F. No. 11-83/2011-IA.III dated 17-02-2012.

b) Declare that the Ministry of Environment and Forest has no authority to initiate any process of CRZ and EIA clearance for prohibited activities in CRZ areas as per the CRZ Notification, 2011.

c) Declare that the proposed project cannot be allowed in the proposed project area as the same constitutes a "prohibited activity" under the CRZ Notification, 2011.

d) Declare that the Sec. 51 of the SEZ Act, 2005 is ultravires to Art. 14 & 21 of the Constitution of India.

e) - - - - - -

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f) - - - - -

g) - - - - -

h) - - - - -

i) - - - - -

j) - - - - -

k) - - - - -

4. Opposing the application as misconceived and not maintainable in law, MoEF (Respondent No. 1) has submitted an Affidavit mentioning that the Application is barred by limitation having been filed beyond prescribed period of limitation. The impugned ToR was issued by the MoEF on 17th February, 2012 and the Application has been filed on 21st February, 2013 and thus, it is hopelessly time barred and sought the dismissal of the Application on this ground itself. The MoEF, Respondent No. 1 further submits that the present Application is premature in as much as the final clearance has not been granted to the project and ToR dated 17th February, 2012 issued by the MoEF does not any way, imply that the project has been approved. MoEF Respondent No. 1 further submits that as per the information received from the project proponent, Ministry of Commerce and Industry, Government of India, on 7th May, 2007 had granted formal approval for setting of port based multi product SEZ in the area about 5000 hectare at Kandla, Tuna area of Gandhidham, Bhuj (Gujrat). The project proponent has planned to develop in SEZ in 3600 Hectare at Kandla area and 1400 Hectare at Tuna area. Kandla area of SEZ will be reserved for industry seeking port facility for import and export at its near vicinity which includes non-polluting industries i.e. Health Care, automotive (Automobile and Auto components), heavy Engineering Equipment, electronics and telecom equipment, textile, electrical equipment, gems and jewelry etc. Tuna area will be reserved for ship based industries, requiring accessibility to water fronts for their operation i.e. shipyard, ship repair facility, ship bunkering facility etc. MoEF has further submitted that the Gulf of Kutch is listed under the Critically Vulnerable Coastal Area under the CRZ Notification 2011. Further CRZ Notification 2011 prohibits new industries and expansion of existing industries, except those directly related to water front, or directly needing foreshore facility. Among the proposed activities, only the activities permissible under CRZ Notification 2011 viz. Port and harbor, shipyard, ship repair facility, ship bunkering facility etc. can be permitted within the CRZ area. The MoEF has asked the project proponent to submit HTL-LTL (High Tide Line & Low Tide Line) map prepared by authorized agency on 1:4000 scale, super imposed with project lay out to know the exact details of the land falling within CRZ area. MoEF has finally submitted that it has only issued ToR at this

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stage and no clearance has been given to the proposed project under the CRZ notification 2011 and therefore, it has urged that the present Application/Appeal is pre-mature, misconceived, vexatious and frivolous and is devoid of any merits and out of limitation and therefore, prayed for dismissal of the appeal.

5. Respondent No. 2 while opposing the application, has submitted that the Application does not disclose any cause of action and is barred by limitation, and hence sought dismissal of the Application on this ground only. Respondent No. 2 has given an approval to Respondent No. 8 to set up the proposed port based SEZ and has extended the approval period from time to time subject to obtaining all necessary statutory clearances from Government of India, State Government and all concerned local bodies. Respondent No. 2, therefore, submits that the proposed port based SEZ is subject to prevailing Rules, Regulations and Clearances including clearance from Ministry of Environment and Forests which has issued CRZ Notification 2011, among other regulations like EIA Notification, 2006. Respondent No. 2 submits that in the proposed project, no construction or industrial activities is being carried out at present and the proposed project has not been finally notified till this date. The project proponent i.e. Respondent No. 8 has been advised to seek necessary approval and clearance from the authorities. The Respondent No. 2, therefore, pleads that the project proponent i.e. Respondent No. 8 will have to obtain necessary CRZ and environmental clearance before commencement of project and the final notification for the project has not been issued so far and therefore, the Respondent No. 2 strongly pleads for dismissal of the application on the grounds of limitation as the last document which are being mentioned in the application are dated 7th July, 2011 and the application has been filed before this Tribunal in March 2013 i.e. after expiry of six months.

6. The Counsel for Respondent No. 3 attended some hearings, however, no Affidavit has been filed on record though during the argument, the Learned Counsel also pleaded for dismissal of the application on the ground of limitation and also the fact that no formal Environmental Clearance has been granted to the said project and therefore, the application is premature. The Officers of Respondent No. 5 and 6 also attended some hearings and Counsel for Respondent No. 5 also attended some dates of hearings. However, no Affidavit or reply had been filed by Respondent No. 5, 6 and 7 though sufficient opportunity was given to them. Respondent Nos. 5 and 6 are important state level environmental regulatory agencies, and they were expected to assist this Tribunal by submitting factual information.

7. Respondent No. 8 i.e. Kandla Port Trust has submitted a detailed Affidavit. The Counsel for Respondent No. 8 has submitted that there is no violation of CRZ Notification either of 1991 or of 2011 by

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Respondent No. 8 and setting of the proposed port based SEZ at Kandla and Tuna is not prohibited under the CRZ Notification of either 1991 or 2011. It is submitted that both 1991 and 2011 Notifications permitted setting up of specific industries/activities in Coastal Regulation Zones with certain restrictions. He further submits that the industries proposed to be set up in SEZ of Kandla are permissible under the CRZ Notification. He further submits that there are no creeks in the part of land identified by SEZ and no creeks are affected by the proposed construction/development in SEZ. KPT had excluded the creeks from the proposed area of construction/development. He further submits that there are number of SEZ projects approved and successfully implemented in the backyard of various ports across the country and the proposed Kandla SEZ is not an isolated one of its nature.

8. The Respondent No. 8 submits that the Ministry of Commerce and industry, Government of India granted formal approval to the proposed SEZ on 7th May, 2011 which will be over an area of 5000 hectare. Accordingly, Respondent No. 8 have approached MoEF for getting the necessary Environmental Clearance under CRZ Notification, 2011 read with EIA Notification 2006. Respondent No. 8 engaged National Institute of Oceanography to conduct of EIA study and also engaged Indian Institute of Remote Sensing Anna University for CRZ studies. Considering the above, MoEF finalized the Terms and Reference (ToR) under the impugned order for preparation of detailed EIA Report wherein it is specifically directed that recommendations of State Coastal Zone Management authority be submitted and also, public hearing shall be conducted as per provisions of EIA notification, 2006. Respondent No. 8 further submitted that environmental impact assessment study have not been completed so far and after receipt of comprehensive EIA report from NIO, the Respondent No. 8 will be submitting an application to Gujrat State Coastal Zone Management Authority for obtaining recommendations. After the recommendations from Gujrat State CZMA are received, the Respondent No. 8 will approach MoEF for necessary environment/CRZ clearance. The Counsel for Respondent No. 8 therefore, argues that at this stage, no cause of action has arisen, for the filing of the present application. The Counsel for Respondent No. 8 makes a further statement that Respondent No. 8 i.e. Kandla Port Trust will not start any Project Development and Construction activity at site unless the necessary environment/CRZ clearance is received alongwith other statutory clearances.

9. We have heard Counsel for all contesting parties and also, perused the records available in the case. The prayers related to SEZ Act are outside the jurisdiction of this Tribunal as the said Act is not enlisted in Schedule 1 of NGT Act, 2010, We feel that following issues

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need to be addressed by this Tribunal for final adjudication in this application.

a) Whether the ToR for environmental clearance can be challenged under the provisions of National Green Tribunal Act, 2010?

b) Whether the application is barred by Limitation?

These issues are addressed in subsequent paras:

10. MoEF vide their letter dated 17th February, 2012 have approved ToR for the environmental studies to be undertaken as a part of process of grant of environmental/CRZ clearance to the proposed project. The present application has been filed under provisions of section 14 read with section 18 of NGT Act, 2010. The Section 14 of NGT Act, 2010 deals with the jurisdiction of Tribunal and is reproduced below of the clarity:

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

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

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

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

11. This Tribunal, in the case of *Goa Foundation* v. *Union of India*, pronounced on 18th July, 2013, on the scope of the expressions 'substantial question relating to environment' as well as 'dispute', as referred to in Section 14 of the NGT Act, held as follows:

"24. Section 2(m) of the NGT Act classifies 'substantial question relating to environment' under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the environmental

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consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal. When we talk about the jurisdiction being inclusive, that would mean that a question which is substantial, debatable and relates to environment, would itself be a class of cases that would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act. At this stage, reference to one of the scheduled Acts i.e. Environment Protection Act, 1986 may be appropriate. The object and reason for enacting that law was primarily to address the concern over the state of environment that had grown the world over. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. These were the considerations that weighed with the legislature to ensure implementation of the UN Conference on the Human Environment held at Stockholm in June, 1972 to take appropriate steps for protection and improvement of human environment. The essence of the legislation, like the NGT Act, is to attain the object of prevention and protection of environmental pollution and to provide administration of environmental justice and make it easily accessible within the framework of the statute. The objects and reasons of the scheduled Acts would have to be read as an integral part of the object, reason and purposes of enacting the NGT Act. It is imperative for the Tribunal to provide an interpretation to Sections 14 to 16 read with Section 2(m) of the NGT Act which would further the cause of the Act and not give an interpretation which would disentitle an aggrieved person from raising a substantial question of environment from the jurisdiction of the Tribunal.

** * **

35. The expression 'disputes' arising from the questions referred to in sub-section (1) of Section 14 of the NGT Act, is required to be examined by us to finally deal with and answer the contentions raised by the parties before us. The expression used in sub-section (1) supra is the expression of wide magnitude. The expression 'question' used in sub-section (1) in comparison to the expression 'dispute' used in sub-section (2) of section 14 is of much wider ambit and connotation. The disputes must arise from a question that is substantial and relates to environment. This question will

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obviously include the disputes referred to in Section 14(2). It is those disputes which would then be settled and decided by the Tribunal. These expressions are inter-connected and dependent upon each other. They cannot be given meaning in isolation or de hors to each other. The meaning of the word 'dispute', as stated by the Supreme Court in Canara Bank *v.* National Thermal Power Corporation *(2001) 1 SCC 43 is "a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other". The term dispute, again, is a generic term. It necessarily need not always be a result of a legal injury but could cover the entire range between genuine differences of opinion to fierce controversy. Conflicts between parties arising out of any transaction entered between them is covered by the term 'dispute'*.

36. The counsel appearing for the respondents, while referring to this expression, relied upon the judgment of the Supreme Court in the case of Inder Singh Rekhi *v.* DDA, *(1988) 2 SCC 338 to support the contention that the dispute, as referred under the Arbitration Act, 1940 arises where there is a claim and there is a denial and repudiation of such claim*.

12. The Applicant has raised objections to issuance of the tor, mainly on the ground that MoEF has itself declared this project area as Critical Vulnerable Coastal Area (CVCA) under CRZ Notification, 2011 and has imposed stringent regulations on any development in this area. Applicant has pleaded that the MoEF while granting the ToR has not considered this important aspect and therefore has preferred this application while raising dispute on grant of ToR. It is accepted fact that grant of ToR is an important milestone in Environment Clearance process as defined in EIA notification 2006. The grant of ToR is result of process of screening and scoping of the project, in EC process. MoEF grants this ToR once the project proponent makes a presentation before the specifically constituted Expert Appraisal Committee on various activities proposed in the project, environmental setting of the project area, and then only EAC gives a project specific ToR which can therefore be considered as first scrutiny of the project proposal by MoEF. Therefore, it is expected that the regional environmental setting and sensitivities are duly considered by the EAC, with the data and information available with the MoEF, before defining the ToR. We, therefore, find merit the case put forth by the Applicant on validity of challenging the ToR under section 14 of National Green Tribunal Act, 2010, and therefore, allow this argument.

13. The impugned ToR has been granted on 17th February, 2012 and the present petition has been filed on 2-8-2013. It is also to be noted that these dates have not been disputed by any party. Considering the

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judgment of Hon'ble Principal Bench, National Green Tribunal in the Appeal No. 1/2013, alongwith provisions of Section 14(3) of National Green Tribunal Act, 2010, there is a delay in filing this application, beyond the stipulated period of 6 months and therefore, the present Application is barred by Limitation of time.

14. Therefore, while holding that the ToR granted under EIA notification, 2006 could have been challenged in the instant case, the present Application is barred by limitation as stipulated in section 14 of NGT Act, 2010, and is therefore dismissed. No costs.

15. Notwithstanding above, we would like to mention that the points raised by Applicant are important and shall be duly addressed by the Project Proponent and also, GCZMA and MoEF in the next stages of EC appraisal process. The Applicant will also have opportunity to present his views in the public hearing which has been mandated in the ToR under reference. The Applicant is also at liberty to represent his case by way of filing application to MoEF for due consideration in further appraisal process.

16. With these observations the Application is disposed of. No costs.

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

M.A. NO. 573 OF 2013

IN

APPEAL NO. 67 OF 2013

In the matter of:

Sunil Kumar Samanta
M/s. Samanta Engineering Works,
1, B.T. Road, Barrackpore,
North 24-Parganas,
West Bengal

.....Appellants

Versus

1 West Bengal Pollution Control Board,
Paribesh Bhawan,
10-A, Block-LA, Sector – III,
Salt Lake, Kolkata – 700 098

2 Chief Scientist
West Bengal Pollution Control Board,
Paribesh Bhawan,
10-A, Block-LA, Sector – III,
Salt Lake, Kolkata – 700 098

3 Senior Environmental Engineer
West Bengal Pollution Control Board,
Kalyani Expressway, Panpur More,
P.O. Narayanpur, Kankinara
District North 24 Parganas – 743 126

4 Environmental Engineer
West Bengal Pollution Control Board,
Kalyani Expressway, Panpur More,
P.O. Narayanpur, Kankinara
District North 24 Parganas – 743 126

5 The Pollution Control Appellate Authority
(West Bengal)
Paribesh Bhawan,
10-A, Block-LA, Sector – III,
Salt Lake, Kolkata – 700 098

6 Government of West Bengal
Through the Secretary
Ministry of Transport
Writer's Building
Kolkata – 700 001

.....Respondents

Counsel for Appellant:

Mr. Jayant K. Mehta with Ms. Kanchan Yadav, Advocates

Counsel for Respondent:

Mr. Amit Agrawal, Advocate for Respondents 1 to 5
Mr. Sachin Das and Mr. Bikas Kar Gupta, Advocate for Respondent No. 6

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Prof. A.R. Yousuf (Expert Member)
Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated: July 24, 2014

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The present appeal is preferred against the order dated 10th April, 2012 passed by the Pollution Control Appellate Authority, West Bengal (for short 'appellate authority'), upholding the order

of closure passed by the West Bengal Pollution Control Board (for short 'the Board') dated 8th February, 2012.

2. The necessary facts are that the appellant is the sole proprietor of M/s. Samanta Engineering Works, which is *inter alia* engaged in the business of running an Auto Emission Testing Centre situated at 1, B.T. Road, Barrackpore, North 24-Parganas, West Bengal. The said Auto Emission Testing Centre checks motor vehicles including two wheelers for emission of smoke within permissible limits of pollution, as per the prescribed norms. Licensing Authority under the relevant rules is the District Magistrate, North 24-Paraganas, Barasat, West Bengal. The appellant had made an application for Letter of Offer for establishment of an Auto Emission Testing Centre before the Licensing Authority. In furtherance to which, the Licensing Authority vide its memo dated 8th February, 2005 called upon the Board to conduct an enquiry and to submit a report. According to the appellant, being satisfied, the consent to operate was issued by the Board and the Licensing Authority also permitted the appellant to operate. Two different licenses for operating the Auto Emission Testing Centre were issued. These licenses were valid for a period of one year. The appellant applied for the renewal of said licenses in the prescribed format. Vide memo dated 10th March, 2011, the Board informed the appellant that their unit will be inspected on that very date. The inspection was carried out in relation to the instruments used for testing vehicles and/or two

wheelers. According to the appellant, the said inspection was satisfactory. In furtherance to the inspection dated 10th March, 2011, the appellant was called for a technical hearing to be conducted at the head office of the respondent No. 1, where the appellant brought to the notice of the officials that the copy of the inspection report was not provided to the appellant as such. He remained unaware about the contents thereof. Thereafter, vide Memo dated 8th February, 2012, a closure order against the appellant was issued by the Chief Scientist of the Board. Against this order, the appellant preferred an appeal before the Appellate Authority. The Appellate Authority in its order dated 10th April, 2012 noticed that during the inspection, it was found that:

1. RPM and oil temperature sensor were not functioning.
2. CO-correction software was not installed in the 4 – gas analyzer software.

During inspection it was also found that Smoke Meter and the 4–gas analyzer were operating unsatisfactorily.

3. In addition thereto, it was stated in the impugned order that the unit was not possessed of any valid license in accordance with the rules. The Appellate Authority, therefore, in its detailed order dated 10th April, 2012, dismissed the appeal rejecting the contentions raised by the appellant before it. Against the said order dated 10th April, 2012, the appellant has preferred the present appeal (Appeal No. 67 of 2013).

4. According to the appellant, this appeal is barred by 104 days. Thus, the appellant has filed a Miscellaneous Application No. 573 of 2013 praying for condonation of delay of 104 days in filing the present appeal. This application is opposed and vehemently contested by the respondents, particularly the Board on the ground that firstly, the appeal is hopelessly barred by 104 days and secondly, this Tribunal has no jurisdiction to condone or even entertain the appeal when it is filed beyond a total period of 90 days i.e. 30+60 days in terms of proviso to Section 16 of the National Green Tribunal Act, 2010 (for short the 'NGT Act'). In support of his second contention, the Learned Counsel has relied upon two judgments of this Tribunal in the case of *Nikunj Developers & Others v. State Of Maharashtra & Anr.* 2013, All India NGT Reporter page 40 and *Krishna Stone Crushers and Others v. Haryana State Pollution Control Board and Another,* 2014, All India NGT Reporter page 42.

5. On the other hand, the Learned Counsel appearing for the appellant contended that these judgments of the Tribunal do not lay down the correct law. It is contended that the provisions of the Sections 4 to 24 of the Limitation Act, 1963 (for short the 'Limitation Act') would be applicable to the application filed by the appellant, as the NGT Act does not expressly or impliedly exclude the applicability of the Limitation Act as contemplated under Section 29(2) of the Limitation Act. Further, it is contended that the language of proviso to Section 16 of the NGT Act has not been

worded by the legislature in a manner so as to completely divest the Tribunal from the jurisdiction of condoning of the delay beyond a total period of 90 days provided under proviso to Section 16. To buttress these submissions, an argument has also been advanced that this Tribunal being the first appellate judicial forum, should construe the law of limitation liberally.

6. Before we proceed to examine the merit or otherwise of the rival contentions raised before us, it is necessary for us to notice certain further facts in relation to the filing of the present appeal belatedly and for condonation of the delay.

7. The order of the Appellate Authority upholding the closure order passed by the Board, was passed on 10th April, 2012. The NGT Act had come into force on 2nd June, 2010. However, the appellant initially did not prefer any appeal before the Tribunal against the order of the Appellate Authority dated 10th April, 2012 but challenged the said order by filing a writ petition before the High Court of Calcutta. The writ petition is stated to have been filed on 17th May, 2012. The writ petition remained pending before the High Court and by order dated 20th December, 2012, the Board was asked to inspect the premises of the appellant as it was the contention of the appellant that it had removed all the defects. However, the writ petition of the appellant came to be dismissed as withdrawn vide order dated 31st January, 2013. The writ petition was withdrawn on the ground that the matter falls

within the ambit of Section 2(m) read with Section 14 of the NGT Act and therefore, the appeal would lie to this Tribunal. The certified copy of the order dated 31st January, 2013 was applied for on 1st February, 2013, which was ready on 12th February, 2013 and was delivered on 13th February, 2013. The present appeal was filed in the registry of the Tribunal at the Principal Bench on 29th May, 2013. Here we may notice that originally the appellant had filed Miscellaneous Application No. 487 of 2013 for condonation of delay without specifying the days by which the appeal was barred. On the very first day of hearing of the appeal before the Tribunal, i.e. on 3rd June, 2013, the appellant had sought permission to file a better affidavit in support of the application of condonation of delay. This liberty was granted. Thereafter, instead of filing additional affidavit, the appellant filed Miscellaneous Application No. 573 of 2013 praying for condonation of delay. Vide order dated 9th July, 2013 notice was issued to the other parties in Miscellaneous Application No. 573 of 2013. According to this application, there was a delay of 104 days in filing the present appeal. But, from the above narrated facts, it is clear that the appeal before the Tribunal ought to have been filed by 10th July, 2012, however, it has been filed on 29th May, 2013. There appears to be a delay of 323 days in filing the appeal. Even, if the time spent by the appellant before the High Court of Calcutta is excluded, the appeal would still be barred by 125 days.

8. From the above narrated factual matrix of the case it is apparent that the present appeal has been filed beyond the outer period of limitation i.e. 90 days as provided under proviso to Section 16 of the NGT Act. Even if we take the case of the appellant at its face value, then admittedly there is a delay of 104 days (which is in excess of the prescribed period of limitation). However, upon proper computation there is in fact a delay of 125 days. If the period spent before the High Court and other period, the exclusion of which is prayed for, is not excluded then the appeal is barred by 323 days. Undisputedly, in any case the appeal has been filed beyond 90 days which is the outer limit of period of limitation prescribed under proviso to Section 16 of the NGT Act.

It will be appropriate to refer to the relevant provisions prescribing limitation under Section 16 of the NGT Act:

> "Any person aggrieved by,--
>
> (a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974(6 of 1974);
>
> (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974(6 of 1974);
>
> (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974(6 of 1974);

(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977(36 of 1977);

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980(69 of 1980);

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981(14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986(29 of 1986);

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

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986(29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002(18 of 2003),

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

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

> filed under this section within a further period not exceeding sixty days."

9. A bare reading of the above provision shows that appeal as contemplated under Section 16 against an order or decision or direction or determination, has to be filed within 30 days from the date on which the order is communicated to the aggrieved persons. Proviso to Section 16 of the NGT Act provides for a special limitation i.e. the appeal could be filed beyond the period of 30 days within a further period not exceeding 60 days, upon showing 'sufficient cause'. This means the tribunal cannot allow an appeal to be filed under Section 16 beyond a total period of 90 days. The NGT Act is a self-contained code as it provides for the forum, procedure, limitation, functions and powers of the tribunal. Furthermore, the scheme of the NGT Act, particularly, with reference to the language of Section 16 of the NGT Act, provides special limitation period. Thus, it necessarily excludes the operation of the general law of limitation. The provisions of the Limitation Act cannot be harmoniously construed with the provisions prescribing special limitation under the NGT Act as in that event it would defeat the very purpose of the NGT Act. A limitation provided under special law must prevail over the general law of limitation; particularly in face of the overriding effect given to the NGT Act by the framers of the law in terms of Section 33 of the NGT Act. In terms of Section 33, the provisions of the NGT Act shall have effect notwithstanding anything

inconsistent contained in any other law for the time being in force. The cumulative effect of all these factors would be that the special limitation prescribed under the NGT Act does not admit any exception to attract the applicability of the provisions of the Limitation Act. Section 16 of the NGT Act controls the very institution of an appeal in the Registry of the Tribunal. In terms of Section 16, the appeal can be filed 'within a further period not exceeding 60 days' but thereafter the Tribunal is not vested with the power to allow the appeal to be filed beyond the total period of 90 days. Thus, the tribunal loses its jurisdiction to entertain an appeal after the expiry of the special period of limitation provided under proviso to Section 16 of the NGT Act.

10. A bench of five members of the National Green Tribunal, in the case of *Nikunj Developers v. State of Maharashtra*, 2013 All India NGT Reporter (Delhi) (1) 40, after discussing various judgments of the Supreme Court had taken the view that the Tribunal has no jurisdiction to condone the delay beyond a period of 90 days, even if a sufficient cause is shown and the provisions of the Limitation Act including Section 5 are excluded. The tribunal held as under:

> "19. From language of the above provision it is clear that the Tribunal loses jurisdiction to condone the delay if the delay is of more than 90 days. Every appeal has to be filed within 30 days from the date of communication of the order. That is, what an applicant is required to ensure before the appeal is heard on merits. However, the Tribunal has been vested with the jurisdiction to entertain the appeal which is filed after 30 days from the date of communication of an order. This power to

condone the delay has a clear inbuilt limitation as it ceases to exist if the appeal is filed in excess of 60 days, beyond the prescribed period of limitation of 30 days from the date of communication of such order. To put it simply, once the period of 90 days lapses from the date of communication of the order, the Tribunal has no jurisdiction to condone the delay. The language of the provision is clear and explicit. It admits of no ambiguity and the legislative intent that Tribunal should not and cannot condone the delay in excess of 90 days in all, is clear from the plain language of the provision.

20. As stated in the cases *Hiralal Ratan Lal* and *India Hou*ses (supra) the period of limitation statutorily prescribed, has to be strictly adhered to and cannot be relaxed and or departed from, on equitable consideration. Further, in construing a statutory provision, the first and the foremost rule of construction is that of literary construction. We do not see any reason to expand the scope of the provision and interpret the proviso to Section 16 in the manner that Tribunal can be vested with the power of condoning the delay beyond 90 days. Such interpretation would be contrary to the specific language of the Section and would defeat the very legislative intent and object behind this provision.

21. This controversy need not detain us any further as it is no more *res integra and stands answered by the judgment of the Supreme Court in the case of Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and others (2010) 5 SCC 23 where the court held as under:*

> *"29.* Section 34(3) of the Arbitration and Conciliation Act, 1996, which is substantially similar to Section 125 of the Electricity Act came to be interpreted in *Union of India v. Popular Construction Company* : (2001) 8 SCC 470. The precise question considered in that case was whether the provisions of Section 5 of the Limitation Act are applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996. The two-Judge Bench referred to earlier decisions in Mangu Ram v. Municipal Corporation of Delhi: (1976) 1 SCC 392, Vidyacharan Shukla v. Khubchand Baghel AIR 1964 SC 1099, Hukumdev Narain Yadav v. L.N. Mishra (supra), Patel Naranbhai Marghabhai v. Dhulabhai Galbabhai : (1992) 4 SCC 264 and held:
>
> > 12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but

not thereafter" used in the proviso to Sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" Sub-section (2) and Sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, Sub-section (3) would not be an application "in accordance with" that Sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that

"where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court".

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

(emphasis supplied)

30. In *Singh Enterprises v. C.C.E., Jamshedpur and Ors.* (supra), the Court interpreted Section 35 of Central Excise Act, 1944, which is *pari materia* to Section 125 of the Electricity Act and observed:

> 8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to Sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period.
>
> (emphasis supplied)"

22. The same view was reiterated in *Commissioner of Customs, Central Excise v. Punjab Fibres Ltd.* : (2008) 3 SCC 73.

> "31. In *Commissioner of Customs and Central Excise v. Hongo India Private Limited and Anr.* (2009) 5 SCC 791, a three-Judge Bench considered the scheme of the Central Excise Act, 1944 and held that High

Court has no power to condone delay beyond the period specified in Section 35H thereof. The argument that Section 5 of the Limitation Act can be invoked for condonation of delay was rejected by the Court and observed:

> "30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35G and reference application to the High Court under Section 35H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.

32. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

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35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law

which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.

(emphasis supplied)

32. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory."

23. Section 34 of the Arbitration and Conciliation Act, 1996 uses the expression 'not thereafter' while the provision under our consideration uses the terms 'not exceeding'. Both these expressions use negative language. The intention is to divest the Courts/Tribunals from power to condone the delay beyond the prescribed period of limitation. Once such negative language is used, the application of provisions of Section 5 of the Limitation Act or such analogous provisions would not be applicable.

24. The use of negative words has an inbuilt element of 'mandatory'. The intent of legislation would be to necessarily implement those provisions as stated.

25. Introduction or alteration of words which would convert the mandatory into directory may not be permissible. Affirmative words stand at a weaker footing than negative words for reading the provisions as 'mandatory'. It is possible that in some provision, the use of affirmative words may also be so limiting as to imply a negative. Once negative expression is evident upon specific or necessary implication, such provisions must be construed as mandatory. The legislative command must take precedence over equitable principle. The language of Section 16 of the NGT Act does not admit of any ambiguity, rather it is explicitly clear that the framers of law did not desire to vest the Tribunal with powers, specific or discretionary, of condoning the delay in excess of total period of 90 days. At this stage, we may also refer to Principle of Statutory Interpretation by Justice G.P. Singh, 13th Edition, where it is stated as under:

> "(c) **Use of negative words**
>
> Another mode of showing a clear intention that the provision enacted is mandatory, is by clothing the command in a negative form. As stated by CRAWFORD: "Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience." As observed by SUBBARAO, J.: "Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative". Section 80 and Section 87-B of the Code of Civil Procedure, 1908; section 77 of the Railways Act, 1890; Section 15 of the Bombay Rent Act, 1947; section 213 of the Succession Act, 1925; section 5-A of the Prevention of Corruption Act, 1947; section 7 of the Stamp Act, 1899; section 108 of the Companies Act, 1965; section 20(1) of the Prevention of Food Adulteration Act, 1954; section 55 of the Wild Life Protection Act, 1972 (as amended in 1956); section 10A of Medical Council Act, 1965 (as amended in 1993) and similar other provisions have therefore, been construed as mandatory. A provision requiring 'not less than three months' notice' is also for the same reason mandatory.
>
> But the principle is not without exception. Section 256 of the Government of India, 1953, was construed by the Federal Court as directory though worded in

the negative form. Directions related to solemnization of marriages though using negative words have been construed as directory in cases where the enactments in question did not provide for the consequence that the marriage in breach of those directions shall be invalid. Considerations of general inconvenience, which would have resulted in holding these enactments mandatory, appear to have outweighed the effect of the negative words in reaching the conclusion that they were in their true meaning merely director. An interesting example, where negative words have been held to be directory, is furnished in the construction of section 25-F of the Industrial Dispute Act, 1947, where compliance of clause (c) has been held to be directory; although compliance of clauses (a) and (b) which are connected by the same negative words is understood as mandatory. These cases illustrate that the rule, that negative words are usually mandatory, is like any other rule subordinate to the context, and the object intended to be achieved by the particular requirement."

26. The provision of Section 16 of the NGT Act are somewhat similar to Section 34 of Arbitration and Conciliation Act, 1996. Thus, adopting an analogous reasoning, as was adopted in *Chhattisgarh State Electricity Board* (supra), we would have no hesitation in coming to the conclusion that we have no jurisdiction to condone the delay when the same is in excess of 90 days from the date of communication of the order to any person aggrieved.

27. Thus, the application must fail on this ground alone. We are of the considered view that the Tribunal has no jurisdiction to condone the delay of 19 days in filing the present appeal, the same being in excess of 90 days computed from the admitted date of communication of order, that is 2nd June, 2012."

11. The above view of the tribunal was followed by different Benches of this tribunal in the case of *M/s. Krishna Stone Crushers v. Haryana State Pollution Control Board,* 2014 (1) All India NGT Reporter (1) (Delhi) 42. In the case of *Aradhana Bhargav v. Ministry of Environment and Forests*, 2013 All India

NGT Reporter (2) (Bhopal) 1, besides following the law stated in *Nikunj Developers* (supra), the bench also clearly held that a special enactment, which specifically provides period of limitation would exclude the general law of limitation. Similar view was also expressed by another Bench of the Tribunal in the case of *Ms. Medha Patkar v. MoEF & Ors.*, 2013 All India NGT reporter (Delhi) 285.

12. In all the above cases, the consistent view of the tribunal has been that the tribunal has no jurisdiction to condone the delay beyond the period of 90 days and it is in fact the very filing of the appeal that is impermissible in terms of proviso to Section 16 of the NGT Act. Admittedly, in the present case, the delay in filing the appeal is beyond 90 days i.e. the total delay being 125 days. Thus, this tribunal has no jurisdiction to entertain the appeal after the expiry of the special limitation period provided under the relevant provisions. We are unable to find any substance in the submissions of the learned counsel appearing for the appellant, that the judgments of the tribunal do not state the correct law and/or are not applicable to the facts of the present case. We have no hesitation in rejecting the said contention raised on behalf of the appellant.

13. Having said so, we would still proceed to discuss the other contentions raised on behalf of the appellant before the tribunal. It is argued that the language of Section 16 of the NGT Act does not expressly or by necessary implication exclude the provisions

of Sections 4 to 24 (inclusive) of the Limitation Act and thus, squarely fall within the ambit of Section 29(2) of the Limitation Act. A limitation period is the period of time prescribed by law within which a person has to approach the prescribed forum/court. The period of limitation is imposed by statutes. There are different limitation periods for different types of cause of action. The period of limitation controls the right of a party to approach the court or tribunal. It also places an obligation upon the court to examine if the claim arising before it, is barred by law of limitation. For instance, the court can reject a plaint *inter alia* on the ground that it is barred by any law in terms of Order VII Rule 11 of the Code of Civil Procedure, 1908.

14. The policies underlying the law of limitation are ultimately based on justice and convenience and an individual should not live under the threat of a possible action for an indeterminate period since it would be unjust. Prescription of limitation takes in its ambit fairness and expeditious trial. Indefinite uncertainty in relation to bringing an action would be opposed to public policy. This concept is applicable with great emphasis to the environmental jurisprudence where the project proponent may invest large amount for making its project operational. Challenge to such project on the ground that it does not have any Environmental Clearance or otherwise, has to be within a specified time, as otherwise it would not only be unfair but also be seriously prejudicial to the interest of a party. Vigilance in the

pursuit of rightful claims should be encouraged so that these are ethical or rational justifications for the law of limitation.

15. We have already noticed that NGT Act is a self-contained code in itself. It provides the forum/procedure that has to be adopted, the limitation period within which the jurisdiction of the tribunal gets invoked, and the power and functions of the tribunal in explicit terms. As a self-contained code, it does not admit of any ambiguity with regard to application of other laws in the adjudicatory process of the tribunal. The legislature in its wisdom has worded provisions of Section 16 of the NGT Act so as to prohibit even filing of an appeal beyond a total period of 90 days. The language of these provisions clearly demonstrates the legislative intendment on excluding application of general law of limitation to this special statute. Such a view would also find clear support from the language of Section 29 (2) of the Limitation Act which postulates that when a special law prescribes for any period of limitation different from the period prescribed in the Schedule to the Limitation Act and the language of the provisions of such special law is indicative of express or implied exclusion, then Sections 4 to 24 (inclusive) of the Limitation Act shall apply only and to the extent they are not excluded by the Special Law. The cumulative reading of Section 16, particularly, the proviso and Section 29 of the Limitation Act leaves no doubt in mind that legislature had clearly intended to exclude the application of the general law of limitation provided under the Limitation Act from

the NGT Act. Proviso to Section 16 of the NGT Act uses the expression 'allow it to be filed under this Section within a further period not exceeding 60 days'. The use of the negative language 'not' in the proviso makes it mandatory that appeals cannot be filed after the expiry of total period of 90 days and thus, there is lack of jurisdiction of the tribunal to condone the delay beyond a total period of 90 days. The framers of law, where, in their wisdom wanted to give a benefit and/or restrict or place embargo on exercise of a right, have done so by using specific language in Section 16 of the NGT Act. A special concession is made available to an appellant to file an appeal beyond 30 days, the initial period of limitation prescribed under that provision. The framers there put a specific embargo on the power of the Tribunal not to entertain an appeal after the expiry of a further period of 60 days. Thus the legislature, by necessary implication excluded the application of general law of limitation from the provisions of the NGT Act. At this stage we may refer to the judgment of the Supreme Court in the case of *Hukumdev Narain Yadav v. Lalit Narain Mishra,* (1974) 2 SCC 133, where the Supreme Court was dealing with the provisions of the Representation of the Peoples' Act, 1951 and the applicability of the provisions of the Limitation Act. The Court in relation to the interpretation of the language of Section 29(2) of the Limitation Act held as:

> "17. What we have to determine is whether the provisions of this section are expressly excluded in the case of an election petition. It is contended before us that the words

> "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Section 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."

16. From the above dictum of the Supreme Court of India, it is clear that the exclusion can be by explicit language or even by necessary implication. It will depend upon the scheme of the Act, it being a self-contained code and what is the intent of legislature? Furthermore, in the case of *Union of India v. Popular Construction & Co.*, AIR 2001 SC 4010, the Supreme Court held that the word 'excluded' appearing in Section 29(2) of the Act would also include 'exclusion by necessary implication'. In the case of *Gopal Sardar v. Karuna Sardar,* (2004) 4 SCC 252, the Supreme Court read exclusion by implication, where some of the provisions in West Bengal Land Reforms Act, 1955, provided for giving benefit of Section 5 of the Limitation Act but Section 8 of the said Act did not make such a provision. The court took the view that

legislature consciously excluded the application of Section 5 of the Limitation Act.

17. Now let us examine the principles or relevant considerations that would help in determining the issue whether the legislature while framing a particular statute intended express, implied or no exclusion of the general law of limitation. It is difficult to state such principles exhaustively but *inter alia* the following would be the relevant considerations:

a) Whether the statute in question is a self-contained code and provides for a special forum or Tribunal?

b) Whether the statute provides for special limitation and expressly or impliedly excludes the applicability of general law of limitation?

c) Whether the scheme and object of the statute and the relevant provisions of the statute require the limitation prescribed thereunder the special law to prevail over the general law of limitation?

d) Whether the cumulative reading of the provisions of the special statute in back drop of the underlying object of the statute makes the provisions mandatory and/or directory?

If we apply the above principles to the provisions of the NGT Act, then, it is clear that NGT Act is a self-contained code, the tribunal is a special tribunal with defined powers and functions,

with a prescribed procedure and unambiguous provisions of limitation, clearly stating exclusion of general law of limitation.

18. Now, we may refer to some of the provisions under different statutes where the language used is *para materia* or substantially similar to the provisions of Section 16 of the NGT Act and the interpretation given by the higher judiciary to such provisions. Section 125 of the Electricity Act, 2003 (hereafter 'the Electricity Act') reads as under:

> "Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908;
>
> Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

19. The bare reading of the above provision shows that power to condone the delay is vested with the Tribunal under that Act but the said appeal cannot be permitted to be filed before the appellate tribunal beyond the period of 60 days. The expression used in the proviso to the section is 'allow it to be filed within a further period not exceeding 60 days.' This provision came up for consideration before the Supreme Court in the case of *Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission*, (2010) 5 SCC 23, where the Supreme Court held that the appellate tribunal had no jurisdiction to

entertain the appeal beyond the prescribed period of 120 days specified in Section 125 of the Electricity Act and Section 5 of the Limitation Act was not applicable. It was held that the proviso to Section 125 of the Electricity Act and the interpretation attracting the application of Section 5 of the Limitation Act read with Section 29(2) thereof, will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory.

20. In the case of *Singh Enterprises v. Commissioner of Central Excise*, (2008) 3 SCC 70, the Supreme Court was concerned with Section 35 of the Central Excise Act, 1944. The proviso to Section 35(1) empowers the Commissioner to allow appeal to be presented within a further period of 30 days. The Supreme Court held that "proviso to sub-Section (1) of Section 35 makes the provision crystal clear that appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were, therefore, justified in holding that there was no power to condone the delay after the expiry of 30 days period."

21. The Supreme Court with reference to the language of the above provisions declared that there was legislative intent to exclude the application of provision of the Limitation Act by necessary implication. However, even in the cases where specific exclusion was not evident from the language of the provision but there was clear absence of the "delay-condoning sections" of the Limitation Act in the special statute, there also the Court had taken the view that non-mentioning of such specific provisions would amount to exclusion thereof.

22. In the case of *Commissioner of Customs, Central Excise, Noida v. Punjab Fibers Ltd., Noida*, (2008) 3 SCC 73, the Supreme Court while dealing with the provisions of Section 35(H)(1) of the Central Excise Act, 1944, where the section only provides a specific limitation for filing of an appeal, held that the appellate authority has no power to allow the appeal to be presented after the prescribed period of 180 days of the date upon which he was served with the notice. The court while reiterating the principles stated in *Singh Enterprises* (supra) further held that logic of Section 5 of the Limitation Act cannot be availed for condonation of delay as there was exclusion of Limitation Act. In the case of *Smt. Hetal Alpesh Muchhala v. Adityesh Educational Institute and Ors.*, (2009) 152 CompCas 75 (Bom), the High Court of Bombay while dealing with the proviso to Section 10(F) of the Companies Act, 1956, which uses the expression, 'not exceeding 60 days', the contention that the benefit of Section 5 of the Limitation Act, 1963

can be granted and that an appeal could be entertained even after the prescribed period of 60 days that there was clear exclusion of Section 5 of the Limitation Act and held as under:

> "20. The words used in the proviso to Section 10F of the Companies Act, 1956, are "not exceeding 60 days" thereby clearly prescribing the time limit of only 60 days, in addition to the initial period of 60 days allowed under Section 10F of the Companies Act, 1956, to enable a party to file an appeal. The proviso clearly shows that the power vested in the court to condone delay on sufficient cause being shown is directory and subject to the discretion vested in the court. However, the maximum period to the extent of which such delay is capable of being condoned is mandatorily prescribed and not open to exercise of any discretion. The words "not exceeding" cannot be given any other meaning except "not more than" or "not beyond" or "not thereafter". Therefore, in my view, the words "not exceeding 60 days" would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, 1963 and would therefore bar the application of Section 5 of the Limitation Act to Section 10F of the Companies Act, 1956. To hold that the court could entertain an application to set aside the decision/order passed by the Company Law Board beyond the extended period under the proviso, to Section 10F of the Companies Act, 1956, would render the phrase "not exceeding 60 days" wholly otiose."

23. In the other case of *Mer Ramda Vejunandbhai and etc. v. Hardashbhai Parbatbhai and Ors,* AIR 1992 Gujarat 122, the Court while dealing with the provisions of Motor Vehicles Act 1988, which provides due limit of 12 months for filing claim under the Act, held that provisions of Section 5 of the Limitation Act, would not be applicable as the legislature has expressly excluded the same by special law i.e. proviso to Section 163 of the Motor Vehicle Act, 1988.

24. From the above dictum declared by the Supreme Court of India, it is clear that wherever the words like 'not exceeding', 'not more than', 'not beyond' or 'not thereafter' are used in the provisions of limitation under different statutes, a view has been taken that the general provisions of the Limitation Act would stand excluded. Even if, there was no specific provision expressly providing exclusion, the Courts have read exclusion into such provisions on the principle of implied exclusion. In the case before us, the Learned Counsel for the appellant, while contending that there was no express or implied exclusion in the language of the provisions of the NGT Act and that the benefit of the provisions of the Limitation Act would be available to the appellant placed relevance upon the judgment of the Supreme Court in the case of *Mangu Ram v. Municipal Corporation Of Delhi,* (1976) 1 SCC, 392, wherein the Supreme Court was considering the provisions of Section 417(4) of Criminal Procedure Code, 1898 (378 of CrPC, 1973) which provides that no special leave to appeal from the order of acquittal shall be entertained by the High Court where the complainant is a public servant and 60 days in every other case, computed from the date of that order of acquittal. The question which the Court was called upon to decide was, whether the provisions of Section 5 of the Limitation Act would be attracted to the benefit of appellant or not and whether Section 29(2)(b) of the Limitation Act, 1908 would cover such a case. Answering the above question in the affirmative, the Supreme

Court held that the provision of Section 5 were applicable and while distinguishing the case of *Kaushalya Rani v. Gopal Singh,* AIR 1964 SC 260 the Court held as under:

> **"**7**.** It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court in Kaushalya Rani's case, the time limit of sixty days laid down in Sub-section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the language of Sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in Sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it."

We may also notice here that *Kaushalya Rani* (supra) was a Three Judge Bench judgment of the Supreme Court while *Mangu Ram* (supra) was a Two Judge Bench judgment. In *Mangu Ram,* the Bench had distinguished *Kaushalya Rani* also on the ground that it dealt with Section 5 and 29 (2) (b) of the Limitation Act of

1908, while *Mangu Ram* was dealing with Section 5 and 29 (2) of the Limitation Act of 1963 and there was not only linguistical distinction between these provisions but they varied in substance as well. Section 29 (2)(b) had dealt with specific application of Section 5 of the Limitation Act of 1908, while Section 29 (2) of the Limitation Act of 1963 dealt with Section 4 to 24, both inclusive, of the Limitation Act of 1963.

25. The other judgment brought to the notice of the Tribunal is *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker*, (1995) 5 SCC 5, where another Two Judge Bench of the Supreme Court dealing with the provisions of Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short 'the Kerala Rent Control Act') and Section 29 (2) and 5 of the Limitation Act of 1963 took the view that the advantage of Section 5 of Limitation Act would be applicable to such proceedings. Section 18 of the Kerala Rent Control Act, provided for an appeal to the Appellate Authority within 30 days from the date of the impugned order. It further provided that the period taken to obtain certified copy of the order shall be excluded. The Court held that the two requirements stated in Section 29 (2) of the Limitation Act were satisfied and thus it would follow that the provisions of Section 5 would be applicable and come to the aid of appellant in that case if he has shown sufficient cause.

26. The above referred two judgments in the case of *Mangu Ram* (supra) and *Mukri Gopalan* (supra) do not state or enunciate the

correct exposition of law for variety of reasons. Amongst others, firstly, these judgments do not consider earlier judgments of the Supreme Court even by larger Benches. This would attract the principle of *stare decisis*. Secondly, the language of the provisions that fall for consideration of the Supreme Court in these two cases is completely distinct and different from the language of the provision which came up for discussion before the Supreme Court in other cases. They are in any case not in parity with the language of Section 16 of the NGT Act. On a plain reading of the provisions with which the Court was concerned in the above two cases, the language of the relevant provisions did not either expressly or impliedly provide for an exclusion of the Limitation Act. Lastly, these cases came to be considered by the Supreme Court itself, even by the larger Benches subsequently and more particularly in the case of *Gopal Sardar* (supra) where in paragraph 14 and 15 of the judgment, the Supreme Court deliberated upon these judgments and did not concur with the view. Same was also considered in the case of *Chhattisgarh State Electricity Board* (supra) where in paragraph 33 of the case of *Mukri Gopalan* (supra) was noticed by the Supreme Court, however, the view expressed in that judgment was not followed. The proposition of law has been clearly stated by the Supreme Court in the case of *Kaushalya Rani* (supra), *Hukum Dev Narayan Yadav* (supra), *Vidyacharan Shukla v. Khubchand Baghel*, AIR 1964 SC 1099 (Constitution Bench) and *Chhattisgarh State*

Electricity Board (supra) and *The Commissioner of Sales Tax, U.P., Lucknow v. Parson Tools and Plants*, (1975) 4 SCC 22.

27. In *Parson Tools and Plants* (supra), the Court observed that where the legislature clearly declares its intent in the scheme and language of the statute, it is the duty of the Court to give full effect to the same, without scanning its wisdom and policy and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver. In the case of *Vidya Charan Shukla* (supra), the Bench of the Supreme Court accepted the application of the principle of implied exclusion. The concept of 'complete code' was applied by the Supreme Court in *Hukum Dev Narayan Yadav* (supra) case, where the Court discarded the dictionary meaning of the word 'expressly excluded' and accepted the doctrine of implied exclusion.

28. In the case of *Union of India v. M/s Popular Construction Company* (supra), the Supreme Court was concerned with the provisions of Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'Arbitration and Conciliation Act'). The Learned Single Judge of the High Court rejected the application on the ground that it was barred by time, which view was upheld by the Division Bench of the High Court. Proviso to Section 34(3) of the Arbitration Act provided that if the Court was satisfied that appellant was prevented by sufficient cause from making the application "within the prescribed period of three months, it may

entertain the application within a further period of 30 days, but not thereafter". The Court held as under:

> "12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result."

29. We may also refer to the case of *Commissioner of Customs & Central Excise v. Hongo India (P) Ltd.,* 2009 (5) SCC 791, where the Court while considering the provisions of Section 35(H) of the Central Excise Act, 1944 and applicability of Section 5 of the Limitation Act to the applications filed beyond the prescribed period of limitation, repelled the contention that Section 5 would be attracted and held as under:

> "31. In this regard, it is useful to refer to a recent decision of this Court in Punjab Fibres Ltd. The Commissioner of Customs, Central Excise, Noida was the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following Singh Enterprises v. CCE6 concluded that: (Punjab Fibres Ltd. case1, SCC p. 75, para 8)
>
> > "the High Court was justified in holding that there was no power for condonation of delay in filing reference application."
>
> 32. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear

that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an 18 appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law here in this case is Central Excise Act. The nature of the remedy provided therein are such that the legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court."

Having noticed various judgments of the Supreme Court and the High Courts for and against the proposition, the undisputed principle that emerges and which has been consistently followed

by the Supreme Court, is that a mere provision of the period of limitation in the statute is not sufficient to displace the applicability of the provisions of the Limitation Act. But where the act is a complete code in itself and where the scheme of the Act and the language of the relevant provisions expressly or impliedly exclude the applicability of the general law of limitation, then such exclusion is accepted by the Court. Not only the scheme of the NGT Act, which is a self contained code, clearly demonstrates legislative intent for exclusion of the general law of limitation, but specifically gives precedence to the provisions of the NGT Act in terms of Section 33 of the NGT Act, which clearly means that the provisions of limitation contained in the NGT Act would prevail and by necessary implication would exclude the application of the provisions of the Limitation Act. Thus, it squarely satisfies the ingredients of Section 29(2) of the Limitation Act.

30. It is next contended on behalf of the appellant that since no penal consequences for default in not filing application within 90 days have been provided under the NGT Act, it should be construed that the legislature did not intend to exclude the application of the provisions of the Limitation Act from the NGT Act. Even this contention of the appellant does not impress us. We have already referred to the relevant provisions of the NGT Act in relation to limitation. The consequences of not filing an appeal within the prescribed period of limitation are inbuilt in proviso to Section 16. It is the very filing of the appeal under Section 16 of

the NGT Act that stands barred if it is brought beyond the period of 90 days. The language of the proviso clearly imposes a duty upon the Tribunal not to permit filing of the appeal if the same is filed beyond the further period of 60 days.

31. In terms of the proviso to Section 16 of the NGT Act, the twin consequences that flow from the very language thereof are that firstly, it takes away the right of a party to file an appeal on the expiry of 90 days and simultaneously, it vests a valuable right in the opposite party. Secondly, it takes away the very jurisdiction of the Tribunal to entertain or allow filing of appeal after the expiry of the prescribed period. None of the provisions vest jurisdiction in the Tribunal to condone the delay after the expiry of 90 days, be there a sufficient cause or not for filing the appeal after that period. In the light of this, the contention that the section does not provide for any civil consequences can hardly be accepted. To examine the consequences of a default in a provision, the rule of plain construction should normally be applied. If upon bare reading of the provision consequences are clear and such consequences are in line with the object and purpose of the Act, then there is no occasion for the Court or the Tribunal to read words into the provisions which are non-existent. Wherever the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of an apparent purpose of the enactment, there it may be advisable to modify the

meaning of the words. The Court or the Tribunal would adopt an interpretation which is reasonable and sensible rather than that which is none of those things [*Sri Nasiruddin v. State Transport Appellate Tribunal*, AIR (1976) SC 331]. Often applied principle of interpretation is that where the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner only because of harsh consequences arising therefrom [*Refer E. Palanisamy v. Palanisamy (D) by Lrs. and Ors.*, (2003) 1 SCC 123]. Mere inconvenience or some hardship has not been accepted as a relevant consideration for giving different meaning to the provision which otherwise is clear and unambiguous on its plain reading. Limitation is a statute of repose. It ordinarily bars a remedy, but does not extinguish a right. Ordinarily, the words of a statute have to be given their strict grammatical meaning and equitable considerations are out of place, particularly in provisions of law limiting the period of limitation for filing suits or legal proceedings. In *General Accident and Life Assurance Corporation Ltd. v. Janmahomed Abdul Rahim,* AIR 1941 PC 6, the Supreme Court held as under:

> "A limitation Act ought to receive such a construction as the language in its plain meaning imports..... Great hardship may occasionally be caused by statutes of limitation in cases of poverty, distress and ignorance of rights, yet the statutory rules must be enforced according to their ordinary meaning in these and other like cases."

32. The provisions providing for period of limitation cannot be so liberally construed so as to not only deprive the right to other

party to whom a benefit has accrued, but even frustrate the very purpose of such provision. In the case of *P.K. Ramachandran v. State of Kerala & another,* AIR 1998 SC 2276, the Supreme Court held as under:

> "6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs."

33. Normally, the statutory period of limitation provided in a provision like under the NGT Act, is un-extendable by recourse to provisions of Section 5 of the Limitation Act. While applying the provisions of limitation, besides applying the rule of strict construction, the Tribunal has to keep a balance between rival rights of the parties; appellant who has lost his right or whose remedy is barred by time and other to whom a benefit has accrued as a result of loss of right of the first. At this stage, it may be appropriate to make reference to a recent judgment of the Supreme Court, in the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others,* Civil Appeal Nos. 8183-8184 of 2013 (Arising out of SLP (C) Nos. 24868-24869 of 2011), where the Court was primarily concerned with the condonation of delay in filing an appeal. The Court

adverted itself towards the respective rights and obligations of the parties and held as under:

> "26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.
>
> vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play."

In light of these principles, the contention of the appellant that the National Green Tribunal is the forum to which first appeal is provided against the orders specified in Section 16 of the NGT Act and that these provisions should be construed liberally, can hardly be accepted. Also there is no question of depravation of right to appellant. The right of appeal is a statutory right and can be exercised within the prescribed period of limitation. If a party chooses to sleep over its right and permits the remedy available to it to become barred by time, then it can hardly be heard to contend that it has lost a valuable right and the result is unjust. Such interpretation would be a normal corollary of application of rule of 'plain construction'. This would be in line with the object

and purpose of the Act and would also subserve the cause of justice. This interpretation would not preclude any litigant from taking recourse to an appropriate remedy prescribed in the Act and in accordance with law.

34. The provisions of Section 16 of the NGT Act do not admit of any ambiguity or absurdity. It clearly provides the period of limitation and the consequences of default for not filing the appeal within the prescribed period of limitation. We do not see any reason to give any other interpretation to the provisions of Section 16 of the NGT Act than the one which the legislature in its wisdom has expressed in plain and unambiguous terms.

35. Lastly, we shall deal with the contention of the appellant that the provisions of Section 16 of the NGT Act prescribing limitation are 'directory' and not 'mandatory', therefore, rule of 'liberal construction' would justify recourse to the provisions of the Limitation Act in condoning the delay even beyond the prescribed period of limitation (90 days). In support of such contention, reference is made to the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908, where language *para materia* to Section 16 of the NGT Act has been used and has been held to be 'directory' in various cases. To examine the merit of this contention, it is necessary for us to explain the distinction between the 'mandatory' and 'directory' in law.

36. 'Mandatory' and 'directory' are two parallel expressions which are incapable of being used synonymously or alternatively for each other. What is 'mandatory' cannot be 'directory' and vice-versa. With the development of law, the distinction between these expressions has become finer but not clearly definite in terms. Whereas 'mandatory' provisions should be fulfilled and obeyed exactly, substantial compliance is all that is necessary with the provisions of a 'directory' enactment. Even the question of prejudice becomes relevant while examining the distinction between these two expressions. Describing this distinction in his book 'Principle of Statutory Interpretation', 13th Edition, 2012 (page 393 to Page 396), Justice G.P. Singh, referring to various case laws on the subject noticed as follows:

> "6. MANDATORY AND DIRECTORY PROVISIONS
>
> (a) General
>
> The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage LORD CAMPBELL said: "No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be considered". As approved by the Supreme Court; "The question as to whether a statute is mandatory or directory depends upon the

intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other". "For ascertaining the real intention of the Legislature", points out SUBBARAO, J. "the court may consider *inter alia,* the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow there from; and above all, whether the object of the legislation will be defeated or furthered". If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. But all this does not mean that the language used is to be ignored but only that the *prima facie* inference of the intention of the Legislature arising from the words used may be displaced by considering the nature of the enactment, its design and the consequences flowing from alternative constructions. Thus, the use of the words 'as nearly as may be' in contrast to the words 'at least' will *prima facie* indicate a directory requirement, negative words a mandatory requirement 'may' a directory requirement and 'shall' a mandatory requirement.

If a provision is mandatory an act done in breach thereof will be invalid, but if it is directory the act will be valid although the non-compliance

> may give rise to some other penalty if provided by the statute."

37. One of the most often quoted distinction between a mandatory and a directory provision is that failure to comply with a 'directory' provision does not invalidate underlining proceedings unless complaining party can show serious prejudice, while non-compliance of 'mandatory' statute would not necessarily require presence of prejudice. The Supreme Court in the case of *Hari Vishnu Kamath v. Syed Ahmad Ishaque and Ors.*, AIR (1955) SC 233, held "the practical bearing of the distinction between a provision which is 'mandatory' and one which is 'directory' is that the former must be strictly observed, while in the case of latter it is sufficient that it is substantially complied with".

38. The Supreme Court in the case of *Fairgrowth Investments Ltd. v. The Custodian*, (2004) 11 SCC 472, was concerned with the provisions of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992. Section 4(2) of the said Act permitted any person aggrieved by a notification issued under Sub-section (2) of Section 3 of the said Act, to file a petition objecting to the notification within 30 days of the issuance of the notification. Section 10(3) of the same Act provided that an appeal to the Supreme Court would lie from any judgment, sentence or order passed by the Special Court within a period of 30 days from the date of such judgment or Order. Further, the proviso to Section 10(3) empowered the Supreme Court to entertain the

appeal even after the expiry of 30 days, if the court was satisfied that sufficient cause has been shown in filing the appeal belatedly. Section 13 of the said Act provided that provisions of the Act would have overriding effect over other laws. In light of these provisions, the Supreme Court while rejecting the argument that no penal consequences were provided and that Section 4(2) did not exclude the application of the provisions of the Limitation Act, held that under Section 4(2), the Special Court was not vested with the power to condone the delay and, therefore, provisions of Section 4 (2) of the Act could not be said to be 'directory'. The Court held that Section 29 (2) of the Limitation Act did not apply to the proceedings under the special law. The Court while following the principle stated in *Gopal Sardar* (supra) held as under:

> "9. We are of the view that the provision prescribing a time limit for filing a petition for objection under Section 4(2) of the Act is mandatory in the sense that the period prescribed cannot be extended by the Court under any inherent jurisdiction of the Special Court. Prescribed periods for initiating or taking steps in legal proceedings are intended to be abided by, subject to any power expressly conferred on the court to condone any delay. Thus the Limitation Act 1963 provides for different periods of limitation within which suits, appeals and applications may be instituted or filed or made as the case may be. It also provides for exclusion of time from the prescribed periods in certain cases, lays down bases for computing the period of limitation prescribed and expressly provides for extension of time under Section 5 in respect of certain proceedings. If the periods prescribed were not mandatory, it was not necessary to provide for exclusion or extension of time in certain circumstances nor would the method of computation of time have any meaning."

39. Still in the case of *State Bank of India v. B.S. Agricultural Industries*, (2009) 5 SCC 121, the Supreme Court while dealing with the Section 24A of the Consumer Protection Act, 1986, held that the expression 'shall not admit a complaint if it is filed after two years from the date on which the cause of action has arisen', is sort of a legislative command to the forum to examine and ensure that the complaint is filed within the prescribed time, thus withholding the rule of plain construction.

40. At this stage, it will be appropriate to refer to the judgment of the Supreme Court in the case of *May George v. Special Tahsildar and Ors.*, (2010) 13 SCC 98, where the Court stated the precepts which would be normally examined by the Courts for determining whether the provision is 'mandatory' or 'directory'. The Court held as under:

> "(a) While determining whether a provision is mandatory or directory, somewhat on similar lines as afore-noticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;
>
> (b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;
>
> (c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;
>
> (d) As a factor to determine legislative intent, the court may also consider, inter alia, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;

(e) It is also permissible to examine the impact of other provisions in the same statute and the consequences of non-compliance of such provisions;

(f) Physiology of the provisions is not by itself a determinative factor. The use of the words 'shall' or 'may', respectively would ordinarily indicate imperative or directory character, but not always.

(g) The test to be applied is whether non-compliance with the provision would render the entire proceedings invalid or not.

(h) The Court has to give due weight age to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.

41. The distinction between mandatory and directory provisions is a well accepted norm of interpretation. The general rule of interpretation would require the word to be given its own meaning and the word 'shall' would be read as 'must' unless it was essential to read it as 'may' to achieve the ends of legislative intent and understand the language of the provisions. It is difficult to lay down any universal rule, but wherever the word 'shall' is used in a substantive statute, it normally would indicate mandatory intent of the legislature.

42. Crawford on 'Statutory Construction' has specifically stated that language of the provision is not the sole criteria; but the Courts should consider its nature, design and the consequences which could flow from construing it one way or the other."

43. In the case of *Mulchand Khanumal Khatri v. State of Gujarat and Ors.,* (2012) 5 SCC 365, the Court held that Section 11A of

the Land Acquisition Act, 1894 (amended in 1984), which provides that if an award is not made within a period of declaration, the acquisition proceedings would lapse, was 'mandatory'.

44. In the case of *Mohd. Ashfaq v. State Transport Appellate Tribunal, Uttar Pradesh and Ors.*, (1976) 4 SCC 330, the Supreme Court while dealing with the provisions of Section 58(2) of the Motor Vehicles Act, 1939, where the application for renewal of stage carriage permit was to be made in not less than 120 days before the date of its expiry considered the question whether the regional transport authority may entertain an application after the last date specified as above 'if the application is made not more than 15 days after the said last date'. The Supreme Court held as under:

> "Section 29, Sub-section (2) of the Limitation Act, 1963 makes Section 5 applicable in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision of the Act. The only provision of the Act sought to be pressed into service for this purpose was Sub-section (3). Does Sub-section (3) expressly exclude further extension of time under Section 5 ? If it does, then Section 5 cannot be availed of by the appellant for condonation of the delay. Sub-section (3) in so many terms says that the Regional Transport Authority may condone the delay in making of an application for renewal and entertain it on merits provided the delay is of not more than 15 days. This clearly means that if the application for renewal is beyond time by more than 15 days, the Regional Transport Authority shall not be entitled to entertain it, or in other words, it shall have no power to condone the delay. There is thus an express provision in Sub-section (3) that delay in making an application for renewal shall be condonable only if it is of not more than 15 days and that expressly excludes the applicability of Section 5 in

> cases where an application for renewal is delayed by more than 15 days."

The Supreme Court took the view that the provisions of Section 58(2) above expressly excluded the application of Section 5 of the Limitation Act within the provisions of Section 29(2) thereof. Whenever the Court is called upon to examine whether a provision of a statute or a rule having statutory force is 'mandatory' or merely 'directory', it can be decided only after gathering the purpose and object behind such statute, the scheme of the Act, fall out consequences that might flow from insisting upon strict observance of a particular provision and its correlation with the other provisions.

45. The purpose and object of the statute is important. The weighing consequences of holding a provision to be 'mandatory' or 'directory' are of significant relevance. We have already indicated that the consequences are inbuilt in the language of Section 16 of the NGT Act and serious civil consequences flow from default in adhering to the time prescribed therein. Not only that the party loses the right to prefer an appeal against an order from which it is aggrieved, but there is a duty cast upon the Tribunal not to permit filing of the appeal beyond the prescribed period of limitation.

46. The Learned Counsel appearing for the appellant relied upon the judgment of Supreme Court in the case of *Kailash v. Nanhku and Ors*, (2005) 4 SCC 480, to contend that the language used in

Section 16 of the NGT Act is *para materia* to the language used in Order VIII Rule 1 of the Civil Procedure Code, 1908 and since the Supreme Court in this case held Order VIII Rule 1 of the Civil Procedure Code, 1908, as 'directory', therefore, the provisions of Section 16 of the NGT Act should be held to be 'directory' by the Tribunal. Thus, the appellant would be entitled to the benefit of the provisions of the Limitation Act in regard to the condonation of delay.

47. Reliance is also placed upon the judgment of the Supreme Court in the case of *Salem Advocate Bar Association, Tamil Nadu v. Union of India*, (2005) 6 SCC 344. The above contention can be directed into two distinct sections. Firstly, whether the language of Order VIII Rule 1 of Code of Civil Procedure, 1908 and Section 16 of the NGT Act are *para materia* and therefore, the provisions of Section 16 should be held to be directory. Secondly, whether the judgment of the Supreme Court on facts thereof and for the reasons recorded therein, have any application to the present case.

48. The language of Order VIII Rule 1 of the Code of Civil Procedure, 1908, cannot by any stretch of imagination be equated with, much less considered as identical to, the provisions of Section 16 of the NGT Act. Order VIII Rule 1 relates to a procedural law, while Section 16 is part of substantive law. A bare reading of Order VIII Rule 1 clearly conveys the intent of the

framers to make the provisions 'directory' and it provides for no consequences of default therein. Most importantly, it must be noticed that even if a defendant does not file the written statement under Order VIII Rule 1, the suit does not come to an end and the defendant does not lose his right to contest the suit on questions of law, cross examination of witnesses and even to lead his own evidences. Order VIII Rule 1 has to be read with other provisions of Code of Civil Procedure, 1908 which does not render the default in filing the written statement within the time prescribed, as of any fatal or serious civil consequences. More so, the said provision does not even apply to the original side of the Chartered High Courts, as held by the Supreme Court in *Iridium India Telecom Ltd. v. Motorola Inc.*, AIR 2005 SC 514.

49. In contradistinction thereto, the provision of Section 16 of the NGT Act is specific, unambiguous and clearly conveys the legislative intent of making the provisions 'mandatory'. The provision of Section 16 of the NGT Act, undisputedly has inbuilt element of consequences. The party loses its right to even institute an appeal after the prescribed period of limitation and a duty is cast upon the Tribunal not to permit such institution. As already stated by us above, the language of Section 16, by necessary implication excludes the application of the general law of limitation. Thus, it cannot be said that the language is *para materia* to Order VIII Rule 1 and hence the consequences thereof should be identical.

50. The Supreme Court in *Kailash Nankhu* (supra), while dealing with the provisions of Order VIII Rule 1 clearly stated that the provision does not deal with the power of the Court and also does not specifically take away the power of the Court to take the written statement on record, though filed beyond the time as provided for. The nature of the provisions contained in Order VIII Rule 1 is procedural. It is not a part of the substantive law. Further, the object behind substituting Order VIII Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs, approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same (paragraph 27 of the judgment). In paragraph 28 of the judgment, the Supreme Court further noticed that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation, unless compelled by express and specific language of the statute. The provisions of the Code of Civil Procedure, 1908, or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in order to achieve the ends of justice.

51. We may also notice here that the Court in *Kailash Nankhu* (supra) specifically dealt with the view expressed by the Supreme

Court in the case of *Dr. J.J. Merchant and Ors. v. Shrinath Chaturvedi*, (2002) 6 SCC 635, where the Court had taken the view that proviso to Order VIII Rule 1 should be strictly construed and adhered to. The Court in the case of *Kailash Nankhu* (supra) referred to both *Topline Shoes Ltd. v. Corporation Bank*, (2002) 6 SCC 33 and *Dr. J.J. Merchant* (supra). In both these earlier judgments of the Supreme Court, the Court was concerned with Section 13(2) of the Consumer Protection Act, 1986, which required the opposite party to a complaint to give his version of the case within a period of thirty days or such extended period not exceeding 15 days as may be granted by the District Forum. This provision was treated by the Court in the case of *Dr. J.J. Merchant* (supra) as *para materia* to Order VIII Rule 1 of the Civil Procedure Code, 1908. In the case of *Topline Shoes Ltd.* (supra), the Court held the same provision as 'directory', while in the case of *J.J. Merchant* (supra), it was held to be 'mandatory', which view in relation to interpretation of Order VIII Rule 1 was treated to be obiter by the Supreme Court in the case of *Fairgrowth Investments Ltd.* (supra).

52. The Supreme Court in the case of *Topline Shoes Ltd.* (supra), also took the view that Section 13(1)(a) of the Consumer Protection Act, 1986, need not be construed strictly.

53. From the above discussion, it is clear that provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908, do not

impose any embargo upon the power of the Court to extend the time. The provision is in the domain of procedural law and was held to be 'directory' by the Supreme Court. On the contrary, the provision of Section 16 of the NGT Act is in unambiguous language and imposes restriction upon the power of Tribunal to permit even institution of an appeal beyond the prescribed period. Besides this and for the reasons afore-recorded, the provision has to be construed as 'mandatory'.

54. Having dealt with the various aspects of this case and the rival contentions raised on behalf of the respective parties we are of the considered view that the provisions of Section 16 of the NGT Act are unexceptionally 'mandatory'. The said provision clearly conveys the legislative intent of excluding the application of the provisions of the Limitation Act, 1963. Further, with approval we reiterate the view taken by the Tribunal in the cases referred supra that this Tribunal has no jurisdiction to condone the delay beyond the total period of 90 days provided under Section 16 of the NGT Act. In fact, the Tribunal cannot permit even institution of an appeal if there is such a delay.

55. Accordingly, we hold that the present appeal is barred by limitation and the Tribunal has no jurisdiction to condone the delay of 104 days as prayed. Resultantly, the application for condonation of delay is dismissed and appeal does not survive for consideration.

56. The appeal and the application are thus dismissed while leaving the parties to bear their own cost.

Hon'ble Mr. Justice Swatanter Kumar
Chairperson

Hon'ble Mr. Justice M.S. Nambiar
Judicial Member

Hon'ble Dr. D.K. Agrawal
Expert Member

Hon'ble Prof. A.R. Yousuf
Expert Member

Hon'ble Dr. R.C. Trivedi
Expert Member

Dated: July 24, 2014

BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

MISC. APPLICATION NO.147/2014
in
APPEAL NO.27 OF 2014

CORAM :

HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)

HON'BLE DR. AJAY A.DESHPANDE
(EXPERT MEMBER)

In The Matter Of:

1. **VARIYA GANDABHAI,**
   S/o Mavjibhai, Aged 68 years,
   R/o Bhagol Vas village Gyaspur,
   Tal. City- District Ahmedabad,
   Gujarat,,, & Ors…3.. **APPELLANT(S)**

VERSUS

1. **UNION OF INDIA,**
   Through Secretary,
   Ministry of Environment, Forests
   And Climate Change,
   Indira Paryavaran Bhavan,
   Jor Bagh Road,
   New Delhi-110003.
   And others 5…

…….**RESPONDENTS**

Counsel for Appellant(s):

Mr Ritwick Dutt, Mr. Rahul Choudhary.

Counsel for Respondent(s):

Shweta Busar Adv holding for Mr. Ranjan Nehru
For Respondent No.1.
Mr. Parth H. Bhatt for Respondent Nos.2,4.
Mr. Viral K. Shah for Respondent No.3
Mr. Ashish H. Shah for Respondent No.6.

Date: March 20th 2015.

P.C.

1. By this Application, the Appellants, herein seek condonatiion of delay caused in filing of Appeal bearing Appeal No.27 of 2014. It may be stated that the Appeal came to be filed on August 26th, 2014, challenging order of Environment Clearance (EC), passed by MoEF on December 16th, 2013. Respondent No.6, is the Project Proponent (PP). The project is for installation of Central Effluent Treatment Plant (CETP), on outskirts of Ahmedabad city, allegedly for reduction of load of already existing STP by installation of new CETP, by updating and using modern technology, so as to avoid pollution.

2. It is not necessary to set out all the facts related to methodology of functioning of the proposed CETP, because presently we are concerned with the preliminary issue of limitation and scope of the Application is, therefore, limited to determine whether the Appeal is filed within period of thirty (30) days as prescribed under Section 16 (1) of the National Green Tribunal Act, 2010. Still, however, it is important to note that there exists old STP, which is being run and the new project is being sought to be operated for the purpose of reduction of strain on existing STP and to accommodate excessive sewage, slurry and effluents, which are being treated by use of existing system. It is undisputed that Ahmedabad Municipal Corporation (AMC), acquired about 500Acres of land way back to operate the sewage treatment and effluent treatment in the area of Industrial Zone. PP submitted an Application to MoEF for grant of EC, inasmuch as though the Application could be considered by the local authority i.e. State Level Environmental Impact Assessment Authority (SEIAA), under normal circumstances, yet, it being in the proximity of the industrial zone of Ahmedabad, which is critically polluted area, as per the EIA Notification dated 14th

September, 2006, the same was required to be treated as Project in category 'A'. obviously, his Application was processed by the MoEF as per procedure laid down under the EIA Notification dated 14th September, 2006, by following relevant norms, namely; (1) Screening, (2) Scoping, (3) Public Consultation and (4) Appraisal. It appears that thereafter the impugned EC dated 16.12.2013, was granted.

3. Undisputedly, the Appellant Nos. 1,2 and 4, participated in public consultation process, when the public hearing was held on 8.8.2012, during process of public hearing held by the competent public authority at stage No.3, of the above stages. Thus, it is imperative that the Appellant Nos. 1,2 and 4, could be attributed with the knowledge that the process which was going on regarding happening in regard to the project in question, notwithstanding the fact that they may not have direct knowledge of subsequent grant of EC.

4. According to the Appellants, they were not aware of the impugned EC until they came to know regarding the same during pendency of Writ Petition bearing Writ Petition No.177 of 2014, on 12th June, 2014, till their Advocate gave them intimation about the same, on

perusal of the documents and reply affidavit, which he had perused that was submitted by PP – Respondent No.6, in that Writ Petition. They submit that it was for such a reason that said Writ Petition No.177 of 2014, was disposed of as 'infructuous' by the Hon'ble High Court of Gujarat, because they had challenged the work of CETP is without obtaining EC and in the meanwhile, grant of EC was noticed as per the reply affidavit filed by the PP. It is case of the Appellants that they filed Appeal within ninety (90) days after obtaining knowledge of EC and thereafter they were required to prepare Appeal in consultation with the Advocate and on perusal of relevant legal material, as well as after obtaining other documents. They would submit that they had no reason to commit delay in filing of the Appeal, had there been earlier knowledge with them about the EC. They allege that delay is unintentional, well justified and, therefore, should be condoned.

5. The Project Proponent (PP)- Respondent No.6, alleges that the Appellants had full knowledge of the impugned EC, due to the fact that publication of grant of EC was duly made in two (2) Newspapers, as required under the procedure, on January 2nd, 2014 and,

therefore, limitation period of filing of Appeal had commenced much earlier, which cannot be extended for any trivial reason. It is further submitted that when the Appellant Nos.1,2 and 4, participated in the public hearing, they cannot be allowed to say that they had no knowledge about ongoing process of public consultation and other steps of process, which could end in grant of EC and, therefore, they could have vigilantly pursued the matter to ensure whether EC is granted or refused. He would submit that any vigilant person interested in such kind of project or the result of public consultation, could have followed the proceedings to the logical end in order to see end result thereof. He contends that absence of knowledge is pretended by the Appellants only with a view to bring the Appeal within limitation period, in order to file Appeal and delay the project in question. He would submit that the project is in the interest of public at large, because it deals with hygiene and treatment of effluents generated by the Industrial waste, which is needed so as to reduce excess load on the existing CETP. Secondly, according to learned Advocate for the Respondent No.6, the Textile Units situated at border of Narol, Ahmedabad, may start discharging effluents in

river 'Sabarmati', which is likely to pollute the water if excessive effluents are not properly treated by making due arrangements of CETP.

6. Perusal of the documents would show that publication of newspaper information was duly made in English and vernacular Newspapers dated January 2nd, 2014, by the Respondent No.6, as required under the provisions of the EIA Notification dated 14th September, 2006. It is well settled that knowledge of Appellants by any three (3) modes like a) going through information from Website of MoEF, or b) from information gathered through Newspaper report or c) the publication made by the public authority, would be triggering point that will start running of limitation. We need not dilate on case Laws in this behalf, because much load of case laws is added on this subject. In case of **(1)** ***Save Mon Region Federation Vs Union of India [ALL (1) NGT PB (1)(1)],*** **(2)** ***Nikunj Developers Vs State of Maharashtra*** **[2013 All (I) NGT (1) PB 40), (3)** ***Medha Patkar Vs MoEF,*** **[Appeal No.1/2013, decided on 11th July, 2013], (4)** ***Kehar Singh Vs State of Haryana*** **[Application No.124 of 2013, decided on 12.9.2013,] (4)** etc**.** We do not wish to repeat the observations made in the above

authorities/decisions, on the subject for want of repetition.

7. Coming to the pointed question, it may be stated that first point of knowledge gathered by the Appellants will be the point wherefrom limitation will start running. It need not be reiterated that once limitation starts running, it is unstoppable, till it goes up to the last point of outer cap. Obviously, it is necessary to locate as to when the first date of knowledge gathered by the Appellants can be precisely attributed to them inspite of the fact that the circumstances show that they may have reason to gather knowledge much earlier than issuance of impugned EC. First, it is important to note that the Appellants did not refer to filing of the Writ Petition in their Main Appeal and outcome of the said Writ Petition or, knowledge gathered from their Advocate during pendency of the said Writ Petition. This is significant, because the Appellant No.4, was one of the Writ Petitioner and could have gathered knowledge of the EC, as the documents were filed by the Respondent No.6, through his Advocate, during course of first hearing of the Writ Petition on 22nd May, 2014. Obviously, at least on 22nd May, 2014, the Appellant No.4, could have

attributed due knowledge of impugned EC which he could have shared with other Appellants. It is nobody's case that the Appellant No.4 and other Appellants were at logger heads and were not with taking terms with each other. In fact, they were acting in unison with each other. As stated earlier, the Appellant Nos.1,2 and 4, had together represented the cause during course of public consultation of the project. Under the circumstances, even a naïve person cannot believe that the Appellant No.4, might not have informed other Appellants about the EC granted as on 22nd May, 2014. In the affidavit filed in rejoinder, certain patch work is done by the Appellants to show that the documents were given by the learned Advocate appearing for them on subsequent date of hearing i.e. on 12th June, 2014, and not on the first date. Because the Appellants were not present at that time. Assuming that this is true position, the statement cannot be accepted to have corroboration for want of affidavit of learned Advocate appearing for them in the Hon'ble High Court and without record of Hon'ble High Court, in support of such a statement. No doubt, parties are not required to appear in person during course of hearing in ordinary course, but as duty bound,

normally the Advocates do not shirk in their duty to inform the parties about progress in the matter at an earlier date and, particularly, when the matter is disposed of for the reasons like present one, as indicated in the order passed by the Hon'ble High Court of Gujarat, due to production of impugned EC in the proceedings of Writ Petition No.177 of 2014.

8. Learned Advocate Shweta Busar, makes a statement that on 23rd May, 2014, EC was uploaded on the website of MoEF, as per instructions received by her, and has put the copy of email, received from MoEF, on record. Though there is no document on record and nothing is stated in the reply affidavit of GPCB, regarding compliances of condition Nos. 8and 10, of EC on the foot thereof, yet, learned Advocate Viral Shah, under instructions of the Law Officer, to whom he contacted telephonically, states that somewhere in first week of March, 2014, communication was forwarded to the public authorities for putting up the same in public domain in their offices, so as to comply with condition Nos. 8 and 10 of the EC.

9. The EIA notification 2006, Regulation 10, describes the information dissemination by putting the

EC in public domain through different modes by the stake holders. The Hon'ble Principal Bench of National Green Tribunal, in its judgment in Appeal No.1/2013 [*Medha Patkar Vs MoEF*,] has already dealt on this aspect and relevant paras are reproduced below : –

> *''12. From the above dictum, it is clear that a communication would mean putting it in public domain and completing the acts as are contemplated in the EIA Notification of 2006, read with conditions of the EC and the provisions of the Act. In terms of the scheme of the notification and law, there are three stakeholders in the process of grant of environmental clearance:*
>
> *(a) Project Proponent*
> *(b) Ministry of Environment and Forests, and*
> *(c) Other agencies which are required to fulfill their obligations to make the communication complete in terms of the provisions of the Act and the notification concerned.*
>
> *13. The MoEF shall discharge its onus and complete its acts to ensure communication of the environmental clearance so as to trigger the period of limitation. The MoEF upon granting of the environmental clearance must upload the same on its website within seven days of such order, which would remain uploaded for at least 90 days, as well as put it on its notice board of the Principal as well as the Regional Office for a period of at least 30 days. It should be accessible to the public at large without impediments (Refer Save Mon Region Federation & Anr V. UOI & Ors.)*
>
> *14 The project proponent, upon receipt of the environmental clearance, should upload it permanently on*

its website. In addition thereto, the project proponent should publish it in two local newspapers having circulation where the project is located and one of which being in vernacular language. In such publication, the project proponent should refer to the factum of environmental clearance along with the stipulated conditions and safeguards. The project proponent then also has to submit a copy of the EC to the heads of the local authorities, panchyats and local bodies of the district. It will also give to the departments of the State a copy of the environmental clearance.

15 Then the Government agencies and local bodies are expected to display the order of environmental clearance for a period of 30 days on its website or publish on notice board, as the case may be. This is the function allocated to the Government departments and the local bodies under the provisions of the notification of 2006. Complete performance of its obligations imposed on it by the order of environmental clearance would constitute a communication to an aggrieved person under the Act. In other words, if one set of the above events is completed by any of the stakeholders, the limitation period shall trigger. If they happen on different times and after interval, the one earliest in point of time shall reckon the period of limitation. Communication shall be complete in law upon fulfilment of complete set of obligations by any of the stakeholders. Once the period of limitation is prescribed under the provisions of the Act, then it has to be enforced with all its rigour. Commencement of limitation and its reckoning cannot be frustrated by communication to any one of the stakeholders. Such an approach would be opposed to the basic principle of limitation."

10. It will be also worthwhile to read the related condition of the EC concurrently at this stage:

> *(xiv) A copy of clearance letter will be marked to concerned panchyat/local NGO, if any, from whom suggestion/representation has been received while processing the proposal.*
>
> *(xv) State Pollution Control Board shall display a copy of the clearance letter at the Regional Office, District Industry Centre and Collector's office/Tahsildar's office for 30 days.*
>
> *(xvi) The project authorities shall advertise at least in two local newspapers widely circulated, one of which shall be in the vernacular language of the locality concerned within 7 days of the issue of the clearance letter informing that the project has been accorded environmental clearance and a copy of the clearance letter is available with the State Pollution Control Board and also at web site of the Ministry of Environment and Forests at http://envfor.nic.in and a copy of the same shall be forwarded to the Regional office of the Ministry located in Bangalore.*"

11. It is evident from the joint reading of above para 17 and 18 that though MoEF is expected to host the EC on its website and display the same on Notice Board, and this is also directly linked to the specific condition that the Project Proponent shall publish newspaper advertisement specifying the EC conditions and also, mentioning that complete EC is available on MoEF website. This particular provision has a specific intent of ensuring wide publicity of the EC and conditions stipulated therein, as a part of legislative intent and therefore, it can be observed that both these modes of

putting it on MoEF's website, the project proponent's newspaper advertisement are linked to each other and need to be read together. The other mode of Notice Board display by various authorities is also equally important, besides sending copies to the people/parties who have raised objection in appraisal process. As these authorities and number of people/parties are plural in numbers, it may not be practicably feasible to verify the compliance by MoEF and will delay the process, and therefore, we are of the considered opinion that the confirmation about sending the copies of the EC to these public authorities through speed post/registered post can be sufficient to assume the completeness of this communication mode. These public authorities have been given the responsibility of putting the copies of the EC on their Notice Board, which they are expected to perform with utmost responsibility. However, mere non-compliance on this ground of communication by one or other public authorities cannot be the basis of incomplete communication.

12. All said and done, it is clear that the Appellants first came to know about the impugned EC during course of hearing of the Writ Petition No.177 of 2014 by

the Advocate of Respondent No.6, on 22nd May, 2014. It may be gathered that being a party to the said Writ Petition, the Appellant No.4, could have knowledge of the said EC on 22nd May, 2014 and, therefore, limitation triggered on that date for all the Appellants, who got knowledge of the EC, being together in the instant action that being the first triggering point, the Appeal ought to have been filed within thirty (30) days from 22nd May, 2014. The period of thirty (30) days elapsed on 21st June, 2014. Thereafter, no doubt, grace period started as provided under Section 16 of the NGT Act, 2010, the Appeal, no doubt, could be filed by availing further sixty (60) days period, if the Appellant(s), would come within domain of proviso appended to Section 16 of the NGT Act, 2010. The instant Application, however, does not show any kind of 'sufficient cause' to explain delay, which occurred after thirty (30) days from first day of knowledge. Grace period of further sixty (60) days can be availed only under the proviso and not otherwise. The proviso comes into play only when 'sufficient cause' is shown by the Appellant(s), whereby explanation is given to satisfaction of the Tribunal, regarding delay caused for further period after thirty (30) days. The proviso

appended below Section 16, is clear. The proviso reads as follows:

> "Provided that the Tribunal may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the Appeal within the said period, allow it to be filed under this Section within a further period of not exceeding sixty days."

13. In our opinion, once the limitation triggers from 22nd May, 2014, it could not be arrested and after period of thirty (30) days, the Appellants could not seek extension, as a matter of right, unless proviso is attracted by showing any explanation to indicate existence of 'sufficient cause' for the delay. That apart, even assuming that first point of knowledge to the Appellants triggered from date of order passed by the Hon'ble High Court of Gujarat on 22nd May, 2014, then also period of thirty (30) days, is over as on 21st June, 2014, and, hence, the Appeal is barred by limitation.

14. Third, even assuming that limitation starts when the EC was put on Website on 23rd May, 2014, then also period of limitation of thirty (30) days is over on 22nd June, 2014 and period of ninety (90) days is over on 21st

August, 2014. As stated earlier, even in Category (3) stated above, there is no reason to apply the proviso appended to Section 16 of the NGT Act, 2010. Needless to say, we find it difficult to entertain the Application for delay condonation. The Application is, therefore, dismissed. Consequently, the Appeal stands disposed of. No costs.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr.Ajay A. Deshpande)

Date: March 20th, 2015.

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2016 SCC OnLine NGT 161

Before the National Green Tribunal, Principal Bench, New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON, SONAM PHINTSO WANGDI, JUDICIAL MEMBER AND DR. D.K. AGRAWAL, EXPERT MEMBER)

Bharat Jhunjhunwala Lakshmoli, PO Maletha, Kirti Nagar, Dt Tehri, UKD 248161 ... Appellant;

Versus

1. Union of India Ministry of Environment & Forests Through its Secretary, Paryavaran Bhawan, CGO Complex, New Delhi - 110 003
2. State of Uttarakhand Through Its Chief Secretary, Dehradun, Uttarakhand
3. L & T Uttranchal Hydro Electric Pvt. Limited Through its Managing Director, No.6 Gavni Village, Next to Jalagam Office, Chandrapuri, District Rudraprayag, Uttrakhand ... Respondent.

Appeal No. 151 of 2016

Decided on May 4, 2016, [Hearing on: 05th February, 2016]

WANGDI, J.:—

1. This application has been preferred by the Applicant seeking certain directions against the Respondents no. 1 and 3 in respect of Singoli-Bhatwari hydro-electric project on the river Mandakini in the State of Uttarakhand.

2. The Applicant is a former Professor of economics of IIM Begaluru who is presently living at Lakshmoli in Uttarakhand, a village lying downstream of the Singloi-Bhatwari hydroelectric project, and claims to have authored three books on hydropower and also of having filed many cases before various courts regarding environment impact of hydro electric projects.

3. As per the Applicant, the project in question had suffered severe damage in the disaster that struck the State of Uttarakhand in June, 2013. It is contended that the Respondent No. 3 who is the project proponent, started with the reconstruction of the project without complying with the Environment and Forest Clearance and the various other safeguards. These facts as per the Applicant, came to his knowledge only in July, 2014 which led him to file the present Application.

4. Without going much into the details, it would be sufficient to note that in the present Application, the Applicant primarily alleges (i) non

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compliance of the terms of the Environment and Forest Clearances as noted by the Expert Appraisal Committee (EAC) in its 40th, 43rd and 46th meetings held on 20th and 21st August, 2010, 12th and 13th November, 2010 and 22nd January, 2011 respectively; (ii) no permission of the National Board of Wildlife having not been sought for before the land for the project was transferred to the State Forest Department and (iii) faulty design of the project.

5. The Applicant thus *inter alia* prays for directions (i) upon the Respondent no. 3 (a) to implement the CAT plan as required under the Environment Clearance, (b) seek clearance of the National Board of Wildlife and (c) to redesign the project and, (ii) upon the Respondent No.1 to conduct fresh Cost-Benefit Analysis of the project.

6. The Respondents in their counter-affidavits while denying all material allegations, have raised preliminary objections on the maintainability of the Application on various accounts including that it is barred by law of limitation as prescribed under Sub-Section (3) of Section 14 of the NGT Act, 2010.

7. On 05.02.2016 when the Application was taken up for hearing, the Applicant appearing in person strongly urged that the question of limitation be taken up and decided first as it may prove to be an exercise in futility to argue on the merits of the case in the event it is ultimately held that the Application was barred by limitation. This was agreed by the Learned Counsel appearing on behalf of the Respondents as they would be pressing the question of limitation seriously.

8. Under such circumstances we requested the parties to address us solely on the question of limitation leaving the rest to be decided later, if necessary.

9. Mr. Atmaram N.S. Nadkarni, Senior Advocate, appearing on behalf of the Respondent No.3 submitted that apart from the fact that the Application is frivolous, it was also barred by the law of limitation as the Applicant has approached the Tribunal much beyond the period of six months prescribed under Sub-Section (3) of Section 14 of the NGT Act, 2010, after the cause of action had arisen. It has been submitted by the respondent that no explanation at all had been furnished for the delay nor was any application for condonation of the delay filed before the Tribunal for the Tribunal to be satisfied that the Applicant had been prevented by sufficient cause in filing the Application within the permissible period and allow him one month's further time to do so. As per Mr. Nadkarni, the delay was inordinate for the reason that the project had commenced on the basis of valid Environment and Forest Clearances dating as far back as the years 2006, 2007 and 2009. That the recommendations of the EAC made in their meetings held in 2010 and 2011 and conditions under other laws had been duly complied with

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which as per the Learned Senior Counsel would be evident from the fact that the project was under execution even as on the date when the present Application was filed.

10. It was next contended that a similar application filed earlier before this Tribunal in the year 2011 being Application No. 12 of 2011, by one *Jaya Prakash Dabral* v. *Union of India*. where the Applicant sought to cancel the Forest Clearance granted in favour of the project proponent on various grounds one of which was the alleged threat to ecology and the environment caused by the underground tunnel, was dismissed by judgment dated 14th December, 2011 as being barred by limitation. It was then submitted that although writ petition being Writ Petition (PIL) No.38 of 2011, filed in the High Court of Uttarakhand raising those very questions had been dismissed by the judgment dated 15th April, 2013 giving the petitioners liberty to approach this Tribunal, neither the petitioners nor anyone else had chosen to exercise the liberty. It is submitted that the Applicant was thus barred by the principle of estoppel in preferring the present Application.

11. Mr. Bharat Jhunjhunwala, the Applicant, while admitting to the delay neither furnished explanation for such delay nor prayed for condonation of the delay and contended that it was sufficiently explained in O.A. No. 97 of 2014 filed by one Raghuvir Dutt Tiwari and another in paragraph 6 of the Application. It was submitted that he had been duly authorized by the Applicants in that case to represent them and also to argue on their behalf. The submission having been accepted, the Applicant drew our attention to paragraph 6 of O.A. No. 97 of 2014 which shall be dealt with in detail later but at this stage suffice it to note that it is the stated case of the Applicants that they had preferred the Application only after they had come to learn in February, 2014 that the project had been restarted after having remained closed since June 2013 when natural calamity had struck the State of Uttaranchal. It was the submission of the Applicant that since the Application was filed within six months from the month of February, 2014, it was within time.

12. We have given anxious consideration to the respective submissions of the parties, carefully examined the pleadings and the documents on record. Having regard to the fact that we are considering only the limited question on the point of limitation, we need not delay ourselves on the merits of the contentions raised in the

13. At the outset it may be noted that admittedly the Respondent No. 3 had commenced with the project after it had obtained necessary Forest and Environment clearances in the years 2006, 2007 and 2009 which the Respondent No 1 had granted following the Precautionary Principle and the principle of Sustainable Development. In the

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Application, the Applicant has failed to cogently set out the violations of the Forest and the Environmental Clearances which are said to have been committed by the Respondents except to state vaguely that there were violations.

14. Next, we find that in Application No. 12 of 2011 the Applicants, one of which was the Applicant in the present Application, had sought for cancellation of the Forest and the Environment Clearances and also had questioned the very feasibility of the project on various grounds including the threat and peril which will be caused by underground tunnels that are associated with the project. Although the Application was dismissed by the Tribunal vide its judgment dated 14th December, 2011, the Applicants chose not to challenge it in Appeal before the Hon'ble Supreme Court thereby giving it a finality. It would, therefore, not be open for the Applicant to file the present Applicant camouflaging the grounds by clever ingenuity and concealing the true intent and purport of the Application.

15. The other aspect of the matter which makes it worse for the Applicant is that he has also failed to exercise the liberty granted by the Hon'ble High Court of Uttarakhand to approach this Tribunal in terms of its judgment dated 15th April, 2013 in Writ Petition (PIL) No. 38 of 2011. The Application was filed only on 2nd August, 2014. Admittedly there has been a delay in filing the Application which the Applicant has failed to explain. Curiously, he seeks to rely upon an averment made in another Application filed by some other persons being Original Application No. 97 of 2014 in the matter of *Raghuvir Dutt Tiwari* v. *Union of India*. For the ends of justice we have perused the averment relied upon by the Applicant which reads as follows:—

> "6. That the Applicants were busy in getting their life as well as trying to help others to get back to their normal life after such a huge tragedy, which took a considerable time, energy and resources. Further, no work was being done on the Singoli Bhatwari project till January, 2014. The Applicants were under the impression that the Project Proponent (PP) had abandoned the idea of restarting the project. However, sometime during February, 2014 the Applicants found that the PP had restarted work on the project. The Applicants are approaching this Hon'ble Tribunal after learning of this restart of work within 6 months of coming to know of this."

16. A bare reading of the above would reveal that it is replete with vagueness. That apart firstly, there is no explanation whatsoever as to why no appeal was preferred against the Judgment of the Tribunal dated 14th December, 2011 in Application No. 12 of 2011 and secondly, it has not been stated as to why this Tribunal was not approached in

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terms of the Judgment dated 15th April, 2013 of the Hon'ble High Court of Uttarakhand in Writ Petition (PIL) No. 38 of 2011.

17. The Petitioner then made efforts to extricate himself from the situation by feebly submitting that the subject matters involved in the present Application are quite distinct from those involved in the previous litigations. However, the ground set out in the averment reproduced above clearly belies this position.

18. For the reasons aforesaid we unhesitatingly hold that the Application is inordinately delayed and, therefore, barred by limitation. A public spirited person which the Applicant claims to be is expected to be diligent in pursuing public cause and not be indolent and lackadaisical, particularly when his action is likely to hinder and jeopardize public work of the magnitude and proportion as the project in question.

As a result the Application is dismissed with no order as to costs.

———

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10009 OF 2014

SUNIL KUMAR SAMANTA ..APPELLANT(S)

VERSUS

WEST BENGAL POLLUTION
CONTROL BOARD & ORS. ..RESPONDENT(S)

O R D E R

1. We have heard learned counsel for the appellant.

2. We find no merit in the Civil Appeal. Accordingly, the Civil Appeal is dismissed.

.....CJI.
(H.L. DATTU)

.....J.
(ARUN MISHRA)

.....J.
(ADARSH KUMAR GOEL)

Signature Not Verified
Digitally signed by
NEETU KHANURIA
Date: 2014.11.25
18:49:22 IST
Reason:

NEW DELHI;
NOVEMBER 21, 2014.

ITEM NO.310 COURT NO.1 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.10009 OF 2014

SUNIL KUMAR SAMANTA Appellant(s)

VERSUS

WEST BENGAL POLLUTION CONTROL BOARD & ORS. Respondent(s)

Date : 21/11/2014 This appeal was called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Mr. Jayant Mehta, Adv.
Ms. Kanchan Yadav, Adv.
For M/s. Victor Moses & Associates

For Respondent(s)

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

The appeal is dismissed in terms of the signed order.

(Neetu Khajuria)
Sr.P.A.

(Vinod Kulvi)
Assistant Registrar

(Signed order is placed on the file.)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

ORIGINAL APPLICATION NO. 222 OF 2014

IN THE MATTER OF:

1. The Forward Foundation
   A Charitable Trust
   Having its registered office at 24/B,
   Haralur Village, HSR Layout Post
   Bangalore 560102
   Through its Secretary

2. Praja RAAG,
   A Society registered under the Karnataka
   Societies Registration Act, 1960
   and having its Registered office at
   C-103, Mantri Classic, 4th Block,
   Koramangala, Bangalore 5600034
   Through its President

3. Bangalore Environment Trust,
   A registered office at A 1-Chartered
   Cottage, Langford Road,
   Bangalore 560025
   Through its Trustee

.....Applicants

Versus

1. State of Karnataka
   Vidhana Soudha
   Bangalore – 560001
   Through its Chief Secretary

2. Ministry of Environment and Forests Regional Office (SZ)
   Kendriya Sadan, IV Floor,
   E and F Wings, 17th Main Road,
   Koramangala II Block,
   Bangalore – 560034
   Through its Addl Principal Chief Conservator of Forests

3. State Level Environment Impact Assessment Authority
   Department of Ecology and Environment
   Room No. 709, 7th Floor,
   M S Building,
   Bangalore – 560001
   Through its Member Secretary

4. Karnataka State Pollution Control Board
Parisara Bhavan,
49, 4th & 5th Floor,
Church Street, Bangalore – 560001
Through its Chairman

5. Bangalore Water Supply and Sewerage Board
Cauvery Bhavan,
Bangalore – 560009
Through its Chairman

6. Lake Development Authority
Parisara Bhavan,
49, Second Floor,
Church Street, Bangalore–560001
Through its Chief Executive Officer

7. Karnataka Industrial Areas Development Board
14/3, 2nd Floor,
Rashtrothana Parishat Buildings,
Nrupathunga Road,
Bangalore – 560001
Through its Chief Executive Officer

8. Bangalore Development Authority
Chowdiah Road,
Bangalore – 560020
Through its Chairman/Commissioner

9. Mantri Techzone Private Limited
(formerly called Manipal ETA P Ltd.)
Having its registered office at
Mantri House, No. 41, Vittal Mallya Road,
Bangalore 560001
Represented by its Managing Director

10. Core Mind Software and Services Private Limited
4th Floor, Solarpuria Windsor,
3, Ulsoor Road,
Bangalore 560042
Represented by its Managing Director

11. Namma Bengaluru Foundation
A registered Public Charitable Trust,
Having its registered office at No. 3J,
NA Chambers, 7th 'C' Main 3rd Cross,
3rd Block, Koramangala,
Bangalore 560034
Represented by its Director Mahalakshmi P.

12. Citizens' Action Forum
A Society registered under the provisions of the Karnataka Societies Registration Act, 1960 and having its registered office at 372, 1st Floor, MK Puttalingaiah Road, Padmanabhanagar, Bangalore 560070
Represented by its authorized signatory Mr. Vijayan Menon

.....Respondents

Counsel for Applicant:

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

Counsel for Respondents:

Mr. Devraj Ashok, Advocate for Respondent No. 1, 3, 4 & 5
Mr. B.R. Srinivasa G., Advocate for Respondent No. 7
Mr. R. Venkatramani, Sr. Advocate, Mr. Shekhar G. Devasa, Mr. D. Mahesh, Advocates for respondent No. 9
Mr. Raju Ramachandran, Mr. Devashish Bharuka, Mr. Vaibhav Niti and Mr. Suraj Govindraj, Advocates for Respondent No. 10
Mr. Sajan Poovayya, Sr. Advocate and Mr. Sumit Attri, Advocate for Respondent Nos. 11 & 12

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Professor A.R. Yousuf (Expert Member)

Reserved on: 27th January, 2015
Pronounced on: 7th May, 2015

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

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

All the three applicants have approached the Tribunal under the provisions of the National Green Tribunal Act, 2010 (for short 'the NGT Act'), with a common prayer that a direction be issued to respondent no. 1, the State of Karnataka to take cognizance of the

Reports dated 12th June, 2013 and 14th August, 2013 prepared by respondent nos. 6 and 2 respectively, and take coercive and punitive action including restoration of the ecologically sensitive land. Further the applicants also prayed for issuance of a direction that the valley land is to be maintained as a sensitive area, without developments of any sort, so that the ecological balance of the area is not disturbed. Besides this, they even prayed for issuance of such other order or directions as the Tribunal may deem fit in the circumstances of the case and render justice.

The three applicants are either a registered charitable trust and/or a Society, registered under the relevant laws in force. They claim to be keenly interested in protecting the environment and ecology, particularly, in the State of Karnataka. Their principal grievance is in relation to certain commercial projects that are being developed by respondent nos. 9 & 10 in a large-sized, mixed use development project/building complex, including setting up of a SEZ park, Hotels, Residential Apartments and a Mall, covering approximately 80 acres on the valley land immediately abutting the Agara Lake and more particularly identified as lying between Agara and Bellandur Lakes, exposing the entire eco system to severe threat of environmental degradation and consequential damage. According to them, it is of alarming significance that the Project has encroached an Ecologically Sensitive Area, namely, the valley and the catchment area and *Rajakaluves* (Storm Water Drains) which drains rain water into the Bellandur Lake. Thus, in the interest of

environment and ecology, they have approached the Tribunal with the above prayers.

2. Shorn of any unnecessary details, the precise facts leading to the filing of this application are that, according to these applicants, the ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short the 'KIADB'), respondent no. 7 herein, to respondent nos. 9 & 10 vide Notifications dated 23rd April, 2004 and 7th May, 2004, respectively. This land was allotted for setting up of Software Technology Park, Commercial and Residential complex, hotel and Multi Level Car Parks. The Master Plan formulated by the Bangalore Development Authority (for short the 'BDA'), respondent no. 8, identifies the allotted land as 'Residential Sensitive', though the same land was identified in the draft Master Plan as 'Protected Zone'. It is stated by the applicant that the Revenue Map in respect of properties as referred in the land lease Agreements has multiple *Rajakaluves*. The development projects in question sit right on the catchment and wetland areas which feeds the *Rajakaluves*, which in turn drain rain water into Bellandur Lake. The project will thus encroach two *Rajakaluves* of 1.38 acres and 1.23 acres each. The satellite digital images of the area from year 2000 to 2012 clearly show encroachment upon these *Rajakaluves*, as well as, the manner in which they are covered by this construction. The State Level Expert Appraisal Committee (for short the 'SEAC'), which was to assist State Level Environment Impact Assessment Authority (for short the 'SEIAA'), held its meetings on various dates to examine

the project. It had required respondent no. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short the 'BWSSB'), respondent no. 5 herein, for the project in question. It was also observed that the project lies between the above stated two lakes. Respondent no. 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11th November, 2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

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

Authority and no construction was to commence until such clearance was granted.

4. According to the applicants, respondent no. 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of the SEAC, in relation to buffer zone and construction over *Rajakaluves*. The construction has been commenced over the ecologically sensitive area of the Lake Catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities the applicant submits that the conversion of land from 'Protected Zone' to 'Residential Sensitive' area is violative of the law. The Project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the *Rajakaluves*. It is also alleged that respondent nos. 9 & 10 have started to level the land by filling it with debris, thus causing damage to the drains. It is further stated that the conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the *Rajakaluves* have been violated. This has in turn, affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is also in violation of Rule 4 of Wetlands (Conservation and Management) Rules, 2010 (for short Rules of 2010). It is

submitted that SEIAA in its meeting dated 29th September, 2012, decided to close the file pertaining to respondent nos. 10 due to non-submission of requisite information and the application therefore was rejected in November, 2012. Despite the rejection, respondent no. 10 commenced construction on the project in full swing.

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

6. The Hon'ble High Court of Karnataka in *Environment Support Group and Another v. State of Karnataka, Writ Petition No. 817/2008* appointed a Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil to suggest immediate remedial action in order to remove encroachments on the lake area and the *Rajakaluves* and preservation of the lakes in and around Bangalore city. Other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for Preservation, Restoration or otherwise of the existing tanks in Bangalore Metropolitan Area, 1986 which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tanks is not polluted. The findings of the Environmental

Information System (ENVIS), Centre for Ecological Science, Indian Institute of Sciences, Bangalore, in May 2013 on the Conservation of the Bellandur Wetlands obligation of Decision Makers is ensure Intergenerational Equity recommended restoration of wetlands and cessation of plan to set up the SEZ in the area. Even the Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas.

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

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

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

causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

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

9. Different respondents in the application have filed independent replies as already noticed. Respondent nos. 9 and 10 are the Project Proponents against whom the applicant has raised the principal grievance. Thus, first we may notice the case advanced by respondent nos. 9 and 10. In its replys, respondent no. 9 has submitted that the said respondent corporation was incorporated with the objective of establishing an Information Technology Park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. This respondent had submitted the proposal to establish such Information Technology Park and other facilities to the State Government and requested for allotment of land for the project. Proposal of respondent no. 9 was considered in 78th High Level Committee meeting held on 21st June, 2000 and after examining the proposal, the same was approved by the government on 06th July, 2000. Before the State High Level Committee, the

Respondent had mentioned that it would require 110 acres of land, 25MW of power from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and 4 lakh litres of water per day from respondent no. 5. The lands for the project were initially notified by the BDA. However, later the lands were de-notified vide notification dated 10th February, 2004. Subsequently, the lands were allotted to the replying respondent vide letter dated 28th June, 2007 for which lease-cum-sale agreement was signed on 30th June, 2007. Considering the overall development of the State of Bangalore, the said Respondent proposed a Mixed Use Development Project consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of 13,50,454.98 sq mtr. The Project was conceived as a zero waste discharge project. According to this Respondent, the project is located one and a half kilometres away from the southern-side of the Bellandur Lake. Towards the North adjacent to the Project site, lie vast stretches of lands belonging to the Defence, and towards the East, which is completely developed lies the Project of Respondent no. 10 and that another developer is also developing a project on the western side. Respondent no. 9 has submitted that it has obtained sanction plan on 4th July, 2007 which was being renewed from time to time. The Respondent also claims that it has obtained No Objection Certificate from Airport Authority of India on 9th April, 2010, certificate dated 15th April, 2010 from Dr. Ambedkar Institute of Technology and that the Bharat Sanchar Nigam Ltd, vide its communication dated 16th April, 2010, granted clearance for the

project construction. BWSSB, respondent no. 5 herein vide its communication dated 26th April, 2011 issued No Objection Certificate for portion of the proposed construction to be built. Bangalore Electricity Supply Company Limited also granted No Objection Certificate for arranging power supply to the proposed residential and commercial building in favour of the Respondent no. 10. Environmental Clearance was granted by SEIAA vide communication dated 17th February, 2012. Director General of Police issued No Objection Certificate and KSPCB vide order dated 4th September, 2012 accorded its consent for construction of the said project site subject to the conditions stated therein.

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

11. Respondent no. 9 later modified the building plan and the same was approved by Respondent no. 7 vide its letter dated 30th August, 2012, which was valid up to 10th August, 2014. It is further claimed that they started the construction of the project in November, 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. The respondent further submitted that he has raised the constructions in accordance with the plans and conditions of the Environmental Clearance and consent orders. According to him, he has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. The allegation

with regard to the covering and blocking the Rajakaluves (Storm Water Drains) drying the wetland and raising of the construction thereupon adversely affecting the lake, are specifically disputed and denied. The Respondent claims that it has already spent a sum of Rs 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities etc., that it has availed financial assistance from various banks and financial institutions towards the construction and proper execution of the project and that various contracts have been signed with third parties.

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

In the meanwhile, Bruhat Bengaluru Mahanagara Palike (for short the 'BMP') issued a stop work notice to the said respondent in regard to illegal and unauthorized construction as well as its adverse impacts on the lake. Aggrieved from the stop work notice dated 23rd December, 2013, Respondent no. 9 filed a Writ Petition before the Hon'ble High Court being Writ Petition No. 366-367 of 2014 and 530-625/2014in which the Hon'ble High Court vide its order dated 21st January, 2014 stayed the operation of the stop work notice dated 23rd December, 2013. Another notice was also issued by respondent no. 7 directing stoppage of work on 2nd January, 2014, which was again challenged by the respondent no. 9 in Writ Petition No. 792 of 2014 before the same High Court and vide its order dated 7th January, 2014 the operation of the stay order was also stayed by the Hon'ble High Court. Replying respondent has taken up specific pleas with regard to the present application being barred by time because the Environmental Clearance was granted on 17th February, 2012 and even article in the newspapers were published on 3rd June, 2013 as such the present petition has been filed beyond the prescribed period of limitation and the Tribunal has no power to condone the delay which in fact has not even been prayed by the Applicant. According to respondent no. 9, this Tribunal has no jurisdiction to entertain and decide this application in the form and content in which it has been filed, as no question or substantial question of environment has been raised in relation to the Scheduled Acts under the NGT Act, 2010. Another objection raised by respondent no. 9 is that the

applicants are guilty of suppression and misrepresentation of material facts and have not approached the Tribunal with clean hands and also that the proceedings before the Tribunal ought to be dismissed in face of the proceedings pending before the Hon'ble High Court of Karnataka in the Writ Petitions afore-referred. If the dates as stated by the applicant are taken to be correct, even then the application should have been filed within 30 days of the constitution of the Tribunal i.e. 18th October, 2010 and in any case within 60 days thereafter, by showing that they were prevented by sufficient cause. Since the application has been filed much beyond the prescribed period, it is barred by time and suffers from the defect of latches.

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

According to respondent no. 10, crux of the dispute is with regard to the allocation of the land and its conversion from 'Protected Zone' to 'Residential Sensitive' in the Master Plan, without giving any reason, which does not fall within the

jurisdiction of the Tribunal. The applicants have raised multifarious proceedings against respondent no. 10 which is an abuse of the process of law and are *mala fide*. The applicant has not only stated identical facts in their application before the Tribunal, but have even submitted the same set of documents as were filed before the Hon'ble High Court of Karnataka, which clearly shows that the application before the Tribunal lacks *bona fides* and there is suppression and misrepresentation of material facts.

14. On merits respondent no. 10 has stated that the State of Karnataka has formulated a policy to invite investment in Karnataka and for that purpose the Karnataka Industries (Facilitation) Act, 2002 had been promulgated. Under this Act, State Level Single Window Clearance Committee and State High Level Clearance Committee were created to examine and clear the projects. All investment projects submitted to Karnataka Udyoga Mitra were forwarded to Single Window Agency, if it was less than the value of Rs 50.00 crores for necessary processing and clearance and for value above Rs 50.00 crores, is placed before the State High Level Clearance Committee for processing and approval. Respondent no. 10 had submitted a proposal for developing of a Software Technology Park with an investment of 48.75 crores in 25 acres of land along the outer ring road in Bangalore to which the clearance certificate dated 27th March, 2004 was issued. Respondent no. 10 submitted a revised proposal in respect of the same project and to obtain fresh clearance on 31st August, 2007 and revised proposal was with the investment of Rs 179.22 crores.

The State High Level Committee had cleared the project which was communicated to Respondent no. 10 on 25th January, 2008. According to Respondent no. 10, properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drain and secondary storm water drains that exist in the above properties. The application by respondent no. 10 seeking sanction of development and building plan in respect of the above properties into a Software Technology Park, Hospitality, Commercial and Residential Complex was also allowed and as per the directive of respondent no. 7, respondent no. 10 has deposited a sum of Rs 1,28,56,830. Respondent no. 10 had also taken clearance from various authorities including Environmental Clearance and consent for establishment. The details of the same are as follows:

Sl. No	Date	Document No.	Nature of Document	Issued by	Annexure
1	17.3. 2011	ASC/CM(AO) /181/HAL: BG:58/2011	No Objection Certificate	Airport Services Centre, Hindustan Aeronautics Limited, Bangalore Complex	'R22'
2	30.07. 2011	AGM(TP)/S:6 /IX/2010-11	No Objection Certificate	Bharat Shanchar Nigal Ltd, CGM, Telecom, KTK Circle, Bangalore	'R23'
3	22.05. 2012	CEE(P&C)/SEE /(Plg)/EEE(plg) /K CO-95/F-46611/2012-13/R-50 (75)	No Objection Certificate	Karnataka Power Transmission Corporation Ltd, Chief Engineer, Electric City, Cauvery Bhavan, Bangalore	'R24'
4	03.08. 2012	GBC(1)478/ 2011	No Objection Certificate	Office of Director General,	'R25'

				Karnataka State Fire & Emergency Services	
5	04.04. 2013	BWSSB/EIC/ ACE ® /DCE(M) -II/TA(M)- II/137/2012-13	No Objection Certificate	Bangalore Water Supply & Sewerage Board, Cauvery Bhavan, Bangalore	'R26'
6	03.06. 2013	PCB/136/CNP/ 12/H321	No Objection Certificate	Karnataka State Pollution Control Board, Church Street, Bangalore	'R27'
7	30.09. 2013	SEIAA:37:CON: 2012	No Objection Certificate	State Level Environment Impact Assessment Authority, Karnataka	'R28'

Certain sections of the media had raised some queries to respondent no. 10 to furnish the copy of the Consent to Establish and Environmental Clearance certificate on 30th September, 2013. They had also expressed that the project had started without such clearances. However, upon issuance of Consent to Establish and Environmental Clearance dated 4th June, 2013 and 30th September, 2013 respectively, same were furnished to the reporter of newspaper 'The Hindu', vide letter dated 11th October, 2013. According to respondent no. 10, around this project, much development has already taken place, even around various lakes, but it has not caused any damage to the lakes and similarly, project of respondent no. 10 would also not cause any damage to the area and the lakes. Respondent no. 10 has also referred to the Writ Petition 36567-36574 of 2013, where relief of resumption of land from both the respondent nos. 9 and 10 was prayed. Notice dated

28th February, 2014 was issued by respondent no. 7 to respondent no. 10 containing direction to stop work/ construction activity against which respondent no. 10 had also filed a Writ Petition in the Hon'ble High Court of Karnataka, being Writ Petition No. 18119 of 2014. The Writ Petition was pending and Interim Order was passed. This Respondent claims that they are entitled to develop the projects, having received all clearances. It is specifically stated that the Bellandur Lake does not support any fishing activity or forms a source of water for domestic purpose nor is the agricultural activity carried out at the said area. There are no wetlands and none of the functional aspects of the wetland exist on the site in question. It is also denied that the project carried out by respondent no. 10 on the property belonging to it has any adverse impact on environment. Respondent no. 10 further states that the ENVIS report relied upon by the applicant is prepared by persons interested in opposing his project. In any case, the said report dated 14th August, 2013 stood superseded by the Environmental Clearance dated 30th September, 2013, wherein, respondent no. 3 has accorded consent to the project after considering the actual facts, after due application of mind and by subjecting respondent no. 10 to strict terms and conditions as mentioned in the clearance dated 30th September, 2013. On these averments, respondent no. 10 prays that the application should be dismissed and no relief should be granted by the Tribunal to the applicants.

15. Respondent no. 7 has filed a short reply. He submits that after the possession of the land was handed over to respondent no.

9 and 10, one year time was granted to implement the project, which was extended from time to time. According to respondent no. 7, the building drawings were approved on 4th July, 2007, modified building drawings were approved on 26th April, 2011 and 30th August, 2012 with specific conditions. In the meeting of the KIADB held on 16th July, 2013, it was resolved to inform respondent no. 9 to fully comply with the Ecology and Environment rules as well as to obtain approvals from the respondent no. 6, LDA and respondent no. 4, KSPCB. Respondent no. 6, LDA vide its letter dated 24th September, 2013, had informed respondent no. 7 that the construction activity in the catchment area in the Bellandur Lake could drastically impact the Lake, with deleterious effects and asked the Respondent no. 7 to stop construction activity of respondent nos. 9 & 10, however, the validity of the building drawings was again extended up to 10th August, 2014. The Lokayukta on 17th December, 2013 had written a letter in respect of complaint filed by South East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21st December, 2013 to keep in abeyance the approval accorded and even the revalidations of plans. This was also informed to respondent no. 9. The Board took a decision which was communicated to respondent no. 9 on 2nd January, 2014, wherein it asked the said respondent no. 9 to stop all construction activities on the allotted lands. It is admitted that the said communication was challenged by respondent no. 9 and on the stop work notice, stay was granted by the Hon'ble High Court of Karnataka. Stop

work notice issued by BBMP dated 23rd December, 2013 was also challenged before the Hon'ble High Court and operation of the said communication was stayed vide order dated 21st January, 2014. It is submitted by respondent no. 7 that the project of respondent nos. 9 and 10 had been approved by the Government. It is specifically submitted that the answering respondent had not acquired any *'Rajakaluves'* and the land allotted by respondent no. 7 to respondent no. 10 does not consist of the same. Respondent no. 7 further states that the Storm Water Drains are not always flowing in strict or permanent path and are prone to flow in different paths from time to time. Respondent no. 7 further states that it had allotted 17 acres 33½ guntas of land in favour of respondent no. 10 for the purpose of establishing Software Technology Park, Hospitality, Commercial and Residential Complex and has executed lease-cum-sale agreement on 20th March, 2008.

16. Respondent no. 6 has taken a stand that it was not at all aware of the project initiated by respondent no. 7, KIADB. The said respondent claims it came to know about the entire project only when certain newspaper reports surfaced during the month of June, 2013 and till that time respondent no. 6 was in the dark. After the complaints, the said respondent immediately inspected the Bellandur Lake and the Agara Lake on 12th June, 2013 and prepared an inspection report. In the report, it was noticed that the large scale construction activities in the catchment area of Bellandur Lake was going on and there was a change in the land use which in turn has directly affected the catchment of Bellandur

Lake. The wetland area of Agara Lake had also shrunk which originally formed the irrigation area for the adjoining agricultural lands. Respondent no. 6, vide its letter dated 6th July, 2013, had questioned the decision of respondent no. 7 and even requested to stop the construction activity and to reclassify the land as non-SEZ area. It was thereafter on 31st August, 2013 that respondent no. 9 wrote a letter to respondent no. 6 for according approval for the proposed development projects. However, vide its letter dated 23rd September, 2013, respondent no. 6 informed respondent no. 7 that the replying respondent had no authority to grant or deny construction projects but at the same time it also communicated their objections to respondent no. 7, mentioning that construction activity would be in contravention to the directions of the Hon'ble High Court of Karnataka as well as of the Hon'ble Supreme Court. Despite these warnings, respondent no. 7 granted approval to the extension of building drawings of the project in favour of respondents no. 9 & 10 on 11th October, 2013 and 3rd January, 2013 respectively, with certain conditions like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed; further, that the natural sloping pattern of the project site shall remain unaltered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite these objections by respondent no. 6, the plans were approved and approvals extended from time to time. Therefore, respondent no. 6 submits that these projects, as approved by

respondent no. 7 would have adverse impacts on Bellandur Lake and Agara Lake.

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

18. Vide order dated 25th July, 2014 of the Tribunal, respondent nos. 11 and 12 were impleaded on their applications. Both these respondents are registered as charitable trust or a society. Replies by both these respondents have been filed wherein they have raised specific objections with regard to allotment of land in Ecologically Sensitive Area in the catchments of the Bellandur Lake for the construction of IT Park and related infrastructure, in flagrant violation of the applicable rules and regulations. According to respondent nos. 11 and 12, the allotment of this land is in contravention of the directions laid down by the Hon'ble Supreme Court in the case of *Karnataka Industrial Areas Development Board vs. Sri. C. Kenchappa and Ors.*, (2006) 6 SCC 371. It is further

stated that the fact that these projects would essentially result in alteration of natural hydrology of the area and sloping pattern of the project site, clearly shows that there was no application of mind on the part of the concerned authority for granting approvals. The plans sanctioned in favour of respondent nos. 9 and 10 are replete with irregularities and illegalities and despite objections from respondent no. 6, the plans have been renewed contrary to law. For instance, respondent no. 9 had first represented that the project will have a built up area of 1.75 lakh sq. ft. while seeking approval from respondent no. 6, while in reality the built up area is 1.30 crore sq. ft./9.54 lakh sq. mtr., which is evidenced by respondent no. 9's own admission, and is not even disputed by him. The water requirement of the project would be nearly 135 million litres per month, which would exert excessive pressure over the wetland and would also lead to scarcity of water for the residents of the nearby areas. As already stated, the execution of the project will necessarily result in altering the hydrology of the area and the natural sloping pattern of the project site. Therefore, the conditions imposed in the Environmental Clearance are incapable of being complied with. According to these respondents, the Google satellite images that have been placed on record, reveal that the excavation work by respondent nos. 9 and 10 commenced much prior to obtaining approvals by them in 2012 & 2013 respectively, making the construction unauthorised and illegal. The matters before the Hon'ble High Court are stated to be restricted to the prayer for resumption of land and not connected with these proceedings

before the Tribunal. According to these respondents, the stop work orders for the construction of the project have been stayed in terms of the orders of the Hon'ble High Court of Karnataka and are subject to the result of the Writ Petition and the Project Proponents are entitled to claim their equities in the event they failed before the Hon'ble High Court. The Hon'ble High Court had granted the interim order staying the stop work orders primarily on the ground that BBMP did not have jurisdiction to issue such order. According to respondent nos. 11 and 12, respondent no. 10 obtained the Environmental Clearance on 30th September, 2013, but it still does not have the mandated clearance from the BDA which was one of the conditions imposed by the State High Level Clearance Committee on 25th January, 2008. The project consists of residential block and commercial block, among other constructed areas. It is averred that as of present, a very small part of the project has been completed and if the construction of the project is permitted to be completed in all respects, the environment and ecology of the area would suffer and residents and public at large would have to face severe and fatal environmental consequences. These adverse consequences would not only be limited to flooding, water shortage, geological instability but would also affect the Bellandur Lake, which is one of the largest lakes in Bangalore, gathering an area of 338.28 hectares, with catchment area, of approximately 171.17 square kms.

As already noticed, respondent nos. 11 and 12 were ordered to be impleaded as respondents in this case on the condition that they

would withdraw the Public Interest Litigation filed by them before the Hon'ble High Court of Karnataka. These Respondents had thus moved the Hon'ble High Court for withdrawal of the Writ Petitions. However, the Hon'ble High Court only permitted these two Respondents to withdraw themselves from the Writ Petitions in terms of the undertaking given by them before the Tribunal. The Petitioner before the Hon'ble High Court who had not given any undertaking before the Tribunal, their Writ Petitions are still continuing before the Hon'ble High Court. They have denied the allegation that any of them has committed violation of the order of the Tribunal or abused the process of law. It is also denied that the averments made and stand taken by them is false, incorrect and vexatious. Respondent no. 7 had first issued a letter dated 14th August, 2013 requiring respondent no. 9 to comply with the ecology and environmental rules and also to take necessary approval from the LDA, Bangalore and KSPCB before taking up any further activity of the project. Then, it issued the order dated 2nd January, 2014 informing the said respondent that the layout plan has been kept in abeyance and thus the Project Proponent should stop all construction activities in the allotted land until further orders. It is also the case of respondent nos. 11 and 12 that the report by Dr. T. V. Ramachandra is not a report by interested persons, but is part of scientist's social responsibility and the report published in May, 2013 gives the complete and correct position at site. It is their case that the cause of action has arisen on various dates, including first on 11th October, 2013 when respondent no. 7, despite objections

from various authorities, extended its approval of plan, on the conditions stated therein. They have, therefore, submitted that the application is neither barred by time nor can it be contended that it does not raise a specific question of environment within the ambit of the Scheduled Acts under the NGT Act, 2010.

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

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

Discussion on Merits

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

20. According to respondent no. 9, it had submitted a proposal to establish Information Technology Park, R & D Centre, Residential Complex and other facilities and sought for allotment of lands for the project in the year 2000. On 15th January, 2001, the Government in exercise of powers conferred upon it under Section 3(1) of the Karnataka Industrial Area Development Act, 1966 declared the land in question as an Industrial Area. Preliminary notification for acquisition of land in question was issued on 15th January, 2001 by KIADB and final Notification for acquisition of the land was issued on 23rd April, 2004, which was preceded by a Global Investor meet held on 10th February, 2004. On 28th June, 2007, respondent no. 7 issued the letter of allotment to respondent no. 9 allotting 63 acres 37½ gunta in Agara and Jakkasandra village. The possession certificate in favour of respondent no. 9 was issued on 29th June, 2007 in furtherance to which said respondent had paid the amount and executed the lease-cum-sale agreement. Project lease was sanctioned on 4th July, 2007. Airport Authority issued the NOC on 9th April, 2010. Clearance for the project construction was issued by BSNL on 16th April, 2010. BWSSB issued NOC on 12th May, 2011. Bangalore Electricity Supply Company Ltd. issued NOC on 27th April, 2011. After meetings of the State Level Expert Appraisal Committee and SEIAA, proposal was

considered and Environmental Clearance was granted to respondent no. 9 on 17th February, 2012 for which notice was published in 'Kannada Prabha' and 'Indian Express' on 12th March, 2012 and 14th March, 2012 respectively. Modified building plan had been approved by respondent no. 7 on 30th August, 2012 which was valid up to 10th August, 2014. On 4th September, 2012, KSPCB issued consent for establishment under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act**,** 1981 as per conditions stated in the NOC. On 12th June, 2013, the LDA made a report stating that the KIADB has initiated a colossal mixed–use development project in the catchment area of Bellandur Lake. With reference to these dates and events, respondent no. 9 had advanced the plea that the application is barred by limitation. It is the contention of respondent no. 9, that all material events that would give rise to filing of an application under the provisions of NGT Act, 2010, had occurred on and prior to 17th February, 2012 and as the application was filed before the Southern Zone Bench of the Tribunal on 13th March, 2014, thus, same is hopelessly barred by time and is liable to be rejected on that short ground alone.

Similar events had taken place in regard to the project of respondent no. 10 who had been granted Environmental Clearance on 30th September, 2013. The contention raised by this respondent, which is, without prejudice to its other contentions, is that the grant of Environmental Clearance would put an end to all other challenges and even if the reports dated 12th June, 2013 and 14th

August, 2013 are taken into consideration, even then the application had to be filed within a period of 6 months from the date on which the 'cause of action for such dispute has first arisen' in terms of Section 14 of the NGT Act, 2010. Admittedly, present application has been filed in March, 2014 i.e. much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Even otherwise, the period of 60 days beyond the prescribed period of limitation has long expired and as such the Tribunal will have no jurisdiction to condone the delay. The Applicants contend, which contention is also duly supported by respondent Nos. 11 and 12 that the present application is not an application simplicitor under Section 14 of the NGT Act. It is an application where a specific prayer has been made with reference to the reports dated 12th June, 2013 and 14th August, 2013 for restoration of the Ecologically Sensitive Land and for maintaining the sensitive area in its natural condition, so that ecological balance of the area is not disturbed. This being a petition under Section 15 of the NGT Act, it could be filed within five years from the date on which the cause for such compensation or relief 'first arose'. According to the applicants, the present application is even filed within the period of limitation as contemplated under Section 14 of the NGT Act, 2010, for the reason that with reference to the inspection reports dated 12th June, 2013 by respondent no. 6 and 14th August, 2013 by respondent no. 2, various actions had been taken by different authorities, fully substantiating the plea of the applicant that such huge

construction activity in the catchment area of the lakes is bound to have adverse impact on the environment and ecology. According to them, it is evident from the record that on 14th August, 2013, respondent no. 7 had issued a communication to respondent no. 9 to comply with Ecology and Environmental Rules, as well as to take approval from the LDA. Various letters were exchanged between different authorities and the Project Proponent about the progress of the project and its irregularities. A letter of stop work notice was issued by the BBMP on 23rd December, 2013. KIADB also issued a stop work notice to respondent no. 9 on 2nd January, 2014. According to these applicants, in light of these facts, it is the case of 'continuing and/or recurring' cause of action relatable to environmental issues. Thus, the application had been filed within the prescribed period of 6 months even in terms of Section 14 of the NGT Act and the limitation would trigger from each of these dates mentioned above.

21. Sections 14 and 15 of the NGT Act, 2010 to a large extent are self contained provisions. They deal with the remedies that an aggrieved person is entitled to invoke. The present application, if treated as an application under Section 15 of the NGT Act, viewed from any angle, is within the prescribed period of limitation. The Environmental Clearance was granted to respondent no. 9 vide order dated 17th February, 2012 and all events have occurred thereafter till institution of the petition. The applicant has prayed for relief and restoration of ecology particularly with reference to the catchment areas of Bellandur Lake & Agara Lake. The applicant

could not have availed of any remedy before the Tribunal, prior to 2nd June, 2010 and/or 18th October, 2010 respectively, i.e. the dates on which the Act came into force and the Tribunal was constituted. Thus, the period of limitation would start running at best from these dates. The present application for the purposes of Section 15 has been filed within 5 years there-from and thus, has to be treated as within time.

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

22. The contesting respondents while relying upon the language of Section 14 read cumulatively, contend that the expression 'within the period of 6 months from the date of which the cause of action

for such dispute first arose' mandates that the period of limitation has to be reckoned when the cause of action for such dispute first arose and not thereafter. In the present case, the Environmental Clearance had been granted to respondent no. 9 on 17th February, 2012 and therefore it is their contention that the application could at best be filed by 16th August, 2012 and not thereafter.

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

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

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

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of *Bal*

Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

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

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

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

which renders the doer of the act responsible and liable for consequence in law.

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

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: *Khatri Hotels Private Limited and Anr. v. Union of India (UOI) and Anr.,* (2011) 9 SCC 126, *Bal Krishna Savalram Pujari & Ors. v. Sh.*

Dayaneshwar Maharaj Sansthan & Ors, AIR 1959 SC 798, *G.C. Sharma v. Municipal Corporation of Delhi,* (1979) ILR 2 Delhi 771, *Kuchibotha Kanakamma and Anr. v Tadepalli Ptanga Rao and Ors.,* AIR 1957 AP 419].

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

To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of

action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

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

> "The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that it the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by

> him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.
>
> The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1."

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be *de hors* the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: *Ex. Sep. Roop Singh v. Union of India and Ors.,* 2006 (91) DRJ 324,

M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].

32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts

which arise from the same event, may be at different stages. This expression would not *de bar* a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose.

33. The Environmental Clearance was granted to the project of Respondent no. 9 on 17th February, 2012 and to Respondent no. 10 on 30th September, 2013. Both these Environmental Clearances being appealable in terms of Section 16 of the NGT Act, 2010, their legality and correctness could be challenged within the prescribed period of limitation i.e. 30 days (or within the extended period of 60 days) which has not been done and as already noticed there is no challenge in this application to the grant of the Environmental Clearance. The applicants have primarily raised a challenge within the ambit and scope of Section 14 and 15 of the NGT Act. As already discussed, the application in so far as it prays for the relief of the restoration, it is within the period of limitation of 5 years. According to the applicants, the facts on record disclose violations of the condition of Environment Clearance and poses serious threat

to the environment and ecology because of the reckless construction in the catchment areas of the lakes. During the period of August, 2012 to January, 2014, various notices have been issued by different authorities in relation to the modification of building plans. These stop work notices/ orders and the inspection reports including report by LDA clearly demonstrates that the development project in the catchment area of Bellandur Lake as implemented would probably have adverse effect on the Bellandur Lake. The applicant may not challenge the grant of Environmental Clearance *per se* but upon commencement of the project and in view of their being definite documentary evidence supported by data, that the Project Proponent has committed breaches and implementation of the project is bound to have serious adverse impacts on ecology, environment and particularly the water bodies would give an independent 'cause of action' to him *de hors* the grant of Environmental Clearance. The averments in the application and the record fully satisfy the ingredients of Section 14 of the NGT Act. From those occurrences particularly of January, 2014, a fresh period of limitation has to be reckoned. The applicant may rely upon various reports, notices and orders in support of its claim. Whether the applicant succeeds on merits or not, is a different issue. However, for the purpose of limitation, the dates of these reports, stop work orders and notices would be relevant dates, which would provide the 'recurring cause of action' to the applicant and thus, the application will be within the prescribed period of limitation. In addition to this, the applicant has also prayed for

taking action in accordance with law on the basis of the report dated 14th August, 2013, communication letter of LDA dated 23rd September, 2013, communication dated 12th December, 2013 by LDA to Respondent No. 9, stop work notice dated 23rd December, 2013 issued by BBMP to Respondent No. 9 and stop work notice issued dated 2nd January, 2014 by KIADP to Respondent No. 9. Thus, the application having been instituted on 13th March, 2014 is well within the period of limitation under Section 14 of the NGT Act and for the reasons afore-recorded, we find no merit in the plea of limitation raised on behalf of the Respondents.

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

34. It is a settled principle that while determining whether the application discloses a cause of action, which would squarely fall within the ambit and scope of the provisions of the NGT Act, the petition has to be read as a whole by the Court or the Tribunal. Thus, we have to examine the cumulative effect of the averments made in the application, read in conjunction with the prayer clause. If upon reading of the entire application together, such cause of action is disclosed, that would fall within the jurisdiction of this Tribunal, the Tribunal would be obliged to entertain and decide such pleas. In the case in hand, the applicant has made reference to various activities in general and illegal and unauthorised activities of respondent nos. 9 and 10 in particular, which are

having adverse effect on the water bodies as well as the water supply to the city of Bangalore. It is alleged that the construction activity that is being carried on by respondent no. 9 is in violation of all the stipulations of the Environmental Clearance. Rampant construction work is being carried on in the buffer zone as well as over and around the Rajakaluves. While pointing out the blatant irregularities, it is also averred that the project is in the midst of fragile wetland area and is bound to severely disturb and damage the Rajakaluves. In terms of the Environmental Clearance, a condition has been imposed that the project proponent shall not disturb the storm water drains, natural valleys, etc. and buffer zone area around the Rajakaluves was to be maintained. However, according to the applicant, the project area is located between two lakes and therefore, the construction is in violation of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010. There has been violation of maintaining the buffer zone in accordance with the revised Master Plan of 2015. There has to be 30 meter buffer zone created around the lakes and 50 meter buffer zone created on either side of the Rajakaluves. This has also not been adhered to. Further, the consent had been granted to respondent no. 9 for residential units and not for other activities.

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

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

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

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

37. The definition of 'environment' under Section 2 (c) of the NGT Act again is widely framed. It is comprehensive enough to take within its ambit all matters in relation to environment. This definition practically covers every activity that will have water, air

and land and inter-relationship, which exists among and between these and the human being, other living creatures, plants, micro-organism and property. This definition is identical to the definition of 'environment' as provided under section 2(a) of the Act of 1986. In terms of the object and purpose of the Act of 1986, it has primarily been enacted to protect and improve the environment and for prevention of hazards to human being, other living creatures, plants and property.

Therefore, both protection and improvement of the environment are two very fundamental aspects of these legislations. Certainly, the applicant has not raised specific challenge to the Environmental Clearances dated 17th February, 2012 and 30th September, 2013 in the present appeal, but what is being questioned is the disappearance and further likelihood of complete extinction of the water bodies in the area in question in the city of Bangalore. Furthermore, since studies have shown serious adverse impacts upon the ecology and environment of the area, the authorities concerned, including the State Government, should take appropriate steps in accordance with law and the ecological degradation or damage should be directed to be restored. Once these reliefs are read in conjunction with the averments made in the record and examined within the domain of Order VII Rule 11 of the Code of Civil Procedure, 1908, then it is not possible to hold that the petition does not disclose a cause of action that would squarely fall within the ambit of the jurisdiction conferred upon the Tribunal in terms of Sections 14 and 15 of the NGT Act.

38. Section 15 of the NGT Act provides not only for relief and compensation to victims of pollution and other environmental damage arising under the enactments specified under Schedule I, but also for restitution of property and damage and restitution of environment for such area or areas. It is a general provision and covers victims of the pollution generally. In contradistinction thereto, Section 17 is a specific provision relating to death or specific injury which has occurred to a person, to a property or environment. Such death or injury has to result from an accident or adverse impact of activity or operation or a process, under any enactment specified under Schedule I, then the person responsible shall be liable to pay such relief or compensation for death, injury or damage, in terms of all or any of the heads specified in Schedule II of the Act and as determined by the Tribunal. This provision is person-specific and relates to such injury which results from an activity, operation or process and imposes liability on the person responsible for that activity, operation or process. Furthermore, when the provision of Section 14 and 15 of the NGT Act are examined in light of the Scheme of the Act, then it becomes clear beyond ambiguity that both these provisions operate in independent fields. They are mutually exclusive and not interconnected. Section 15 is not essentially dependent upon an order being passed under Section 14 as a condition precedent. In other words, remedy under Section 15 is not a consequential remedy to the provisions under Section 14. The legislature has provided distinct criteria, procedure and limitation under both

these sections. If they were to be treated interconnected or inter dependent, there was no occasion to provide entirely different limitation within which an aggrieved person can invoke the jurisdiction of the Tribunal. The essentials to be pleaded and proved under these provisions are notably different. While under Section 14, an applicant has to show that he has raised a substantial question relating to environment, which arises out of the implementation of the enactments specified under Schedule I, under Section 15, an applicant is called upon only to show that he is victim of pollution or other environmental damage.

39. Another contention raised before the Tribunal by the respondents is that as far as grant of restoration under Section 15 is concerned, the applicant has not made out a case invoking the said jurisdiction and furthermore, that Section 15 comes into play post event. This argument cannot be accepted. Firstly, we have already noticed in some detail that the factual matrix of the case as pleaded by the applicant brings out a case for invoking the jurisdiction of the Tribunal under Sections 14 and 15 both. Secondly, Section 15 when construed on its plain language does not mandate a jurisdiction which can be invoked only post event. We are persuaded to hold so because of the clear distinction in language of Sections 15 and 17 of the NGT Act. Section 17 specifically requires that there ought to have been death, injury to any person or damage to any property or environment from an accident or adverse impact of an activity or operation or process where on the liability of the person to pay such relief or

compensation shall be computed on the principle of no fault i.e. strict liability. In contradistinction thereto, Section 15 would operate both to a damage that has occurred as well as the damage which is likely to occur in relation to a property or environment. Of course, such damage will be to the victim of the pollution or other environmental damage arising under the enactments specified in Schedule I. Section 20 of the Act places an obligation on this Tribunal to apply the three principles of Sustainable Development, Precautionary Principle and the Polluter Pays Principle, in settlement of disputes before it. Since the precautionary principle will also be part of Section 15, its applicability in a likely damage to environment or property cannot be excluded. The legislature in its wisdom has enacted two different and distinct provisions. They have to operate in their respective fields, particularly, when their language is distinct and different. A clear distinction between two is that Section 17 would operate only for compensation while Section 15 would deal both with compensation and restitution.

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

41. Wherever a dispute as afore-noticed would arise, it would certainly give rise to a cause of action and accrue a right to sue in favour of an applicant in order to invoke one or the other

jurisdictions of the Tribunal. At this stage it may be useful to refer to the decision of the Tribunal in the case of *Kehar Singh v. State of Haryana,* 2013 ALL (I) NGT REPORTER (DELHI) 556, wherein it was held:

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

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

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

> environmental degradation and for restoration of the property damaged. Thus, the cause of action has to have relevancy to the dispute sought to be raised, right to raise such dispute and the jurisdiction of the forum before which such dispute is sought to be raised."

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

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

matters which certainly raise a substantial question relating to environment and which arise in relation to implementation of the enactments specified in the Schedule to the NGT Act. Once, such disputes are raised which require determination by the Tribunal, it can hardly be contended that the application does not disclose any cause of action falling within the jurisdiction of the Tribunal.

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

45. The Learned Counsel appearing for the respondents, particularly the Project Proponents, while relying upon the judgement of the Hon'ble Supreme Court in the case of *T. Arivandandam v. T.V Satyapal & Ors.,* (1977) 4 SCC 467 and *ITC Ltd. v. Debt Recovery Tribunal,* (1998) 2 SCC 70, contended that the application before the Tribunal does not disclose a cause of action, is a vexatious litigation without merits and is cleverly drafted to create an illusion of a cause of action and therefore the application

should be rejected. In our considered opinion, the respondents cannot take any advantage from any of the judgements cited by them. Firstly, these were the judgements on their own peculiar facts. In the case of *T. Arivandandam* (supra), the Hon'ble Supreme Court was dealing with an appeal against the order of Hon'ble High Court of Karnataka dismissing the revision petition of the petitioner for granting injunction or stay on the order of the Trial Court directing vacation of premises. The Apex Court observed that it was an audacious attempt by the petitioner for seeking more and more time in vacating premises by filing these fake litigations. It was held by the Hon'ble Supreme Court that the plaint was manifestly vexatious and meritless in the sense of not disclosing a clear right to sue and, therefore, the plaint should be rejected. On the other hand, in the case of *ITC Ltd.* (supra), the appeal was filed against the judgment of the Learned Single Judge of High Court of Karnataka, dismissing the Writ Petition filed by the appellant against the orders of the Debt Recovery Tribunal and Appellate Tribunal, rejecting the application of the appellant under Order VII Rule 11 of the Code of Civil Procedure, 1908. The Hon'ble Supreme Court had therein observed that non-movement of goods can be for a variety of tenable or untenable reasons but that by itself will not give a reason to the plaintiff to use the word "fraud" in the plaint and cleverly get over any objections that may be raised by way of filing an application under Order VII Rule 11. In these circumstances, it was held that if the plaint in fact did not disclose a cause of action, clever drafting cannot create illusionary cause of

action. Hon'ble Supreme Court also stated that there was gross abuse of process of law repeatedly and observed that a plaint on a meaningful and not formal reading, should disclose the cause of action.

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

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

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

47. The Respondents have raised the plea that the present application of the applicant is barred by the Principles of *res judicata*, constructive *res judicata* and in any case principle analogous thereto. This plea is found on the averment that some

petitioners including Respondent Nos. 11 and 12 had filed a Writ Petition being Writ Petition No. 36567-574 of 2013, before the Hon'ble High Court of Karnataka with the following prayers:-

> "PRAYER
> In the above premises, it is prayed that this Hon'ble Court may be pleased to:
> (a) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 8 vide Lease cum sale agreement dated 30.06.2007 at Annexure "B", more fully described in the schedule to the said agreement;
> (b) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 9 vide Lease cum sale agreement dated 20.03.2008 at annexure "C", more fully described in the schedule to the said agreement.
> (c) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from, in any manner, further alienating the public land, described in the schedule o the Lease cum Sale Agreement at Annexure B and C, in the vicinity of Agara lake to any private individual/institution/trust/societies/non-governmental associates and organizations without following the due process of law;
> (d) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from allotting the said land, described in the schedule to the Lease cum Sale Agreement at Annexure B and C, for purpose which may have an adverse consequences on the environment and, in particular the land in issue;
> (e) Direct the Respondent no. 1 to appoint a Task Force to look into illegal allotment of land in favour of private persons at the cost of environment and ecology and report to the Respondent no. 1 take action over them;
> (f) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case.
> INTERIM PRAYERS
> Pending consideration of this writ petition, this Hon'ble Court be pleased to:
> (a) Pass an order staying all construction activity under the project being carried out on the land in issue;
> (b) Pass an order restraining the Respondent Nos. 8 and 9 from alienating the land described in the schedule

to the Lease cum Sale Agreement at Annexures B and C, or creating any third party rights or encumbrances on the land in issue; and

(c) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case."

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

It is also argued that respondent nos. 9 and 10 have also filed two Writ Petitions before the Hon'ble High Court of Karnataka being Writ Petition No. 792 of 2014 and Writ Petition No. 366-367 of 2014, challenging the stop work notices issued to the respective respondents on 23rd December, 2013 and 2nd January, 2014 and that the operation of these notices have been stayed by the Hon'ble High Court on 21st January, 2014.

Thus, it is contended that the issues in the present application are directly and substantially in issue before the Hon'ble High Court of Karnataka and therefore, the present proceedings are barred by the Principle of *res judicata* and/or constructive *res judicata*. Neither the applicant nor respondent nos. 11 and 12 have disputed the filing of these Writ Petitions before the Hon'ble High Court, but have vehemently contended that neither the parties are common nor the issues in both the applications are directly and substantially the same. According to them, there is no commonality

of cause of action or likelihood of a conflict between the judgments. It is therefore, their contention that the application is not liable to be rejected on that ground.

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

> "34.
> (iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: ***Nivedita Sharma***).
> (iv) The High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the

> statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: ***Nivedita Sharma***).
>
> 36. In ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO)*** this Court observed that it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.
>
> In ***Chhabil Dass Agrawal*** this Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

The Court then proceeded to examine the likelihood of analogous situation that could arise by exercise of such jurisdiction and finally concluded held as under:

> "37.
>
> …Once, the High Court entertains a petition Under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal Under Section 30 with leave to appeal Under Section 31 of the Act against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court Under Article 226 of the Constitution Under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court Under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy Under Section 30 read with Section 31 Armed Forces Act.
>
> 38. The High Court (Delhi High Court) while entertaining the writ petition Under Article 226 of the Constitution bypassed the machinery created Under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions Under Article 226 and directed the writ Petitioners to seek resort Under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition Under Article 226 of the Constitution of India.

> 39. For the reasons aforesaid, we set aside the impugned judgments passed by the Delhi High Court and upheld the judgments and orders passed by the Andhra Pradesh High Court and Allahabad High Court. Aggrieved persons are given liberty to avail the remedy Under Section 30 with leave to appeal Under Section 31 of the Act, and if so necessary may file petition for condonation of delay to avail remedy before this Court."

50. Now firstly, let us examine if the parties in both these proceedings are common. The present application was instituted by 3 applicants and none of them is a party to the Writ Petition before Hon'ble High Court of Karnataka. The official Respondents are common in both the proceedings. Respondent Nos. 11 and 12 were the petitioners No. 1 and 2 in the Writ Petition before the Hon'ble High Court. However, at a later stage of pendency of this application, they filed M.A. No. 139 and 140 for being impleaded as party to the present application. This application was contested by the respondents including Respondent no. 9 and 10 in the present application and the same was allowed vide order dated 25th July, 2014 passed by the Tribunal. In the said order, it was recorded that both these Respondent Nos. 11 and 12 have given an undertaking to the Tribunal that they would withdraw the Writ Petition that they had filed before the Hon'ble High Court of Karnataka. In compliance to the undertaking given to the Tribunal, these two Respondents filed an application before the Hon'ble High Court and vide order dated 1st August, 2014 passed in Writ Petition No. 36567 of 2013, the name of these two Respondents as Petitioner Nos. 1 and 2 were ordered to be deleted. Thus, as of today, none of the above applicants is the party in the Writ Petition before the High Court

and in fact, they have been impleaded as Respondent Nos. 11 and 12 in consonance with the order of the Tribunal and that of the High Court as afore-referred. Now, we may proceed to deal with the content and scope of these proceedings. Undisputedly, the jurisdiction of the High Court under Article 226 of the Constitution of India is very wide. The jurisdiction of the Tribunal is very limited and it has to exercise it within the limitation of the Statute that created it. There are similar and at some places even identical contentions raised by the applicants in the present application, to the facts averred in the Writ Petition by the Petitioners before the High Court of Karnataka. The prayers in the Writ Petition as referred to above, both generally and substantially relate to acquisition of land, requiring the respondent authorities to resume the land in question, to examine the question of illegal allotment of the land and stop allotment and alienation of land. While the prayers before the Tribunal are and have to be restricted to environmental degradation and its restoration along with treating the areas in question as sensitive areas. The rampant development activities carried out by Respondent Nos. 9 and 10 are stated to have adverse impact on ecology, environment and the water bodies. It is further prayed before tribunal that there should be restoration of ecology of sensitive area. Thus, it is evident from the prayers and genesis of the respective proceedings that they are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment, ecology and its restoration and have to be essentially a civil proceeding. While the

proceedings before the High Court relate to entirely different issues i.e. the acquisition of land, its allotment and its transfer to third party. Thus, the issues in both the proceedings are neither substantially nor materially identical. Both jurisdictions have to operate in different fields governed by different and distinct laws. The objection taken by the Respondent does not satisfy the basic ingredients to attract the application of *res judicata* or constructive *res judicata*.

51. One of the tests in regard to the above is that a 'cause of action' should culminate into a judgment and lose its identity by merging into the result of the judgment. Once a 'cause of action' is culminated into the judgment, the general principle of *res judicata* or *constructive res judicata* bars re-agitating the same issue all over again. The object is to prevent abuse of process of law by re-agitating the same issues in different courts.

For these reasons, we find no merit in this contention of respondent Nos. 9 and 10. The purpose of the doctrine of *res judicata* is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of re-agitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality in so far as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High

Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The 'cause of action' in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor *constructive res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of 'judicial propriety', because of the Writ Petitions pending before the Hon'ble High Court of Karnataka.

In light of the above law enunciated by the Supreme Court of India, the contention raised on behalf of the applicant that this Tribunal should entertain and decide the application despite pendency of Writ Petitions before the High Court, deserves to be accepted.

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

52. Discussion on this issue with reference to the facts of the case would require the Tribunal to decide as to what relief, if any, could be granted to the applicant and whether there is any need for the Tribunal to pass any direction in the interest of environment

and ecology in the peculiar facts and circumstances of the case. As already noticed in the afore-indicated discussions, the serious objection herein is that these projects commenced their construction activities without seeking Environmental Clearance and therefore, the constructions are illegal and unauthorised. These huge constructions of residential, commercial and other purposes are located on the wetlands of different water bodies in the city of Bengaluru. The constructions have been raised even on the catchment areas of the water bodies. With reference to the reports afore-noticed, averments are that these constructions have adversely affected the environment, ecology and particularly the water bodies and their biodiversity. These constructions would have tremendous impact on the water supply to the city of Bengaluru and that there is a likelihood of complete extinguishment of these historical lakes, which have been the basic factor behind maintaining the environmental and ecological balance in the city of Bengaluru.

53. One of the most important facets of deliberation on this issue would be the alleged construction on the wetlands and catchment areas of the water bodies, i.e. the Agara and the Bellandur Lakes. In common parlance, 'wetlands' are the areas where water is the primary factor controlling the environment and the associated plant and animal life. They occur where the water table is at or near the surface of the land or where the land is covered by water.

54. Ramsar Convention uses a broad definition of wetlands. It includes all lakes and rivers, underground aquifers, swamps and

marshes, wet grasslands, peatlands, oases, estuaries, deltas and tidal flats, mangroves and other coastal areas, coral reefs, and all human-made sites such as fish ponds, rice paddies, reservoirs and salt pans.

55. The Indian definition of a 'wetland' means "an area or of marsh, fen, peatland or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six meters and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Government of India in the Ministry of environment and Forest, S.O. number 114 (E) dated the 19th February, 1991."

56. Wetlands are amongst the most productive ecosystems on the Earth, and provide many important services to human society. However, they are also ecologically sensitive and adaptive systems. "Free" services provided by wetlands are often taken for granted, but they can easily be lost as wetlands are altered or degraded in a watershed. Estimates of the per acre value of wetland services run as high as $370,000/acre in 1992 dollars (Heimlich *et al.* 1998). The exact value can be attributed to the type and location of the

wetland, the services it provides, and the economic methods and assumptions used.

57. Ecosystem goods provided by the wetlands mainly include: water for irrigation; fisheries; non-timber forest products; water supply; Pollutant removal, Flood attenuation, Groundwater recharge, Shoreline protection, Wildlife habitat and recreation. Major services include: carbon sequestration, flood control, groundwater recharge, nutrient removal, toxics retention and biodiversity maintenance (Turner et al., 2000).

58. Various services provided by wetlands include Carbon Cycle/ Carbon Sequestration: Swamps, mangroves, peat lands, mires and marshes play an important role in carbon cycle. Though wetlands contribute about 40% of the global methane (CH4) emissions, they have the highest carbon (C) density among terrestrial ecosystems and relatively greater capacities to sequester additional carbon dioxide (CO2). Wetlands provide for habitat for more aquatic, terrestrial, and avian species on an area basis than any other habitat type, making them one of the most ecologically and economically important ecosystems on earth. Thus, wetlands provide for soil life, habitat, biodiversity maintenance and recreation. Wetlands are a service provider to Nutrient Removal, Flood attenuation and Water supply and Ground water recharge and even are a source of employment [Ref: Pant *et. al,* 2003; Groffman and Crawford, 2003; Juliano and Simonovic, 1999; Olewiler, 2004; MFPED, 2004]. It is essential to provide an effective institutional framework to manage water bodies through

governmental and even non-governmental organizations.

59. Bengaluru has many artificial lakes, built for various hydrological purposes and mainly to serve the needs of irrigated agriculture and other allied purposes. The studies placed on record show that lakes of Bengaluru occupy about 4.8 per cent of the city's geographical area (640 square meters) covering both urban and non-urban areas (Krishna M.B. *et al.,* 1996). The number of these lakes has rapidly fallen from 262 in 1960 to 81 in 1985. The quality of water has reduced due to discharge of industrial effluents and domestic sewage. Conversion of lakes for residential, agricultural and industrial purposes has engulfed many lakes. Similarly, between 1973 and 2007, this region lost 66 lakes with a water spread area of around 1100 hectares due to urban sprawl (NitinBassi*et al.,* 2014). General factors affecting wetlands especially lakes are Eutrophication, low dissolved oxygen and pH, sedimentation and heavy metal pollution, biodiversity loss, etc.

60. Studies also reflect that a comparative analysis of drainage network between the Bengaluru urban and rural areas showed that the water bodies in Bengaluru urban district were subjected to intense pressure due to the process of urbanization and increasing population, resulting in loss of interconnectivity, in contrast to water bodies in rural Bangalore, where less pressures from direct human activities were noticed. At Madivala and Bellandur, there is interconnectivity of lakes with the adjacent lakes. Due to conversion and encroachment of two water bodies, connectivity between Yelchenahallikere and Madivala is lost as in the case of

Bellandur and Ulsoor lakes with the conversion of Challegatta tank into a golf course. The GIS analysis revealed that due to developmental activities in the catchment area, the drainage connectivity between the water bodies has been lost.

61. The loss in wetland interconnectivity in Bangalore district is attributed to the enormous increase in population and the reclamation of tanks for various developmental activities. Analysis of Madivala and Bellandur drainage network revealed that encroachment and conversion has resulted in the loss of connectivity between Yelchenhallikere and Madivala. Similarly the drainage network between Bellandur and Ulsoor is lost due to conversion of Chelgatta tank into a golf course (Status of wetlands in Bangalore).

62. In 1995, the National Lake Conservation Authority (NLCA) came up with National Lakes Conservation Plan (NLCP) for Bangalore, specifically aimed at raising the highest state of environmental alarm for dwindling quality of the remnants of the city's lakes. The National Lake Conservation Plan for Bangalore came with the theme of "*Integrated Lake Ecology with Water Quality.* This plan aimed at improving urban sanitation and health conditions, especially for the weaker sections of the society living within the lake catchment area. The plan also called for eco-friendly, low-cost, waste management bio-systems like "engineered wetlands". A total of 4 sub-systems comprising of around 20 lakes were selected for the first phase of the NLCP. These four sub-systems included Agara Lake System (Hulimavu, Doddabegur,

Madiwala, Puttenahalli; AgaraKere); Hebbal System (Narasipura I and II; DoddaBomassandra, HebbalKere, and Nagavara); Bellandur Lake System (Ulsoor, Bellandur, Vartur); and Dorekere System (Vasanthapura, Janardhana, Dorekere, Moggekere). Rs. 5.542 Crore were sanctioned for the restoration of the Bellandur Lake under NLCP in January 2003. The proposal specified the following tasks for the restoration: de-silting of lakes, fencing around the lakes, afforestation and gardening, sewage water treatment, interception chambers, diversion channels, oxidation ponds, de-weeding of lakes, community sanitation, solid waste and garbage disposal, recreational facilities. This was to be a five year phasing project (1995-2000) divided into the catchment area development (CAD); Sewage diversion channels; De-silting and Weed control; Face-lifting of lake; Biological studies and public awareness program; land acquisition, and others. The total cost for five years was estimated at Rupees Twenty-One Crores, Twenty Lakhs and Thirty five thousands.

63. In late 2000, the Research and Development wing of KSPCB published its report on comprehensive monitoring of lakes in and around Bangalore Metropolitan area to assess the state of the water quality. This was an interesting report given the weight of the output carried after the first phase of the city's lakes restoration process. KSPCB's results as a result of water quality monitoring on 44 selected lakes (including all but 2 in the NLCP list) revealed that most lakes still remained highly polluted.

64. The LDA instituted in January 2002, identified about 60 lakes

for immediate restoration soon after it was established. This program, like the NCLP one previously was proposed to be a five year phasing project costing Rs. 250 Crores, almost ten times the estimated cost proposed by the NLCA in 1995. These selected lakes included Ulsoor Lake, Sankey tank, Agara Lake, Narasipura Lake, Lal Bagh Lake, Dodda Bamasandra Lake, Hebbal Lake, Nagavara Lake and Bellandur Lake. The LDA's main objectives were: Resuscitation of lakes to boost aquifers, Diversion and treatment of sewage to generate alternative sources of raw water; improving sanitation and health conditions; and preserving the habitat of aquatic life.

65. The wetland management program generally involves activities to protect, restore, manipulate, and provide for the functions and values emphasizing both quality and acreage by still advocating sustainable usage of them [Walters, C. 1986.]. Management of wetland ecosystems requires an intense monitoring, increased interaction and co-operation among the various agencies (state departments concerned with environment, soil, natural resource management, public interest groups, citizen groups, agriculture, forestry, urban planning and development, research institutions, government, policy makers, etc.). Such management goals should not only involve buffering wetlands from any direct human pressures that could affect the wetlands normal functions, but also in maintaining important natural processes that operate on them that may be altered by human activities. Wetland management has to be an integrated approach in terms of planning, execution and

monitoring requiring effective knowledge on a range of subjects from ecology, economics, watershed management, and planners and decision makers, etc. All this would help in understanding wetlands better and evolving a more comprehensive solution for long-term conservation and management strategies.

We have noticed the above studies on record to bring clarity in regard to the importance of these water bodies and need-oriented significance to maintain the wetlands and catchment areas in the interest of environment, ecology, biodiversity and hydrological balance. The merit or otherwise, of these cases have to be examined in light of these studies, which is a matter of record.

66. It is alleged that respondents 9 and 10 had started the construction activity of their projects without grant of Environmental Clearance and it is sought to be substantiated by placing the Google Images on record. However, it cannot be disputed that subsequently both these respondents obtained ECs for the projects in question on 17th February, 2012 and 30th September, 2013, respectively. After the grant of Environmental Clearance, the respondents were expected to carry on with the projects strictly as per the terms and conditions of the orders granting them Environmental Clearance. The allegation is that they have carried out the constructions in violation of the conditions of the Environmental Clearance and have encroached upon the wetlands and catchment areas of the lakes.

67. The Environmental Information System (ENVIS), Centre for Ecological Sciences, Indian Institute of Science, Bangalore had

carried out a study and submitted a report on the need for 'Conservation of Bellandur Wetlands: Obligation of Decision Makers to Ensure Intergenerational Equity'. This report had specifically dealt with the activity of the SEZ projects by Karnataka Industrial Area Development Board in six zones. It was opined that this activity is contrary to Sustainable Development as the natural resources, lakes and wetlands get affected due to such activity. Removal of Rajakaluve (storm water drains) and gradual encroachment over them amounts to removal of lake connectivity, which enhances the episodes of flood and associated disasters. The Supreme Court of India, in Civil Appeal No. 1132/2011 while expressing concern regarding encroachment, particularly over lakes, had directed the State Governments to remove encroachments on all community lands. Even the High Court of Karnataka in Writ Petition No. 817/2008 had directed that the lakes should be protected across Karnataka, prohibited dumping of garbage and sewage in lakes, removal of encroachments, plantation of trees in consultation with experts lake surroundings and to declare it a 'No Development Zone' around the lakes. The report also speaks of water shortage by stating that BWSSB had not given NOC to respondent no. 9 and had communicated inability to supply such huge quantity of water on regular basis, as these projects require 4,587 kilolitres water per day (4.58 MLD per day). In this report, the Institute did not approve of the decision of the authorities to go ahead with such huge project, but also made

reference to the ecological and environmental implications as follows: -

> "Ecological and Environmental Implications:
>
> - Land use change: Conversion of watershed area especially valley regions of the lake to paved surfaces would alter the hydrological regime.
> - Loss of Drainage Network: Removal of drain (Rajakaluve) and reducing the width of the drain would flood the surrounding residential as the interconnectivities among lakes are lost and there are no mechanisms for the excessive storm water to drain and thus the water stagnates flooding in the surroundings.
> - Alteration in landscape topography: This activity alters the integrity of the region affecting the lake catchment. This would also have serious implications on the storm water flow in the catchment.
>
> The dumping of construction waste along the lakebed and lake has altered the natural topography thus rendering the storm water runoff to take a new course that might get into the existing residential areas. Such alteration of topography would not be geologically stable apart from causing soil erosion and lead to siltation in the lake.
>
> - Loss of Shoreline: The loss of shoreline along the lakebed results in the habitat destruction for most of the shoreline birds that wade in this region. Some of the shoreline wading birds like the Stilts, Sandpipers; etc will be devoid of their habitat forcing them to move out such disturbed habitats. It was also apparent from the field investigations that with the illogical land filling and dumping taking place in the Bellandur lakebed, the shoreline are gobbled up by these activities.
> - Loss of livelihood: Local people are dependent on the wetlands for fodder, fish etc. estimate shows that wetlands provide goods and services worth Rs 10500 per hectare per day (Ramachandra et al., 2005).

Decision makers need to learn from the similar historical blunder of plundering ecosystems as in the case of Black Swan event (http://blackswanevents.org /? page_id=26) of evacuating half of the city in 10 years due to water scarcity, contaminated water, etc. or abandoning of Fatehpur Sikhri and fading out of AdilShahi's Bijapur, or ecological disaster at Easter Island or Vijayanagara empire.

> It is the responsibility of Bangalore citizens (for intergenerational equity, sustenance of natural resources and to prevent human-made disasters such as floods, etc.) to stall the irrational conversion of land in the name of development and restrict the decision makers taking the system (ecosystem including humans) for granted as in the case of Bellandur wetlands by KIADB."

This report also highlighted the threats faced by the wetlands in Bengaluru with particular reference to SEZ Bellandur wetlands, which is the land in question. The report recorded as follows:

> "Greater Bangalore had 207 water bodies in 1973 (Figure 6), which declined to 93 (in 2010). The rapid development of urban sprawl has many potentially detrimental effects including the loss of valuable agricultural and eco-sensitive (e.g. wetlands, forests) lands, enhanced energy consumption and greenhouse gas emissions from increasing private vehicle use (Ramachandra and Shwetmala, 2009). Vegetation has decreased by 32% (during 1973 to 1992), 38% (1992 to 2002) and 63% (2002 to 2010).

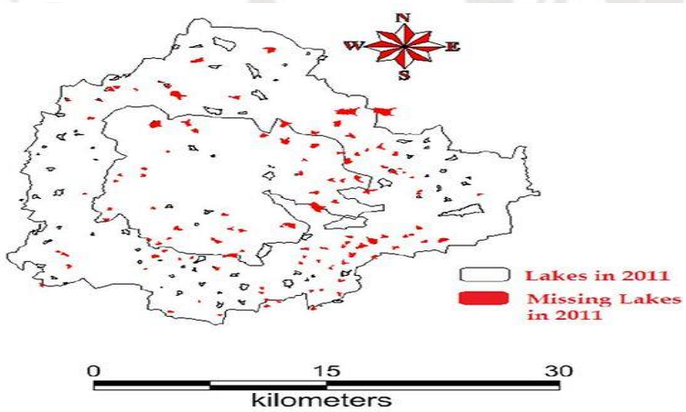


Figure 6: Lakes encroached by land mafia

> Disappearance of water bodies or sharp decline in the number of water bodies in Bangalore is mainly due to intense urbanisation and urban sprawl. Many lakes (54%) were encroached for illegal buildings. Field survey of all lakes (in 2007) shows that nearly 66% of lakes are sewage fed, 14% surrounded by slums and 72% showed loss of catchment area. Also, lake catchments were used as dumping yards for either municipal solid waste or building debris (Ramachandra, 2009a; 2012a). The surrounding of these lakes have illegal constructions of buildings and most of the times, slum dwellers occupy

the adjoining areas. At many sites, water is used for washing and household activities and even fishing was observed at one of these sites. Multi-storied buildings have come up on some lake beds that have totally intervene the natural catchment flow leading to sharp decline and deteriorating quality of water bodies. This is correlated with the increase in built up area from the concentrated growth model focusing on Bangalore, adopted by the state machinery, affecting severely open spaces and in particular water bodies. Some of the lakes have been restored by the city corporation and the concerned authorities in recent times. Threats faced by lakes and drainages of Bangalore:

1. Encroachment of lakebed, flood plains, and lake itself;
2. Encroachment of rajakaluves / storm water drains and loss of interconnectivity;
3. Lake reclamation for infrastructure activities;
4. Topography alterations in lake catchment;
5. Unauthorised dumping of municipal solid waste and building debris;
6. Sustained inflow of untreated or partially treated sewage and industrial effluents;
7. Removal of shoreline riparian vegetation;
8. Pollution due to enhanced vehicular traffic.

These anthropogenic activities particularly, indiscriminate disposal of industrial effluents and sewage wastes, dumping of building debris have altered the physical, chemical as well as biological integrity of the ecosystem. This has resulted in the ecological degradation, which is evident from the current ecosystem valuation of wetlands. Global valuation of coastal wetland ecosystem shows a total of 14,785/ha US$ annual economic value. Valuation of relatively pristine wetland in Bangalore shows the value of Rs. 10,435/ha/day while the polluted wetland shows the value of Rs.20/ha/day (Ramachandra et al., 2005). In contrast to this, Varthur, a sewage fed wetland has a value of Rs.118.9/ha/day (Ramachandra et al., 2011). The pollutants and subsequent contamination of the wetland has telling effects such as disappearance of native species, dominance of invasive exotic species (such as African catfish, water hyacinth, etc.), in addition to profuse breeding of disease vectors and pathogens. Water qualityanalyses revealed of high phosphates (4.22-5.76 ppm) levels in addition to the enhanced BOD (119-140 ppm) and decreased DO (0-1.06 ppm). The amplified decline of ecosystem goods and services with degradation of water quality necessitates the implementation of sustainable management strategies to recover the lost wetland benefits.

SEZ in Bellandur Wetlands: Irrational decision of setting up SEZ at Bellandur wetland would affect the lake. The Mixed Use Development Project - SEZ (figure 6) is proposed along Sarjapur Road in a wetland between Bellandur and Agara Lake, extending from 77°38'28.96" E to 77°38'57.99"E of Longitude and 12°55'24.98" N to 12°55'44.43" N of Latitude with an area of 33 hectare. The proposal of the project is to construct residential areas, offices, and retail and hotel buildings in this area.

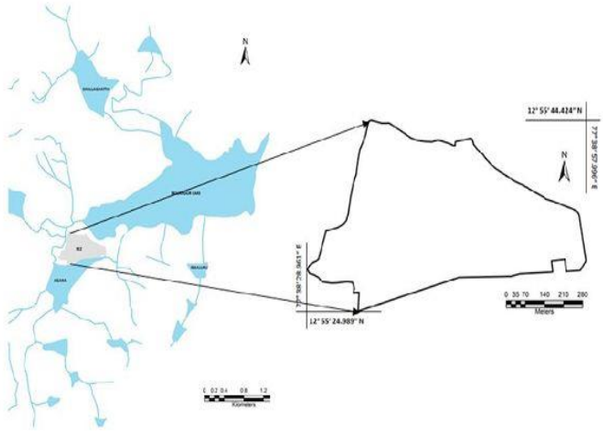


Figure 6: SEZ

Significance of the Region:

1. Wetlands with remediation functional ability (function as *kidneys* of the landscape). Removal of wetlands will affect the functional ability of the lake and would result in the death of Bellandur lake;
2. Considering severe water shortage to meet the drinking water requirement in Bangalore, there is a need to remove deposited silt in the Bellandur lake, which will enhance the storage capacity and in turn helps in mitigating the water requirement;
3. Wetlands aid in recharging groundwater as soil are permeable;
4. Belanduru lake provide food (fish, etc.) and fodder;
5. Retain the excess water and prevent flooding in the vicinity;
6. Large number of farmers in the downstream is dependent on Belanduru lake water for agriculture, vegetable, etc.

Realizing these, BDA has aptly earmarked these regions in CDP 2005 for "ENVIRONMENT PROTECTION AND HERITAGE CONSERVATION". The masterplan includes the protection of valleys and tanks as part of the vision and enforcing the ban on construction over protected areas. CDP 2015: As per CDP 2015, valley region are "No Development Zone"

1. In case of water bodies a 30.0 m buffer of 'no development zone' is to be maintained around the lake (as per revenue records) with exception of activities associated with lake and this buffer may be taken into account for reservation of park while sanctioning plans.
2. If the valley portion is a part of the layout/ development plan, then that part of the valley zone could be taken into account for reservation of parks and open spaces both in development plan and under subdivision regulations subject to fulfilling section 17 of KTCP Act, 1961 and sec 32 of BDA Act, 1976.
3. Rajakaluve/ storm water drains categorized into 3 types namely primary, secondary and tertiary. These drains will have a buffer of 50, 25 and 15m (measured from the centre of the drain) respectively on either side. No activities shall be permitted in the buffer zone."

This technical report was prepared in the year 2013 when these projects had already commenced their constructions. Of course, as per the case of the project proponents themselves, the construction activity was not in full swing.

68. After inspection of the projects in question, another report was prepared by the Regional Office, Southern Zone (Bengaluru) of the Ministry of Environment and Forests, Government of India, in relation to the building project undertaken by respondents no.9, which was sent to the Additional Principal Chief Conservator of Forests (Central), Ministry of Environment and Forests, Bangalore, on 14th August, 2013. It reported on the construction of mixed use development with residential, retail, hotel office, SEZ and Non-SEZ by respondent no.9. In part III of this report, the MoEF commented upon each condition of the order granting Environmental Clearance and compliance thereto. It noticed that the projects are under initial stages, i.e. only levelling and excavation works are going on. It will

be useful to refer to some of the significant observations relating to the compliance of the conditions of the Environmental Clearance in relation to the project of Respondent no.9 in this Report. They read as follows:

Sl. No.	Conditions	Compliance
xiv)	Disposal of muck, construction debris during construction phase should not neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority	The project authorities stated that, the excavated soil from the project site would be stored in Rachenahalli village, K.R. Puram Hobli, Bangalore East Taluk which is about 10 km away from the site and further stated that, the construction debris will be reused/recycled for back filling / sub base work for roads, pavements, drains etc., within the project site and the earth work excavated material will be managed through back filling between foundations on the back side of retaining walls and underground tanks / sumps and also will be reused for filing up low lying areas within the site. As on today the levelling and excavation works are going on. The foundation work of commercial block in Phase-I has

		been started from here the excavated earth is kept just adjacent to this foundation work within the site and agreed to reuse back.
xv)	Soil and ground water samples should be tested at the project site during the construction phase to ascertain that there is no threat to ground water quality by leaching of heavy metals and or other toxic contaminants and reports submitted to SIEAA.	Soil (one location) and ground water (……location) samples are being tested on monthly basis through the third party. The heavy metal has not been analyzed yet and agreed to analyse in future.
xvi)	Construction spoils, including bituminous material and other hazardous materials, must not be allowed to contaminate water courses and the dumpsites for such material must be secured so that they should not leach into the ground water.	The project authorities assured that hazardous material will not be used in the site.
xx)	Fly ash should be used as building material in construction as per the provisions of fly Ash Notification of September 1999 and amended as on August, 2003.	Fly ash bricks are not used because there is no coal based thermal power plant located within 200 km of the project site.
xxiv)	No ground water is to be drawn without permission from the Central Ground Water Authority.	Agreed to comply. The project construction activities are under initial stages. As gathered that, the ground water is purchased from outside for drinking and sanitation purpose.
xxxiv)	The project authority shall maintain and operate the common	Agreed to comply.

	infrastructure facilities created including STP and solid waste management facility for a period of 5 years after commissioning the project.	
xxxix)	The natural sloping pattern of the project site shall remain unaltered and the natural hydrology of the area be maintained as it is to ensure natural flow of storm water.	Execution of the project will necessarily sloping pattern of the project site and the natural hydrology of the area and hence specific condition no xxxix cannot be complied.
xl)	Lakes and other water bodies (if any) within and/or at the vicinity of the project area shall be protected and conserved.	The project area is in the catchment area of Bellandur lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by the project activities either during construction or during operation phase.
B. General Conditions		
ii)	All commitments made by the proponents in their application, and subsequent letters addressed to the SEAC / SEIAA should be accomplished before the construction work of the project is completed.	The project authorities have agreed to implement all the commitments made to the SEAC/ SEIAA before the construction work of the project is completed.
v)	In case of any changes(s) in the scope of the project, the project would require a fresh appraisal by this Authority	Agreed to comply.

xii)	The issuance of Environmental Clearance doesn't confer any right to the project proponent to operate / run the project without obtaining Statutory clearance/sanctions from all other concerned authorities.	Agreed to comply.

There does not appear to be any such similar report in relation to the project of respondent no.10. However, there are other general reports which deal with the project properties of respondent no.10.

69. We have also noticed above that the High Court of Karnataka in W.P. No. 817/2008 had passed certain directions in regard to the preservation of lakes and wetlands in the State of Karnataka. These directions were based upon the report dated 21st February, 2011, submitted to the High Court by the Committee Chaired by Justice N. K. Patil, in relation to the preservation and restoration of lakes in and around the city of Bangalore. In the report, recommendation had been made with regard to preservation of lakes, noticing rapid urbanisation of Bangalore city as the main cause for reduction in water bodies. While referring to an earlier report of 1985, prepared by Shri N. Lakshman Rau Expert Committee, constituted by the Government of Karnataka, it was emphatically stated that necessity of lake preservation is more pronounced in the context of urbanization, when city takes more and more villages into its fold, as in case of Bangalore city. It stated that the lakes are the lung spaces of a city and climate moderators, adding to thermal ambience. Most importantly in this report, emphasis was made on

the role of the LDA in preservation of lakes. It was referred that the LDA was constituted in the year 2002 as a registered society. Its jurisdiction extends over lakes in metropolitan cities area of Bangalore inclusive of Bangalore Metropolitan Region Development Authority area, besides this LDA has jurisdiction over the lakes in other Municipal Corporations and Town Municipal Councils within the State. It is the regulatory, planning and policy making body with nodal functions for protection, conservation, reclamation, restoration, regeneration and integrated development of lakes in its jurisdiction. Another important feature of this report was in relation to augmenting water supply to Bangalore city from these lakes. It stated that Bangalore population was likely to exceed 12 million by 2020 and at the current growth rate, the water shortage may lead to water crisis, if the problem is not tackled with advance planning. Report further stated that, the ground water was depleting and that bore-wells of 700 to 1000 feet deep were quite common in this city. These all were indicators of a grave situation.

70. The Hindu newspaper on 3rd June, 2013 had widely raised the issue of environmental degradation in the catchment area of the Bellandur Lake due to construction of mixed use development projects, as also undertaken by both the respondents no. 9 and 10. After this report, instructions were issued by the CEO of LDA on 4th June, 2013 to inspect the lake premises. Inspection was conducted by Shri S. R. Nagraj, EE, LDA and Sh. C. Nagesh Rao, AEE, LDA. After the inspection, a report dated on 12th June, 2013 was prepared which concluded as under:

> At the time of inspection it was observed that huge construction activities were observed in this catchment area and on enquiry it was informed that the above said land was acquired by the KIADB for SEZ and allotted for different agencies for construction of apartment complexes, malls, etc., Due to huge construction activities in this catchment area there is change of land use and directly impacting the catchment of Bellandur lake.
> As per the Para 2 of the report, it is reported that the wet land (a marshland ecosystem typically found around water bodies) has shrunk. It is not the wetland of Bellandur lake. It is achcutland of Agara lake. Originally Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake. It is catchment area which was shrunk due to allotment of agricultural land by KIADB to different agencies for construction of apartment complexes, malls etc.
> Hence KIADB"s colossal "mixed – use development project in the catchment area of Bellandur will probably have adverse effect to Bellandur lake.

The above conclusions suggest that these multi-purpose construction activities of huge dimensions could have adverse environmental and ecological impacts. Of course, the report submitted by the MoEF primarily deals with the construction activity and projects of respondent no.9 only. However, the other reports are of general nature which deals with the construction of multi-purpose projects and their adverse impacts on environment, ecology with particular reference to the water bodies like lakes etc.

71. In order to analyse the environmental and ecological impacts of these multipurpose projects appropriately, the case can be divided into two parts: First, what are the irregularities or breaches which the project proponents, i.e. respondent nos. 9 and 10 as stated to have been committed. Secondly, the likely impacts of these

projects upon the environment and ecology of the area in question, particularly on the water bodies.

Proposed Mixed Use Development Project is located at Agara Village and Jakkasandra Village, Begur Hobli, Bangalore South. Special Economic Zone (SEZ) is located between the Agara Lake & Bellandur lake. The Mixed Use Development Project – SEZ is proposed along Sarjapur Road in the catchment of lakes Bellandur and Agara Lake, extending from 77°38'28.96" E to 77°38'57.99" E of Longitude and 12°55'44.43" N of Latitude with an area of 33 hectare. Agara Lake is located at other side of 45 m wide road whereas Bellandur Lake is just 50 m away from the project boundary. Rajakaluve (Natural Drain) is running all along the project site.

Proposal envisages for construction of residential apartment with (Block-1 (Block A: 2B+G+ 14UF; Block B: 2b+G+10 UF) + Block 2 (2B+G+14UF), retail, hotel & office building with 3B+G+11 UF, SEZ with 3B+G+11UF +Terrace and Non-SEZ 3B+G+12UF+Terrace on the plot area of 2,92,636.03 sqm. The total built-up area is 11,50,454.98 sq. m. The total water requirement is 4587 KLD and the investment is of Rs. 2347 crores.

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

1) The construction of both the projects had started prior to the grant to Environmental Clearance.

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

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

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

5) Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.

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

7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved: The inspection report by the MoEF clearly notes that condition nos. (xxxix) and (xl) in the Environmental Clearance of respondent no. 9 cannot be

complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase.

73. There are four reports on record which are suggestive enough that there would be adverse impacts of these projects upon the environment and ecology of the area, particularly on the lakes and the wetlands. The report prepared by the Committee chaired by Justice N.K. Patil filed before the Tribunal states that the lakes and the wetlands should be protected in the city of Bangalore. Measures were required to be taken in that direction and to remove encroachment in lake area and *Rajakaluves*. The large construction activity was stated to be prejudicial to the environment in those areas. Contents of this report are neither denied nor admitted by respondent no. 9 who, in its reply, has required contents of the report to be proved by the applicants. On the other hand, respondent no. 10 has submitted that there are no *Rajakaluves* or canal in his property and thus the above recommendations are not applicable to respondent no. 10. The other report on record is prepared by ENVIS, Centre for Ecological Sciences, Indian Institute of Science, Bangalore. This report focuses on possible consequences for setting up SEZ in Bellandur Lake area and also recommends restoration of wetlands in that area. In this report, how the land use

changed from 2007 to 2012 was illustrated, stating that the wetlands have decreased from 32.80 ha to 5.95 ha, whereas the Open land (Conversion of Wetlands to SEZ Construction site) has increased from 0.6 ha to 27.46 ha. Noticing the major violations, it was recorded that development in wetland violates the CDP 2015, which would result into flooding in the vicinity due to encroachment of drains, alterations in topography, encroachment of lake-bed and encroachment of lake itself by dumping debris and filling up of same; there was violation of 30 metre buffer (lake floodplain); traffic congestion and filling of a portion of lake with building debris. While respondent no. 9 termed the report as speculative and based on presumptions, respondent no. 10 denied it as frivolous and baseless and termed it as tailor made to support the case of the applicants. At this stage, we may also notice that in the column of 'Acknowledgement' of this Report, the name of Koramangala Residents Association has been mentioned. It is contended that this Association had approached Dr. T.V. Ramachandran to prepare the Report. The said Resident Association is a party to one of the Writ Petitions before the Hon'ble High Court of Karnataka. Therefore, it is argued that the report stand vitiated because of the self-interest of Dr. T.V. Ramachandran who was a member of the Committee which prepared the said report. On the other hand, the contention of the applicant and respondent nos. 11 and 12 is that Dr. T.V. Ramachandran prepared the said Report as a part of scientists' social responsibility and that the observations and findings of the report by the scientists do not become invalid/*non est* merely

because the study was undertaken at the request of a concerned group of citizens.

74. The objection taken by the respondents does not appeal to us. This report was not prepared by an individual but by a team of scientists from a Government Institute. Apparently, it appears to be in discharge of his scientists' social responsibility that Dr. T.V. Ramachandran participated in preparing this report. However, this issue loses its significance, because it is the content of the report which is to be considered by the Tribunal and not the persons who have prepared the report. There is a vague denial to the contents of the report by the respondents, who have not placed any report on record to contradict the contents of this report, which itself is largely supported by three other reports placed on record.

75. Report which is placed on record by respondent no. 10 is prepared by a Private Consultant, which only mentions that there will be no adverse impacts on environment. This report does not aspire confidence, as it is not data based and in fact, does not meet any of the issues raised in the four reports placed by the applicant on record. The other two reports are the MoEF Monitoring Committee report and the inspection report prepared by the LDA, which we have already discussed in some detail above.

76. The MoEF monitoring report prepared by regional office of MoEF has forwarded on 14th August, 2013 mentions two most significant conditions which have a substantial bearing on the matters in issue before us is with regard to the preservation of the water bodies in Bengaluru and the natural slopping pattern and

natural hydrology of the area to remain unaltered. These conditions having been noticed as not possible to be adhered to, we really do not understand as to how these projects have been permitted to progress any further.

77. Lastly, it is the report of LDA, which as already noticed is the Society created by the Government of Karnataka with a specific purpose of protecting the lakes and the wetlands. This report had specifically recorded that the projects are bound to have adverse impacts on the catchment area of Ballendur Lake. This report has also been denied by the respondents stating that it is frivolous and according to respondent no. 10, there are no wetlands around Bellandur Lake.

78. There is sufficient material by way of reports, google images and other documents that the Bellandur Lake and even other lakes for that matter have wetlands and catchment areas. There are encroachments on the Rajakaluves as well as on the catchment areas of the water bodies. The adverse impacts of this colossal mixed development projects had got the attention of all concerned, including the Press and the issue was widely raised. This resulted in the inspection by the LDA as well as other authorities, which commented on the adverse impacts of this project in the interest of environment and ecology. Furthermore, the stop-work notices issued by different authorities from time to time also suggest that the work and progress of the projects was in violation of the laws in force. Of course, these stop-work notices have been challenged before the Hon'ble High Court of Karnataka which has granted stay

on these notices, but the fact of the matter remains that various authorities including the BBMP and the KIADB have found out and observed that the construction should be stopped forthwith.

79. The cumulative effect of the above discussion would be that there is a definite possibility of environment, ecology, lakes and the wetlands being adversely affected by these projects. There are multiple public authorities including SEIAA involved in regulating such projects and they are also responsible for protecting interest of environment and ecology while keeping in mind the settled canon of sustainable development. It is the contention of the respondent nos. 9 and 10 that there are large numbers of other projects located around these lakes. If that be so, then we have no hesitation in observing that various regulatory authorities including SEIAA ought to have examined the cumulative Environmental Impact Assessment in these cases on the water bodies as the protection of the water bodies, the wetland and the catchment areas of the lakes is the obligation of these authorities.

80. It was vehemently contended before us that the construction of the projects is nearing completion and huge money of respondent nos. 9 and 10 including investments made by various land and other area purchasers is at stake. Thus, according to these respondents, the application should be declined by the Tribunal only on that fact. We are not impressed with this contention at all. The respondents have started the construction even prior to the grant of Environmental Clearance and instigated the public to invest money. They cannot be permitted to take advantage of their

own wrong. However, it may also not be in the interest of justice and particularly, while applying the Principle of Sustainable Development in terms of Section 20 of the NGT Act, that these properties be demolished but that does not mean that they should not be directed to take all measures and precautions, even if it results in necessary demolition of some parts of the projects in the interest of environment, ecology and protection of lakes and wetlands. It cannot be disputed that there is serious scarcity of water in the city of Bangalore. Impact of these projects on water bodies ought to have been of fundamental consideration before the authorities concerned. In our considered view, they have failed to take complete notice of this fact and act objectively in light of the laws in force.

81. The project proponents, i.e. respondent nos. 9 and 10 submitted their respective applications for grant of Environmental Clearance to the concerned authorities in the year 2011 and 2012 respectively. The Environmental Clearance was granted to the Project proponents on 17th February, 2012 and 30th September, 2013 respectively. However, construction activities had been carried out by the project proponents much prior to the grant of Environmental Clearance. There is not even an iota, much less valid, reason placed by the project proponents before the Tribunal as to why the applications for Environmental Clearance were moved at such belated stage and why construction was started prior to grant of Environmental Clearance. The provisions of the EIA Notification, 2006 which was in force at all relevant times does not

permit carrying on of any construction or any other activity in relation to the project prior to the grant of Environmental Clearance. The provisions of this Notification admit of no ambiguity that specific project or activities shall not require prior Environmental Clearance. All steps in that direction, including site selection, are the subject matter of scrutiny at the time of grant of Environmental Clearance. The project proponents are clear defaulters of compliance of the statutory provisions. They cannot take advantage of their own wrong of raising construction prior to submission of the application for Environmental Clearance and even grant of Environmental Clearance. The respondent nos. 9 & 10 are intentional defaulters. They violated the law being fully conscious of their obligations under different laws in force. The authorities concerned had sanctioned the building plans of these respondents subject to a specific stipulation that such sanction was subject to grant of other clearances including Environmental Clearance under different laws. Since the construction and allied activities were being carried on contrary to law, they even would be deemed to have caused pollution not only of the environment but more particularly of the lakes and caused obstructions of the Rajakaluves in the area. Applying the Principle of 'Polluter Pays' as contemplated under Section 20 of the NGT Act, the project proponents must be held liable to pay compensation for restoration and restitution of the environmental pollution and degradation. There is sufficient material on record to show that there has been environmental degradation. From the date of grant of

Environmental Clearance, the construction is supposed to be carried on in accordance the conditions of the Environmental Clearance and with due protection of the environment, which the respondents have failed to comply with. The project proponents are liable to pay compensation under the 'Polluter Pays' Principle, for the illegal and unauthorised construction carried on in violation of the environmental laws and prior to grant of Environmental Clearance. One who violates law renders itself liable for consequences of such violations. Respondent nos. 9 & 10 commenced excavation and even construction prior to submission of their application for grant of Environmental Clearance. Obviously at that stage they did not take any protections in the interest of environment and ecology in relation to the project activities. The terms & conditions in that behalf came to be stipulated only in the order granting Environmental Clearance; prior thereto the entire project activity was illegal and unauthorised. The mining, excavation and construction work adversely affected the Lakes and the Rajakaluves. The possible risk and degradation, due to construction and operation of the project include actual damage and even threats to environment and ecology pertaining to pollution, encroachment, eutrophication, illegal mining of soil, loss of Biodiversity, ungoverned human activities and cultural misuse. The consequential damage and degradation of environment and ecology from the activities of these projects can broadly be placed under two distinct heads, while invoking the Polluter Pays Principle. First being the damage that has already

been caused because of such activity, particularly, for the period when the activity was carried out in an illegal and unauthorised manner and without sanction of the competent authorities. Secondly, the damage and environmental degradation that is likely to occur upon completion of these projects and the liability of the concerned respondents in regard to restoration and restitution of environment. Another very important aspect which cannot be overlooked by the Tribunal is with regard to the respondent nos. 9 & 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with condition no. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August, 2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof.

82. It may not be possible to determine the above compensation with exactitude but that does not mean that the project proponents can avoid liability in that regard. The Supreme Court in the case of *M/s Sterlite Industries (India) Ltd. v. Tamil Nadu PCB & Ors*, JT 2013 (4) SC 388, had directed payment of Rs. 100 crores by the Company which operated without consent of the Board. It needs to be noticed that M/s Sterlite Industries was possessed of the consent from the Board prior as well as subsequent to the period for which the compensation was imposed. In order to comply with the principle

stated by the Hon'ble Supreme Court in the case of *Sterlite Industries* (supra) and as followed in the case of *Sarang Yadwadkar & Ors. v. The Commissioner, Pune Municipal Corporation & Ors,* 2013 ALL (I) NGT REPORTER (DELHI) 299, discussed hereafter, we may refer to some relevant facts and figures from the records before us. The project area of respondent no. 9 is nearly 2,92,636.03 sq. m, while the built-up area is 13,50,454.98 sq.m., with a project cost of Rs. 2,347 Crores. While in the case of respondent no. 10 the plot area is 33,333.00 sq.m., while the built-up area is 72,180.64 sq. m., with a project cost of Rs. 450 Crores. The afore-noticed project activities and construction started much prior to moving of application and grant of Environmental Clearance. The principle which has often been adopted by the Courts, including the Hon'ble Supreme Court in the case of *Goa Foundation v. Union of India and Ors.,* (2014) 6 SCC 590, is to direct deposit of certain percentage of the cost of the project at the first instance. In the case of ***Goa Foundation***, the Supreme Court had directed deposit of 10 per cent of the value of the mineral extracted. In the case of *Krishankant Singh v. National Ganga River Basin Authority* 2014 ALL (I) NGT REPORTER 3 DELHI 1, this Tribunal directed Simbhaoli Sugar Mills which had operated without consent of the concerned Board for a long period and had polluted the environment, Phuldera drain as well as the underground water, to pay a compensation of Rs. Five Crores. The said sugar factory had operated with the consent of the Board prior and subsequent to this period. The compensation was imposed for flouting the law and for causing the pollution. It

may be noticed that the appeal against the said judgment of the Tribunal was dismissed by the Supreme Court in Civil Appeal No. Civil Appeal No. 10434 OF 2014 vide its order dated 21st January, 2015. This liability primarily accrues on account of the illegal and unauthorised activities carried on by the Project Proponents. These are purely commercial ventures of respondent nos. 9 & 10 to make high profits, while causing environmental and ecological degradation and also by carrying on illegal and unauthorised activities, particularly, for the period prior to grant of Environmental Clearance.

83. The drawings and construction plans had been approved by respondent no. 7 vide its letter dated 4th July, 2007 and 22nd April, 2008, for respondent nos. 9 and 10 respectively. Despite this, the applications for seeking Environmental Clearance were moved much later i.e. on 3rd March, 2011 and 4th February, 2012. Even these letters granting approval of drawing and plans had mandated that these Respondents are expected to comply with all bye-laws and even other laws in force. When they applied for renewal of building plans and drawings, the same were granted vide letter dated 11th October, 2013 and 3rd January, 2013 respectively, where specific conditions were stipulated that other laws in force relating to construction and use of premises should be complied with and they were required to install ETP/STPs and use of recycled water for washing and flushing was mandated. From this, it emerges that there was clear onus on the part of these respondents to seek Environmental Clearance before commencing construction, which

they intentionally and flagrantly violated and furthermore, there is nothing on record to show that the conditions with regard to setting up of ETP/STP and recycling of water have fully been satisfied. Furthermore, respondent no. 10 has been issued a specific letter on 18th March, 2013 by respondent no. 7 directing it that no construction works should commence prior to obtaining Environmental Clearance. They were also directed to obtain Consent for Establishment from KSPCB which was also not adhered to. They were required to furnish the requisite information within 7 days. These are the apparent violations of law committed by respondent nos. 9 and 10.

84. We are conscious of the fact that the projects in question have already been granted the Environmental Clearances and that they have raised constructions in furtherance to such Environmental Clearances. Still as discussed above, the matters in relation to conditions of the orders granting Environmental Clearances, adverse impacts of these projects upon the environment, ecology, lakes and wetlands, need for taking preventive and remedial measures for restoration of the environment and ecology as well as protection of the water bodies in future, are the matters which have been examined by us above. We may also appropriately make reference to the judgment of this Tribunal in the case of *Sarang Yadwadkar and Ors. v. The Commissioner, Pune Municipal Corporation and Ors.* 2013 ALL (I) NGT REPORTER (DELHI) 299, wherein under somewhat similar circumstances, the Tribunal had while declining to demolish the construction raised in the project,

issued substantive directions in the interest of environment and ecology and for protection of River Mutha in Pune. The Respondent Corporation had preferred an appeal before the Supreme Court of India being Civil Appeal Diary No. 3445 of 2015, which was dismissed on merits on 12th February, 2015. The Project Proponent was thus directed to comply with the directions of the Tribunal including partial demolition of the project in question. We have already indicated that at this stage the entire amount of compensation payable on various counts by the Project Proponent cannot be determined with exactitude, however, liability to pay for violation of law, raising construction unauthorizedly and illegally, renders the Project Proponent liable to pay the environmental compensation forthwith. The final amounts for restoration of environment and ecology would be determined by the Committee constituted in this judgment. We are of the considered view that 10 per cent of the project cost may be somewhat on the higher side and to maintain the equitable balance between the default and the consequential liability of the applicant, we direct the Project Proponents to pay at the first instance compensation for their default at the rate of 5 per cent of the cost of the project. In light of this, Respondent No. 10 would be liable to pay a sum of Rs 22.5 crores and Respondent No. 9 would be liable to pay a sum of 117.35 crores.

85. This is a fit case where in exercise of its jurisdiction in terms of Section 20 of the NGT Act, the Tribunal has to invoke both polluter pays principle as well as precautionary principle. Further,

where the Tribunal should also apply the principles of law enunciated by the Supreme Court and this Tribunal in the case of *Sterlite Industries* (supra), *Krishankant Singh* (supra) and *Sarang Yadwadkar* (supra) and issue the following directions:

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

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

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

   c) Chief Town Planner of BBMP, Bangalore.

   d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.

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

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

   g) An Senior Officer from the National Institute of Hydrology, Roorkee.

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

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

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

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

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

7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages

and wetlands. The committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.

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

9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letter dated 4th July, 2007 and 22nd April, 2008 respectively. Further, the Committee would also report whether both respondent nos. 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing etc., in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to respondent nos. 9 and 10 respectively.

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

11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both respondent nos. 9 and 10 are hereby restrained from creating

any 3rd party interests or part with the possession of the property in question or any part thereof, in favour of any person.

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

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

14) For the reasons stated in the judgment respondent no. 9 is liable and shall pay a sum of Rs. 117.35 crores, while respondent no. 10 shall pay a sum of Rs. 22.5 crores respectively being 5 per cent of the project value, within two weeks from today. The said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non–compliance to law by the Project Proponent in that area, after taking approval of the Tribunal.

15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of direction 14, onto

the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.

86. Thus, we dispose of the Original Application No. 222 of 2014 in the above terms while leaving the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Dr. D.K. Agrawal
Expert Member

Professor A.R. Yousuf
Expert Member

New Delhi
7th May, 2015

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(2019) 18 Supreme Court Cases 494 : 2019 SCC OnLine SC 322

In the Supreme Court of India

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

MANTRI TECHZONE PRIVATE LIMITED . . Appellant;

Versus

FORWARD FOUNDATION AND OTHERS . . Respondents.

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

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

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

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

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

— Constitution of India — Sch. VII List I Entry 13 — Water/River/Coastal Pollution — Water Conservation/Preservation, Development Projects and Interlinking of Rivers — Primacy of environmental laws over town planning laws — Wetlands (Conservation and Management) Rules, 2010 — Local Government, Municipalities and Panchayats — Town Planning — Ecology/Environmental clearance — Layout/Master/Zonal Plan — Primacy

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of environmental laws over — National Green Tribunal Act, 2010, Ss. 33, 14, 15, 20 and 22

(Paras 39 to 47 and 60 to 63)

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

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

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

(Paras 35 to 38 and 55)

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

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

(Paras 35 to 38)

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

— Considering specific prayer of applicants before NGT, evidence supported by data, findings arrived at by NGT, and jurisdiction of NGT it is not an application under S. 14 simpliciter — It was a petition under S. 15 — Non-mention of or erroneous mention of provision of law, not a bar to pass appropriate orders, if NGT had jurisdiction in respect of same — Directions issued by NGT against both project proponents in present case did not suffer from any perversity — General Principles of Environmental Law —

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Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Limitation period for approaching NGT — Reckoning of

(Paras 48 to 55)

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

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

(Paras 56 to 59)

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

Disposing of the appeals, the Supreme Court

Held :

Appeal to Supreme Court

The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by the Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court 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.

(Para 37)

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

Further, merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22 of the NGT

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Act, 2010. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision.

(Paras 36 to 38)

Jurisdiction of Tribunal

The first question is in relation to the maintainability of the application before the Tribunal.

(Para 39)

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

(Para 40)

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

(Para 41)

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

(Para 43)

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

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

(Para 44)

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

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

(Para 45)

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

(Para 46)

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

(Para 47)

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

(Paras 60 to 62)

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

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

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Limitation

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

(Para 49)

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

(Para 50)

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

(Paras 52 and 51)

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

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

(Para 54)

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

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

(Para 55)

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

SS-D/62061/S

Advocates who appeared in this case :

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

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

Chronological list of cases cited ***on page(s)***

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1. 2016 SCC OnLine NGT 1409, *Forward Foundation* v. *State of Karnataka* **(partly reversed)** 499*e*, 499*g*, 509*a*, 514*e*, 522*e-f*, 523*e-f*

2. 2016 SCC OnLine NGT 637, *Forward Foundation* v. *State of Karnataka* 508*e*

3. 2015 SCC OnLine SC 1778, *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation* 507*f-g*

4. 2015 SCC OnLine NGT 5, *Forward Foundation* v. *State of Karnataka* 499*e*, 505*e-f*, 508*c*, 520*a-b*, 521*a*, 522*a*

5. (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *Kishore Lal* v. *ESI Corpn.* 518*a*

6. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.* 516*e-f*

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.— These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity "the NGT Act") challenging the judgment and order dated 7-5-2015[1] and 4-5-2016[2] respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short "the Tribunal").

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

3. The State of Karnataka has filed Civil Appeals Nos. 4923-24 of 2017, challenging the general condition and Direction (1) contained in the order of the Tribunal dated 4-5-2016[2]. The other appeals have been filed by different entities, who were not parties before the Tribunal

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challenging the order of the Tribunal dated 4-5-2016[2] insofar as it directs a buffer/green zone of 75 m in respect of lakes, 50 m in respect of primary Rajakaluves, 35 m in

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

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

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

6. It was alleged that NOC was issued covering an area of 17,404 sq m whereas the built-up area, as noted by SEAC, is 13,50,454.98 sq m. Respondent 9 obtained NOC from BWSSB by concealing material facts

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and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent 9 had approached the Karnataka State Pollution Control Board (for short "KSPCB") for obtaining clearance, which was granted on 4-9-2012 subject to the fulfilment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by KSPCB to Respondent 9 also contained a condition with regard to obtaining environmental clearance from the competent authority and no construction was to commence until such clearance was granted.

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

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

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

9. The applicants also relied upon the findings of the Joint Legislative

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

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10. The Lake Development Authority (for short "LDA"), after inspection in the catchment area of Bellandur Lake submitted its report dated 12-6-2013 which confirms that the project will have disastrous impact, including deleterious effect on Bellandur Lake. This report was brought to the notice of KIADB. LDA has also opined that the land should be classified and maintained as sensitive area. KIADB called upon Respondent 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, Respondents 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardising the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 m buffer zone is to be

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created around the lakes and 50 m buffer zone to be created on either side of the Rajakaluves. It was also pleaded that Respondent 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the environmental clearance obtained by Respondent 9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of Respondent 9 alone is approximately 4.5 million litres per day i.e. 135 million litres per month, which is more than what BWSSB supplies to the entire Agaram Ward. The construction of respective projects by Respondents 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of Bellandur Lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the waterbodies.

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

technology park, residential apartments, retail, hotel and office buildings with a total built-up area of 13,50,454.98 sq m. The Project

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was conceived as a zero waste discharge project. The Project is located one-and-a-half kilometres away from the southern side of Bellandur Lake. Towards the north, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the east, lies the project of Respondent 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 4-7-2007 which was renewed from time to time.

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

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

14. Respondent 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and mala fides. It had submitted a revised proposal in respect of its project in

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question and to obtain fresh clearance on 31-8-2007 with an investment of Rs 179.22 crores. The State High-Level Committee had cleared the project which was communicated to it on 25-1-2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains

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

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

16. LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June 2013 and

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till that time it was in the dark. After the complaints, it inspected Bellandur Lake and Agara Lake on 12-6-2013 and prepared an inspection report. In the report, it was noticed that large-scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 6-7-2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31-8-2013, that Respondent 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23-9-2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity

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

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

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

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

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

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

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

18. The Tribunal by its order dated 7-5-2015[1] at Annexure A-2, disposed of the applications with the following directions : (*Forward Foundation case*[1], SCC OnLine NGT para 85)

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

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

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

(*c*) Chief Town Planner of BBMP, Bangalore.

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

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

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

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

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

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

(4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and

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Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of Respondents 9 and 10 or by any of the projects in the area in question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2015) and Rs 22.5 crores against original Respondent 10 (the appellant

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in CA No. 4829/2015) is imposed.

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

4. With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject-matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment[1] can also be raised.

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

20. In relation to Issue 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 6-4-2016[4] on these applications as under : (*Forward Foundation case*[4], SCC OnLine NGT)

"***MA No. 603 of 2015 and MA No. 596 of 2015***

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

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

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

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

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The Tribunal after hearing the parties passed an order dated 4-5-2016[2] as under : (*Forward Foundation case*[2], SCC OnLine NGT)

"***General conditions or directions***

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

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

(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

(*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

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

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

All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10

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upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified by CPCB/MoEF.

3. Bangalore City receives treated potable water of 1360 MLD from River Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of groundwater exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the

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

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

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

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

Specific conditions/directions for Respondent 9

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

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

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

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

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

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

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

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

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

* * *

10. Though, at the time of hearing prior to passing of the judgment, we had heard the parties on all aspects but still we have

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

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

General directions

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

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

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

4. We hereby direct the State of Karnataka to submit a proposal

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

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

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

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

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

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

(emphasis in original)

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

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

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

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

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

26. Shri Maninder Singh, learned Senior Counsel appearing for the appellants, in CAs Nos. 5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent

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authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30-9-2013. Hence, imposing penalty/compensation is entirely unsustainable.

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

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

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

29. On the other hand, Shri Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of NGT in para 1 of the order dated 4-5-2016[2] except the directions issued against Respondents 9 and 10. In view of the above, it is not necessary to examine the contentions of the

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learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10.

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

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

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

32. Regarding limitation, he has submitted that the application filed

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

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

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

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

> "**22.** ***Appeal to Supreme Court***.—Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):
>
> Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

36. It is settled that there is no vested right of appeal unless the

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statute so provides. Further, if a statute provides for a condition subject to which the appropriate appellate court can exercise jurisdiction, the court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein.

37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 CPC. Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.*[5] This Court has laid down the test as under : (AIR p. 1318, para 6)

> "*6.* … The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to

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

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

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

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

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

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

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

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

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

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

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

48. The second question raised by the appellants is that the petition

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

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

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

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

51. Shri R. Venkataramani, learned Senior Counsel, appearing for the appellant in CA No. 5016 of 2016 has submitted that the

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

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

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

> "*72.* In light of the above scope of the project and records before the Tribunal and the defaults on the part of the project proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:
>
> (1) The construction of both the projects had started prior to the grant to environmental clearance.
>
> (2) The EIA Notification of 2006 requires that without grant of environmental clearance, no project can commence its activity. This restriction applies not only to operationalisation of the project but even for the purposes of establishment.
>
> (3) Revenue map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
>
> (4) Digital images of the land available on Google satellite

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images showing encroachment on two major Rajakaluves.

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

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

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

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

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

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restitution thereof."

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

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

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

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

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

"*51.* … For these reasons, we find no merit in this contention of Respondents 9 and 10. The purpose of the doctrine of res judicata is

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

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

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 4-5-2016[2] : (*Forward Foundation case*[2], SCC OnLine NGT)

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

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

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(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

(*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

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

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

All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore."

(emphasis in original)

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

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

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

62.2. All the other appeals are hereby allowed and Direction/Condition (1) in the order dated 4-5-2016[2] is hereby set aside except the direction issued against Respondents 9 and 10.

63. There will be no order as to costs.

———

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

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

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

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

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

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

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

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(2008) 10 Supreme Court Cases 115 : (2008) 2 Supreme Court Cases (L&S) 961 : 2008 SCC OnLine SC 1502

(BEFORE R.V. RAVEENDRAN AND L.S. PANTA, JJ.)

C. JACOB . . Petitioner;

Versus

DIRECTOR OF GEOLOGY AND MINING AND ANOTHER . . Respondents.

SLP (C) No. 25795 of 2008[†] (CC No. 11425 of 2008), decided on October 3, 2008

A. Service Law — Delay/Laches — Court's direction to the department to "consider" stale claim — Held, court should be circumspect in issuing such direction as it ultimately leads to consideration of case on merits at subsequent stages of litigation as if the cause of action stood revived due to fresh consideration — Further held, the department can reject a stale case on the ground of delay alone without examining merits — Reply given to an individual does not give rise to fresh cause of action or acknowledgement of jural relationship — Observations made in a case where terminated employee submitted representations after 18 years and Administrative Tribunal directed disposal of representations within four months — In subsequent litigation, staleness of the claim ignored and relief given to employee because the department, in compliance with court's earlier direction had passed a detailed speaking order — "Representation and relief" — Administrative Tribunals Act, 1985, Ss. 20 and 21

B. Service Law — Abandonment of service — Automatic termination — Held, where an employee reappears after two decades, he cannot be treated as having continued in service, nor can he be given benefit of qualifying service for pension — Pension — Qualifying service

C. Service Law — Departmental enquiry — Records relating to — Inability to produce records after a long time — Termination challenged after about 20 years — Burden of proof whether enquiry was conducted — Held, the burden was on the individual to prove what he alleges — Adverse inference could not be drawn against department which might have lost relevant records in the meantime, or the department concerned itself might have been wound up — Reinstatement with back wages cannot be ordered in such circumstances — Reinstatement and back wages — Unauthorised absence — Reappearance after 20 years — Reinstatement with back wages — Not justified — Misconduct — Evidence Act, 1872 — S. 114 Ill. (g) — Old records

D. Service Law — Back wages — Award of, based on misplaced

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sympathy, held, encourages indiscipline, leads to unjust enrichment of employee and drain on public exchequer — Hence, there must be application of mind and should not be awarded as a routine — Restitution

The petitioner's services were terminated in 1982 after issuing a show-cause notice dated 8-7-1982 to him. Nearly 18 years thereafter, he submitted two

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departmental representations dated 5-5-2000 and 21-7-2000 requesting that he may be taken back in service. He received a reply from the department that a copy of the show-cause notice enclosed by him with his representation was incomplete and therefore he should submit complete copy of notice. Instead of doing so, the petitioner filed an application in the Administrative Tribunal which was disposed of by the Tribunal on 19-12-2002 without issuing notice to the opposite party, directing that the petitioner's representation should be considered and an order passed thereon within four months. In compliance with this direction, Respondent 1 passed a detailed speaking order rejecting the representation (detailed order reproduced in para 3 of the judgment). The petitioner again approached the Tribunal challenging the order passed by Respondent 1. The Tribunal transferred petitioner's application to the High Court. The Single Judge of the High Court decided the case on merits, holding that the respondent Department had failed to establish that procedure of enquiry, as prescribed in relevant rules, was followed before terminating the petitioner's service. The Single Judge therefore held that the petitioner was deemed to have retired w.e.f. 18-7-1982. The Single Judge also directed sanction of pension to the petitioner. The Division Bench of the High Court, however, held that the petitioner had not completed 20 years of qualifying service as on the deemed date of his retirement i.e. 18-7-1982, and therefore was not entitled to pension.

Important issues involved in this case were : (*i*) whether the Tribunal ought to have directed the respondent Department to consider the petitioner's representations dated 5-5-2000 and 21-7-2000 which were badly delayed (about 18 years), (*ii*) whether the respondent Department was bound to consider the representations on merits, (*iii*) whether the burden of proof at such a belated stage was on the petitioner or the respondent Department to show that requisite procedure of enquiry was followed while terminating the petitioner's services.

Dismissing the special leave petition, the Supreme Court

Held :

There is need for circumspection and care in issuing directions for "consideration". If the representation on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing "consideration" of such claims.

(Para 14)

The courts/tribunals proceed on the assumption, that every citizen deserves a

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reply to his representation. Secondly, they assume that a mere direction to consider and dispose of representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, an ex-employee gets a relief, which he would not have got on account of long delay, all by reason of the direction to "consider". If representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

(Para 9)

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Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot create a fresh cause of action or revive a stale or dead claim.

(Para 10)

When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience of court order. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action.

(Para 11)

When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as

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qualifying service for the purpose of pension. That will be a travesty of justice.

(Para 12)

Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce records of enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages.

(Para 13)

The present case is a typical example of "representation and relief". The petitioner kept quiet for 18 years. A stage was reached when no record was available regarding his previous service. The Single Judge of the High Court ought not have found fault with the Department, for failing to prove that termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the Department in which the petitioner had worked had been wound up as long back as in 1983 itself and the new Department had no records of his service. The petitioner neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He produced only the first sheet of a show-cause notice dated 8-7-1982 and failed to produce the second or subsequent sheets of the said show-cause notice in spite of being called upon to produce the same.

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There was no material to show that the termination was not preceded by an enquiry. When a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges. The Single Judge dealt with the matter as if he the petitioner had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to "consider" a representation relating to a stale issue.

(Paras 15 and 16)

E. Service Law — Pension — Entitlement to — In a government department — Pension Rules framed by State of Tamil Nadu and Central Government reviewed — Held, the scheme of Rules was such that an employee claiming pension should in the first instance fall in particular category of pension, like retiring pension, invalid pension, voluntary

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retirement pension, etc. — Question of determination of amount of pension with reference to length of qualifying service comes afterwards — Petitioner's case not falling within any of the specified categories of pensions mentioned in Ch. V of T.N. Pension Rules, 1978 — Held, mere fact that he had 10 years' qualifying service and a particular rule relating to determination of amount of pension referred to 10 years qualifying service, did not entitle him to pension — T.N. Pension Rules, 1978 — Chs. V and VI, R. 43(2) — Central Civil Services (Pension) Rules, 1972, Ch. VII R. 49(2)(b)

The Single Judge of the High Court took the view that the petitioner's services were illegally terminated because relevant rules of enquiry were not followed. However, by the time the Single Judge decided the matter, the petitioner was already 59 years old and therefore holding of enquiry at that time was not considered desirable on account of the petitioner's poor health condition. The Single Judge therefore ordered that the petitioner was deemed to have retired from service from 18-7-1982 and therefore he should be granted pension. The respondent Department's contention was that the petitioner had not completed 20 years' qualifying service and therefore was not entitled to pension. The petitioner's contention was that he had completed 10 years' qualifying service and was therefore entitled to pension under Rule 43(2) of the Tamil Nadu Pension Rules, 1978.

The Supreme Court reviewed the relevant provisions of the Tamil Nadu Pension Rules, 1978 and corresponding provisions of the Central Civil Services (Pension) Rules, 1972, and

Held :

A government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V, is not entitled to pension. If a government servant is not able to make out entitlement to any class of pension specified in Chapter V of the Pension Rules, there is no question of having recourse to the Rules in the Chapter dealing with regulation of amount of pension (Chapter VI of the TNP Rules or Chapter VII of the CCSP Rules) for determining the quantum of pension.

(Para 20)

The petitioner was not "superannuated"; nor was he absorbed in any corporation/company/body owned by the State/Central Government; nor did he retire on account of any infirmity which incapacitated him for service; nor was he discharged on abolition of his post. Nor is he claiming compassionate allowance (on being dismissed/removed after putting in service to an extent which would entitle him to pension but for the dismissal/removal). The only other categories of pension are compulsory retirement pension and the retiring pension. If a government servant is not otherwise entitled to pension, he cannot

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obviously be granted pension on compulsory retirement. There is no such grant in this case.

(Para 21)

The provision relating to retiring pension makes it clear that a minimum of 20 years' qualifying service is required for retiring pension. It does not entitle a government servant to retiring pension on completion of ten years' service. Therefore, the petitioner is not entitled to retiring pension.

(Para 22)

K-M/39316/CL

Advocates who appeared in this case :

M. Gireesh Kumar, Avijeet K. Lala and Vijay Kumar, Advocates, for the Petitioner.

The Order of the Court was delivered by

R.V. RAVEENDRAN, J.— IA No. 1 is allowed and the delay of 56 days condoned. We find no merit in this special leave petition. However, as the questions raised in this petition arise repeatedly, we propose to pass a reasoned order after referring to the relevant facts.

2. The petitioner joined service as a Drill Helper in June 1967, in the Regional Mining Cell, Trichy, in the erstwhile State Geology Branch of Department of Industries and Commerce, State of Tamil Nadu. According to him, his services were terminated in the year 1982, in pursuance of a show-cause notice dated 8-7-1982. Nearly eighteen years later, the petitioner gave representations dated 5-5-2000 and 21-7-2000 to the first respondent requesting that he may be taken back into service. As the enclosure (show-cause notice dated 8-7-1982) to the said representation was incomplete, the first respondent called upon him to send the complete document. Instead of complying with the said request, the petitioner approached the Tamil Nadu Administrative Tribunal seeking a direction to the first respondent to dispose of his representation.

3. The Administrative Tribunal disposed of the said application on 19-12-2002, without notice to the respondents, with a direction to the Director of Geology and Mining (the first respondent), to consider the petitioner's representation dated 21-7-2000 and pass an order thereon within four months. In compliance with the said direction, the first respondent considered and rejected the petitioner's representations by order dated 9-4-2002. The relevant portions of the said order referring to the facts, are extracted below:

> "The individual was sanctioned unearned leave on medical certificate for 25 days from 7-10-1980 to 31-10-1980 and he did not rejoin duty after the expiry of this leave. On perusal of the first page of Memo No. 19093/E2/80 dated 8-7-1982, the individual has taken

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up private employment and has applied for leave on loss of pay for two years from 1-1-1981 onwards vide his letter dated 1-1-1981. In the memo dated 19-2-1981 of the State Geologist, he was informed that his private employment is against the Government Servants' Conduct Rules and hence, disciplinary action would be taken against him if his explanation on the above was not received within 15 days from the date of receipt of the memo. The above memo was sent by registered post to the address at Marthandam in Kanyakumari District through the Assistant Geologist,

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Regional Mines Cell, Tiruchi. The memo was returned to the Assistant Geologist, RMC, Tiruchi, undelivered.

Then another memo dated 6-8-1981 was issued to him calling for his explanation in 15 days' time as to why disciplinary action should not be taken against him and his services terminated if explanations were not received in time. The above memo was sent by registered post acknowledgement due to the address 'Singaliar Street, Marthandam Post, Kanyakumari District'. The receipt of the above memo was acknowledged by his wife Smt C. Stella Jacob, on 31-8-1981.

On 10-9-1981 Thiru M. Ramaswamy, Assistant Geologist, RMC, Tirunelveli contacted his wife with his Geological Assistant and had the information that he was working in India and refused to inform the exact concern where he was employed. The above information was reported by the Assistant Geologist, RMC, Tirunelveli in his letter dated 14-9-1981.

In spite of so many efforts taken by the office, he has not even responded to the memo, which was received by his wife. Therefore, show-cause notice was issued to him vide memo dated 8-7-1982 by the State Geologist, Guindy by registered post (acknowledgement due) and the above memo was received by him. He absented himself from duty and kept silent for a long period (1-11-1980 to 4-5-2000). He has submitted representations (dated 5-5-2000 and 19-7-2000) and requested to permit him to rejoin duty. In his letter dated 5-5-2000, he has stated that due to illness he has not attended duty and subsequently, he was also terminated from service.

In this office letter (dated 28-8-2000) he has been requested to produce the copies of the memorandum and other records issued by the State Geologist to him. But, he has not produced the copies of the same.

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The erstwhile State Geology Branch of the Department of Industries and Commerce was upgraded as a separate Department of Geology and Mining and is functioning as a separate Department with effect from 14-4-1983. The Government issued Order dated 15-3-1989 permanently transferring the officers and staff of the State Geology Branch to the new Department of Geology and Mining. The name of Thiru C. Jacob is not finding a place in this G.O….

Thiru C. Jacob absented from attending duties without proper leave application. He has taken up private employment without prior permission which is against the Government Servants' Conduct Rules and he has not turned up for duty in time. He has absconded from duty from 1-11-1980 to 4-5-2000 without intimating the reasons for absenting himself. As he had completely absconded from duty his name did not find a place in the list of officers and staff transferred to the new Department of Geology and Mining vide GOMs No. 1/Industries (SIA 2) Department dated 15-3-1989 from the erstwhile State Geology Branch of the Department of Industries and Commerce. This clearly brings to light that the applicant was not considered as a regular employee of the

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Department of Industries and Commerce as he had not followed the relevant Rules and absented from attending duties without proper leave application.

Thiru C. Jacob has not produced the second and subsequent pages of the memo issued to him by the State Geologist, Madras in RC No. 19093/E2/80 dated 8-7-1982 for perusal. It is evident from the available records that the individual had stayed away from duty without any information to the office and taken up private employment without prior permission. Therefore, his request for permitting him to rejoin duty after a lapse of twenty years cannot be complied with."

4. On 10-3-2003 the petitioner filed an original application before the Tamil Nadu Administrative Tribunal for the following relief:

"… the applicant prays that this Hon'ble Tribunal be pleased to call for the records of the first respondent dated 9-4-2002 and direct the respondents to grant service benefits to the applicant within a time-frame to be fixed by this Hon'ble Tribunal…."

5. In its counter to the said application, the respondents reiterated the reasons for rejection of the request given in the order dated 9-4-2002. They also specifically pleaded:

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"It is submitted that the erstwhile State Geology Branch was under the control of the Director of Industries and Commerce and during the year 1983 this Department of Geology and Mining was formed as a separate Department and is functioning with effect from 14-4-1983 under the control of the respondent. Orders were issued by the Government on GOMs No. 1/Industries (SIA 2) Department dated 15-3-1989 permanently, transferring the officers and staff of the erstwhile State Geology Branch of the Industries and Commerce Department to the new Department of Geology and Mining and the name of the applicant is not finding a place in the G.O. which clearly brings to light that the applicant was not considered as a regular employee of the Department of Industries and Commerce and it is evident that the applicant's services were already terminated.

It is submitted that every efforts were taken to process the representations submitted by the applicant and the available records with the respondent were carefully examined. Since some of the records are destroyed due to efflux of time, the applicant was requested to furnish the second page of the memo issued to him by the State Geologist, Madras, dated 8-7-1982 for perusal and the applicant has not furnished the same but only furnished the first page of the above memo with his representation dated 5-5-2000. It is submitted that in the second page there may be specific orders of the State Geologist with reasons for termination of the services of the applicant."

6. The said original application was transferred from the Tribunal to the Madras High Court. A learned Single Judge of the High Court by order dated 13-4-2006 held that the Department failed to establish that it had followed

the mandatory requirements of Section 17(*b*) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by issuing a charge-memo, holding an enquiry and passing an order of punishment. He, therefore, declared that the termination of the petitioner's service in 1982 was illegal. As the petitioner was already 59 years old and it was impractical to hold an enquiry on account of the employee's health condition, the learned Single Judge disposed of the writ petition by declaring that the petitioner was deemed to have retired from service from 18-7-1982 and directing that pension be sanctioned from that date and that the entire arrears should be calculated and paid in eight weeks.

7. The order of the learned Single Judge was challenged by the

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respondents in an intra-court appeal. The Division Bench allowed the writ appeal by order dated 28-1-2008. The Division Bench held that the petitioner had not completed 20 years of qualifying service as on 18-7-1982, and therefore, he was not entitled to pension. The said order is under challenge in this petition. We propose to examine the following two issues arising in this case:

(*i*) The modus of representation adopted by several claimants/petitioners to get over the bar of limitation/delay and laches.

(*ii*) Common error in assuming that 10 years' service entitles a government servant to pension under the Pension Rules.

The modus of "representation"

8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying to such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee

files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the

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representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action.

12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.

13. Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the

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employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there

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is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages.

14. We are constrained to refer to the several facets of the issue only to emphasise the need for circumspection and care in issuing directions for "consideration". If the representation on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing "consideration" of such claims.

15. The present case is a typical example of "representation and relief". The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9-4-2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the petitioner has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18-7-1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the Department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the Department in which the petitioner had worked had been wound up as long back as in 1983 itself and the new Department had no records of his service.

16. The petitioner neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show-cause notice dated 8-7-1982 and failed to produce the second or subsequent sheets of the said show-cause notice in spite of being called upon to produce the same. There

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was absolutely no material to show that the termination was not preceded by an enquiry. When a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges. The learned Single Judge dealt with the matter as if he the petitioner had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to "consider" a representation relating to a stale issue.

Pension for service of less than 20 years

17. In this case, taking advantage of the fact that the Department did not have any records and by not producing the order terminating his service, the petitioner vaguely alleged that he was "terminated" from service in the year 1982, without specifying whether it was by way of dismissal, removal or

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compulsory retirement or otherwise. If his termination was by way of dismissal or removal, he would have forfeited his past service as also his pension and gratuity under the Pension Rules. Even if it is assumed that he was not dismissed or removed, but was retired from service, the question is whether he is entitled to pension on the basis of 14 years of service.

18. The appellant relied on Rule 43(2) of the Tamil Nadu Pension Rules, 1978 ("the TNP Rules", for short) to contend that on completion of 10 years of service, a government servant is entitled to pension. Relevant portion of the said Rule is extracted below:

> "43. (2) In the case of a government servant, *retiring in accordance with the provisions of these Rules after completing qualifying service of not less than 10 years*, the amount of pension shall be appropriate amount as set out below namely:"
>
> (emphasis supplied)

As similar contention is frequently raised under the corresponding Rule 49(2)(*b*) of the CCS Pension Rules ("CCSP Rules", for short), we will for convenience refer to the corresponding provisions of the CSSP Rules also.

19. Rule 43(2) relied on by the petitioner falls under Chapter VI of the TNP Rules [corresponding to Rule 49(2)(*b*) in Chapter VII of the CCSP Rules] dealing with "regulation of amount of pension". The said Rule relates to quantum and lays down how the pension of a retired government servant should be calculated if he is entitled to pension. Entitlement to pension is governed by Chapter V of the said Rules, which enumerates the classes of pension and conditions for

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entitlement. The enumerated classes of pension are:

	Classes of Pension (vide Chapter V of the Pension Rules)	*CCSP Rules*	*TNP Rules*
(*i*)	Superannuation pension	Rule 35	Rule 32
(*ii*)	Retiring pension	Rule 36	Rule 33
(*iii*)	Pension on absorption in or under a corporation, company or body owned/controlled by the State/Central Government	Rule 37 Rule 37-A	Rule 34
(*iv*)	Invalid pension	Rule 38	Rule 36
(*v*)	Compensation pension payable on discharge owing to abolition of the post	Rule 39	Rule 38
(*vi*)	Compulsory retirement pension	Rule 40	Rule 39
(*vii*)	Compassionate allowance to government servants who forfeit their pension on being dismissed or removed	Rule 41	Rule 40

20. A government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V, is not entitled to pension. If a government servant is not able to make out entitlement to any class of pension specified in Chapter V of the Pension Rules, there is no question of having recourse to the Rules in the Chapter dealing with regulation of amount of pension (Chapter VI of the TNP Rules or Chapter VII of the CCSP Rules) for determining the quantum of pension.

21. Admittedly, the petitioner was not "superannuated"; nor was he absorbed in any corporation/company/body owned by the State/Central Government; nor did he retire on account of any infirmity which incapacitated him for service; nor was he discharged on abolition of his post. Nor is he claiming compassionate allowance (on being dismissed/removed after putting in service of an extent which would entitle him to pension but for the dismissal/removal). The only other categories of pension are compulsory retirement pension and the retiring pension. A government servant compulsorily retired from service as a penalty, may be granted by the authority competent to impose such penalty, pension at a rate not less than two-third admissible to him on the date of his compulsory retirement. If a government servant is not otherwise admissible to pension, he cannot

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obviously be granted pension on compulsory retirement. There is no such grant in this case. That leaves us with retiring pension.

22. Rule 33 of the TNP Rules provides that a retiring pension shall be granted to a government servant who retires, or is retired, in accordance with the provisions of Rule 42 of the said Rules. Rule 42 of the TNP Rules provides that a government servant, who under Fundamental Rule 56(*d*), retires voluntarily or is required by the appointing authority to retire in public interest shall be entitled to a retiring pension (corresponding Rule 36 of the CCSP Rules which provides that a retiring pension shall be granted to a government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rules 48 or 48-A of those Rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations and to a government servant who on being declared surplus, opts for voluntary retirement in accordance with Rule 29 of those Rules). The provision relating to retiring pension makes it clear that a minimum of 20 years' qualifying service is required for retiring pension. It does not entitle a government servant to retiring pension on completion of ten years' service. Therefore, the petitioner is not entitled to retiring pension.

23. The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43 (2) would not have stated "qualifying service of not less than 10 years". He contended that as Rule 43(2) of the TNP Rules [Rule 49(2)(*b*) of the CCSP Rules] refers to "not less than 10 years' service", any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the said Rule does not relate to "entitlement" of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of pension should be calculated in cases where the retiring government servant is entitled to pension under Chapter V of the Pension Rules. The said Rule regulates the "amount" of pension not only in case of retiring pension, but in case of all classes of pension.

24. Under Chapter V, in certain situations, a government servant may be eligible for pension even where the service is less than ten years. Rules 32, 36 and 38 of the TNP Rules [Rules 35, 38 and 39 of the CCSP Rules] do not prescribe any minimum service for being entitled to pension, where the

cessation of service is on account of superannuation, or on account of

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bodily or mental infirmity or on account of abolition of his post. When Rule 43(2) of the TNP Rules [Rule 49(2)(*b*) of the CCSP Rules] refers to payment of pension to a person who has a qualifying service of not less than 10 years, it does not mean that the minimum period of service prescribed for retirement pension is reduced to 10 years or that government servants who are dismissed/removed/compulsorily retired by way of punishment, or those who voluntarily retire before reaching the age of superannuation with less than 20 years of qualifying service, become entitled to pension. Rule 43(2) of the TNP Rules [Rule 49(2)(*b*) of the CCSP Rules], as noticed earlier, comes into play only when the government servant is entitled to any of the classes of pension enumerated under Chapter V of the Pension Rules. Therefore, when Rule 43(2) of the TNP Rules [or Rule 49(2)(*b*) of the CCSP Rules] dealing with the quantum of pension refers to a government servant retiring in accordance with the said Rules after completing qualifying service of not less than 10 years, it does not mean that pension is payable to persons who have not completed the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Therefore, the petitioner is not entitled to pension.

25. Special leave petition is therefore dismissed as having no merit.

———

† From the Final Judgment and Order dated 28-1-2008 of the High Court of Judicature at Madras in WA No. 1097 of 2006

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2025 INSC 565

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. /2025
[ARISING OUT OF SLP(C) NO.6289/2019]

THE CHIEF EXECUTIVE OFFICER & OTHERS ... APPELLANTS

VS.

S. LALITHA & OTHERS ... RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.

2. The challenge in this appeal is to a short order of the High Court of Karnataka at Bengaluru[1] dated 8th March, 2018[2] dismissing a writ petition[3] that the appellants had presented before it. The appellants felt aggrieved by a judgment and order dated 1st August, 2017 of the Central Administrative Tribunal, Bengaluru[4] whereby it allowed an original application[5] of the respondent.

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[1] High Court
[2] impugned order
[3] W.P. No. 9171 of 2018
[4] Tribunal
[5] O.A. No. 2 of 2017

3. Undisputed facts, giving rise to this appeal, in a nutshell are these:

a. The respondent joined as TV News and Film Librarian (Library & Information Assistant) at Doordarshan Kendra, Bangalore on 11th March, 1985.

b. On 31st May, 2002, the appellant received benefit of financial upgradation under the Assured Career Progression[6] Scheme, 1999 for the first time w.e.f. 9th August, 1999.

c. Since the ACP Scheme envisaged benefits of financial upgradation in the hierarchical scale after 12 and 24 years of service, the respondent became entitled to receive benefit of financial upgradation under the ACP Scheme for the second time w.e.f. 11th March, 2009.

d. The Modified Assured Career Progression[7] Scheme, 2009 was brought into force superseding the ACP Scheme, w.e.f. 19th May, 2009.

e. The MACP Scheme envisaged placement in the immediate next higher grade pay on completion of 10, 20 and 30 years of service. It also provided that upgradation granted under the ACP Scheme in the past to those grades which now carry the same Grade Pay due to the merger of pay scale/upgradation of pay recommended by the 6th Pay Commission shall be ignored for the purpose of granting upgradation under the MACP Scheme.

f. The basic difference between the ACP Scheme and the MACP Scheme appears to be that while under the former scheme the financial upgradation was to the pay scale of the next higher promotional post

[6] ACP Scheme
[7] MACP Scheme

in the service, under the latter scheme, financial upgradation was with reference to the next higher grade pay in the scale of pay as notified upon implementation of the Central Civil Services (Revised Pay) Rules, 2018.

g. Since the respondent had not been promoted to a higher post till 1st September, 2008, she was granted the second benefit envisaged in the MACP Scheme [Pay Band 2 with Grade Pay of Rs.4,800/-] *vide* an order dated 10th August, 2010, w.e.f. 1st September, 2008.

h. In due course of time, w.e.f. 11th July, 2015, the respondent was granted the benefit of third financial upgradation under the MACP Scheme [Grade Pay of Rs.5,400/-] *vide* an order dated 18th November, 2015.

i. The respondent, indubitably, received the benefits of second and third financial upgradation under the MACP Scheme without raising any demur.

j. On 4th October, 2016, the respondent submitted a representation to the Director General, Doordarshan, 3rd appellant (5th respondent in the original application), to grant her benefit of second financial upgradation under ACP Scheme with Grade Pay of Rs.6,600/- w.e.f. 11th March, 2009 and the benefit of the third financial upgradation under the MACP Scheme with Grade Pay of Rs.7,600/-, w.e.f. 11th March, 2015.

k. Such representation was rejected on 5th November, 2016 by the Dy. Director (S.II).

l. Challenging rejection of her representation, the respondent approached the Tribunal which, as noted above, allowed her original application[8] *vide* the judgment and order dated 1st August, 2017[9], which later came to be affirmed by the High Court *vide* the impugned order.

4. The Tribunal proceeded to allow the O.A. of the respondent relying on a judgment and order of the High Court dated 5th June, 2017 in ***B. D. Kadam & ors. v. Union of India & ors.***[10].

5. The impugned order recorded its concurrence with the decision in ***B. D. Kadam*** (supra) and, thus, held that the Tribunal was not in error in upholding the respondent's challenge to the order dated 5th November, 2016 rejecting her representation. The High Court also noticed that the decision in ***B.D. Kadam*** (supra) had been challenged before this Court by the Union of India in SLP (Civil) D No. 29605 of 2017 but no order had been passed. Accordingly, the challenge in the writ petition was spurned. Submission advanced on behalf of the respondent that the Tribunal's order had been complied with was, however, recorded.

6. Incidentally, SLP (Civil) D. No. 29605 of 2017 stands dismissed *vide* an order of this Court dated 27th January, 2020.

7. Up to this stage, it would seem to be an open and shut case. The Tribunal having proceeded to allow the O.A. on the basis of ***B. D. Kadam*** (supra), which it was bound to follow, the Tribunal's order having been complied with by the

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[8] O.A.
[9] Tribunal's order
[10] 2017 SCC OnLine Kar 4772

appellants by granting to the respondent the benefit she had claimed, and the SLP (Civil) D. No. 29605 of 2017 against the decision in ***B. D. Kadam*** (supra) having been rejected, nothing further would survive for consideration. However, certain subsequent developments including decisions of this Court have been drawn to our notice by the appellants and it has been urged that this Court may examine the issue of the respondent's entitlement in the light of such developments and notwithstanding that compliance with the Tribunal's order has been secured.

8. After SLP (Civil) D. No. 29605 of 2017 came to be dismissed by this Court on 27th January, 2020, a review petition[11] was filed before the High Court. *Vide* its order dated 7th March, 2023, the High Court rejected the review petition. Challenging such rejection, SLP (Civil) D. No. 45401 of 2023 has been filed, whereupon a coordinate Bench of this Court on 8th December, 2023 has issued notice in view of the decisions in ***Union of India & ors. v. S. Ranjit Samuel & ors.***[12] and ***Vice Chairman, DDA v. Narendra Kumar & ors.***[13].

9. The appellants, therefore, contend that the issue is still at large as to whether the respondent was entitled to succeed in her claim before the Tribunal and the High Court.

10. Since SLP (Civil) D. No. 45401 of 2023 is pending, the same has to be decided on its own merits. However, for reasons more than one (which we need not express here, lest it has any effect on the pending *lis*), we are really

[11] R.P. No.345 of 2022
[12] 2022 INSC 340 = 2022 SCC OnLine SC 368
[13] 2022 INSC 276 = (2022) 11 SCC 641

not impressed by the contention advanced on behalf of the appellants based on the fact of issuance of notice referred to above.

11. Though not cited by the appellants, we have looked into a decision of recent origin of a coordinate Bench of this Court in ***Union of India v. N.M. Raut***[14], wherein, upon thorough consideration of the MACP scheme and the decisions referred to therein, financial upgradations granted in favour of the respondents-employees were interdicted and the appeals were allowed. However, we have noticed a factual dissimilarity which is of some significance. The respondents-employees were granted financial upgradations under the MACP Scheme despite grant of non-functional upgradation after two or four years of service while functioning as Pharmacist and Superintendent, respectively, and thus had not stagnated. This Court in ***N.M. Raut*** (supra) held that such grant of non-functional upgradation and thereafter financial upgradation under the MACP Scheme would be contrary to the intent and purpose of the MACP scheme. This position is evident from what was observed in paragraph 20, reading as follows:

> "20. In view of the aforesaid position of the MACPS, we fail to understand how we can ignore the financial upgradation, which was granted upon completion of two or four years of service in the posts of Pharmacist or Superintendent, as the case may be, for the purpose of deciding as to whether or not the Government employee would be entitled to the next financial benefit under the MACPS. To ignore the financial upgradation granted on completion of two or four years of service as Pharmacists or Superintendents, would be contrary to the intent and purpose of the scheme, the language employed as well as the examples/illustrations which have been given. …"

12. It is, therefore, apparent that financial upgradations granted under the MACP Scheme despite grant of non-functional upgradation to the respondents-

[14] 2024 INSC 1042 = 2024 SCC OnLine SC 3873

employees upon completion of two or four years of service, as the case may be, was not found by this Court to be in accord with the MACP scheme and while, however, not ordering recovery from those who had retired and those who were due to retire within a year of pronouncement of such judgment, the Court clarified that their pension and pay scale be redetermined w.e.f. 1st January, 2025. The respondent before us had claimed benefits of financial upgradation on completion of 24 years of service with effect from the date of grant of financial upgradation to her was due in terms of the ACP Scheme, which got delayed and, in the interregnum, the MACP Scheme intervened. The reason why this Court held against the respondents-employees in ***N.M. Raut*** (supra) is, therefore, quite distinct, whereas this appeal calls for a different perspective.

13. Be that as it may, non-interference with the order impugned is the logical conclusion based on our understanding that issuance of notice on SLP (Civil) D. No. 45401 of 2023 is of no relevance and that the decision in ***N.M. Raut*** (supra) does not operate to the detriment of the respondent; however, the reason why we propose not to end our judgment here but to say a few more words is because of an objection that the appellants had raised in their counter statement as regards maintainability of the O.A. According to the appellants, the O.A. was time-barred and ought to have been dismissed as such.

14. The respondent had pleaded in paragraph 3 of the O.A. as follows:

> "3. LIMITATION:
>
> The Applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985 as the Applicant is challenging the orders passed by the 5th Respondent at Annexure A-11 dated 5.11.2016 against the claim of the Applicant."

15. Since the O.A. was verified on 21st December, 2016, the respondent was confident and, accordingly, declared that it was within the period of limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985[15].

16. Both the Tribunal as well as the High Court did not rule on the objection of maintainability though, for the reasons and the observations that follow, such objection appears to us to be fairly sound.

17. ***C. Jacob v. Director of Geology and Mining***[16]***, Union of India v. M.K. Sarkar***[17]***, State of Uttaranchal v. Shiv Charan Singh Bhandari***[18] *and* ***Union of India v. Chaman Rana***[19] are decisions of this Court on belated approaches with stale grievances in service related disputes having a material bearing on this appeal.

18. In ***C. Jacob*** (supra), this Court observed that the case before it was a typical example of "representation and relief". The employee kept quiet for 18 years after termination of service. A stage was reached of no record being available regarding his previous service. In the representation which the employee made in 2000, he claimed that he should be taken back in service. On rejection of the said representation by an order dated 9th April, 2002, he filed a writ petition before the jurisdictional high court claiming service benefits, by referring the said order of rejection as the cause of action. The learned Judge examined the claim, as if it was a live claim made in time, found fault with the employer for not producing material to show that termination

[15] 1985 Act
[16] 2008 INSC 1133 = (2008) 10 SCC 115
[17] 2009 INSC 1288 = (2010) 2 SCC 59
[18] 2013 INSC 560 = (2013) 12 SCC 179
[19] 2018 INSC 230 = (2018) 5 SCC 798

was preceded by due enquiry and declared the termination as illegal. But as the employee already reached the age of superannuation, the learned Judge granted the employee the relief of pension with effect from 18th July, 1982, by deeming that he retired from service on that day. This Court expressed its inability to understand how the learned Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005 as well as how fault could be found with the Department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in proceedings initiated after 22 years, when the department in which the employee had worked was wound up long back in 1983 itself and the new department had no records of his service.

19. The facts in ***M.K. Sarkar*** (supra) would reveal that more than 22 years after his retirement, and after receiving his dues under the Provident Fund Scheme, the retiree-respondent had made a representation requesting that he may be extended the benefit of the Pension Scheme while, at the same time, expressing willingness to refund the amount received under the Provident Fund Scheme (by way of adjustment against the arrears of pension that would become payable to him on acceptance of his request for switch over to the Pension Scheme). The said request was not accepted. The retiree-respondent therefore approached the Central Administrative Tribunal[20] by filing an application under Section 19 of the 1985 Act seeking a direction to the Railway Administration to permit him to exercise an option to switch over to the Pension Scheme. The application was disposed of by the CAT by directing a decision to

[20] CAT

be taken on the representation of the retiree-respondent by passing a reasoned order, making it clear that it did not examine the claim on merits. The claim of the retiree-respondent was rejected by the Chairman, Railway Board whereupon a second original application was filed before the CAT. CAT allowed this second application and directed the Railways to permit the retiree-respondent to opt for the pension scheme and also inform him the amount that was required to be refunded in case he exercised the option. The relevant high court having jurisdiction was unsuccessfully approached by the Railways, whereafter this Court's jurisdiction under Article 136 of the Constitution was invoked. It is in the aforenoted facts and circumstances that this Court had the occasion to observe in paragraphs 15 and 16 as follows:

> **15.** When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.
>
> **16.** A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.

20. ***Shiva Charan Singh Bhandari*** (supra) and ***Chaman Rana*** (supra) arose out of belated claims for grant of promotion. In ***Chaman Rana*** (supra), it was held that a subsequent pronouncement of a judgment by this Court

could not enthuse a fresh lease of life or furnish a fresh cause of action to what was otherwise clearly a dead and stale claim. The following passage from ***Shiv Charan Singh Bhandari*** (supra) was quoted:

> "*29*. … Not for nothing, has it been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

This was followed by the observation that caution has to be exercised by the Court with regard to the modus operandi of the representation syndrome to revive what are clearly dead and stale claims, as discussed in ***C. Jacob*** (supra).

21. One of us (Rajesh Bindal, J.), speaking for the coordinate Bench in ***State of Orissa v. Laxmi Narayan Das***[21], had the occasion to consider the effect that unexplained delay and laches would have in availing remedies. The Court in that case was concerned with a challenge to finally published record of rights. Taking note of multiple precedents in the field on the subject of delay or laches disentitling a party to relief, it was held that a writ petition filed 46 (forty-six) years after final publication was grossly belated and that no relief could have been made available to the respondents/writ petitioners.

22. Although in ***C. Jacob*** (supra) and ***M. K. Sarkar*** (supra) the law was declared keeping in mind that there were directions for consideration of the "stale" or "dead" claims by the orders of the high court and the CAT, respectively, and thereafter, rejection of the claims gave rise to the second

[21] 2023 INSC 619 = (2023) 15 SCC 273

round of litigation, here no such order of the Tribunal admittedly intervened. There is, thus, a factual dissimilarity; yet, nothing much turns on it.

23. In the facts of the present appeal, we find that the respondent had received the second benefit of financial upgradation under the MACP Scheme in August, 2010 and even the third benefit thereunder sometime in November, 2015. She claimed grant of the second benefit of financial upgradation under the ACP Scheme, due to her in March, 2009, as late as in October, 2016 by making a representation. Fortuitously for the respondent, she did not have to approach the Tribunal for getting her representation decided, because within 32 days of receipt thereof, the Dy. Director (S.II) rejected such representation on 5th November, 2016. The due diligence exercised by a conscientious officer, [who thought it to be his duty to decide the representation but otherwise could well have elected not to examine the same because (i) a "stale" or "dead" claim had been raised and (ii) the respondent, while in service, had accepted the benefits of financial upgradation without raising any demur] cannot be taken undue advantage by the respondent by urging that the law declared in the aforesaid decisions would not be applicable in her case because of factual dissimilarities.

24. The self-imposed restrictions in the exercise of writ jurisdiction under Article 226 of the Constitution, which have evolved from judicial precedents of this Court, need not be restated here. Suffice to say, unexplained delay or laches is considered one of the factors which could assume significance in denying relief when the discretionary writ remedy is invoked. In an appropriate case, a writ court may refuse to invoke its extraordinary powers if the

applicant's negligence or omission to assert his right combined with undue delay or laches and prejudice to the other party warrants such refusal.

25. However, although limitation laws do not apply to writ jurisdiction, in relation to service disputes triable under the 1985 Act the laws of limitation traceable in Section 21 read with Section 20 thereof do apply. Sections 20 and 21 (to the extent relevant) read as follows:

> *"**20. Application not to be admitted unless other remedies exhausted**.—(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the **remedies** available to him **under the relevant service rules** as to redressal of grievances.*
> *(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the **remedies** available to him **under the relevant service rules** as to redressal of grievances,—*
> *(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or*
> *(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.*
> *(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."*
>
> (emphasis supplied)

> *"**21. Limitation**.—(1) A Tribunal shall not admit an application,—*
> *(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;*
> *(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.*
> *… ".*

26. A Constitution Bench of this Court in ***S.S. Rathore v. State of Madhya Pradesh***[22], upon noting Section 20, had the occasion to observe as follows:

> **15.** In several States the Conduct Rules for government servants require the administrative remedies to be exhausted before the disciplinary orders can be challenged in court. …
> **16.** The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for government servants of the Centre and several States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallised on the line laid down under Section 20 of the Administrative Tribunals Act.
>
> (emphasis supplied)

27. As noted in ***S.S. Rathore*** (supra) and as is still the present position, service rules (rules relating to conduct, discipline and appeal, leave, pension, etc.) governing public servants do have provisions providing for first appeals, second appeals (not ordinarily), revisions against original/appellate orders, or memorials (not ordinarily). In rare cases, such rules may also provide for representations against actions which affect the public servants and are perceived by them to be not in accordance with law. In any event, even though service rules may not provide for a representation, there could be cases (to be discussed hereafter) where omission or failure to consider and dispose of a representation could give rise to a claim to move the CAT.

28. We may, at this juncture, clear the position that the CAT does have, in exceptional cases, the power to entertain an original application under Section 19 of the 1985 Act even if the applicant before it has not exhausted the remedies available to him under the service rules applicable to him as to

[22] 1989 INSC 268 = (1989) 4 SCC 582

redressal of grievances. If any authority on the point is required, one may profitably refer to the decision in ***D.B. Gohil v. Union of India***[23].

29. Coming back to Section 20, the purport of the opening words of sub-section (2) read with sub-section (1) thereof, which we have highlighted above, leaves no manner of doubt that the word "remedies" referred to therein, used as a noun, mean the "remedies" that are statutorily available as to redressal of grievances under the relevant service rules. However, in a case where the service rules do not provide any scope for representation to be made, the aggrieved public servant without making an unprovided for representation, i.e., a non-statutory representation, and without waiting for its disposal, may approach the CAT directly challenging the order/action that has prejudicially affected his right and left him aggrieved; and, if any objection as to non-exhaustion of remedy before the departmental authorities is raised before the CAT by the authorities, the same can well be countered by urging that the service rules do not provide any statutory remedy by way of a representation to the departmental authorities against the order/action under challenge.

30. There could, however, be innumerable cases where formal orders may not exist affecting the rights of public servants covered by the 1985 Act but affectation of their rights could arise out of silence or inaction of the employer to confer an otherwise legitimate benefit. What is the recourse available in such a case? In such cases, it is eminently desirable that steps be first taken by the public servant to invite the attention of the employer to such affectation

[23] (2010) 12 SCC 301

of rights for the same to be addressed by the employer. Suppose, a public servant is due for promotion or is due for a pay raise or claims entitlement to any service benefit which, according to him, is due but the employer has remained silent or inactive in not giving the public servant what is due to him. In such cases, the only way of espousing one's grievance is through a representation bringing to the notice of the employer that grant of the service benefit, though due, has not been considered and that the grievance be redressed. If the grievance is not redressed despite receiving the representation and despite expiry of the period mentioned in sub-section (2) of Section 20 of the 1985 Act, in such cases, the CAT cannot throw out an original application by holding that the remedy by way of a representation is not provided in the service rules. However, the public servant has to be cautious and take care not to wait indefinitely for espousing his grievance from the date affectation of his right begins. If he does wait indefinitely, he does so at his own peril.

31. Or, take a case where there is no employer-employee relationship yet, viz., the case of an aspirant for public employment who participates in the selection process but turns out to be unsuccessful. Should he have any grievance in relation to the process and seeks to challenge the same, he may do so immediately before accrual of third party rights; or, he may first represent and if there be no response or any response which does not address his grievance, he may apply before the CAT under Section 19 of the 1985 Act within the prescribed period of limitation. However, if there is delay and third party rights accrue, the delay has to be explained and condonation sought.

32. Reading Section 20 as we have interpreted it above with the guiding light provided by ***S.S. Rathore*** (supra) and ***M.K. Sarkar*** (supra), we need to consider whether the O.A. filed by the respondent before the Tribunal was within time or not.

33. The respondent did not in the O.A. plead and indicate the specific provision in the service rules in terms whereof she sought relief from the 3rd appellant by filing the representation dated 4th October, 2016. In the absence of such pleading, one has to proceed on the premise that she had made the representation on her own without the same being provided under any service rules applicable to her and, in that sense, it was a non-statutory representation. The period of limitation could not have been stretched by the respondent by asserting that rejection of her non-statutory representation resulted in accrual of the cause of action for moving the Tribunal.

34. To summarise the legal position, what assumes cruciality in cases, such as these, is whether the representation that has been made and rejected, whereafter the jurisdiction of the CAT is invoked, is statutorily provided in the service rules governing the applicant-public servant. Bare reading of the opening words of Section 20 of the 1985 Act with sub-section (1), which requires exhaustion of other available remedies as a general precondition for entertaining original applications under Section 19, refers to remedies that are available under the relevant service rules as to redressal of grievances against final orders. If the relevant service rules do not provide for making of a representation against final orders, by reason of absence of such a provision, the remedy of the aggrieved applicant-public servant would lie directly before

the CAT in challenging the order/action of the authorities adverse or prejudicial to his interest; and, in such a case, an original application ought not to be rejected mechanically on the ground that all "remedies" have not been exhausted. However, it cannot be gainsaid that if the relevant service rules do provide for making of a representation, the remedy made available has to be exhausted unless an exceptional case is set up. Provision made in the service rules, if at all, for making of a statutory representation, timing of such representation and whether the representation raises a "stale" or "dead" claim – all these are relevant for deciding the question of limitation under the 1985 Act. The opening words of Section 20 read with sub-section (2) thereof would, however, call for a nuanced approach. As observed earlier, a representation though not provided in the relevant rules governing service could yet be necessary and imperative when a legitimate service benefit is not conferred on the aggrieved applicant-public servant by the employer on his own either due to inaction or otherwise. In such a case, the representation inviting attention to what the aggrieved applicant-public servant perceives is deprivation of a legitimate benefit has to be made expeditiously and before accrual of third-party rights, if any. Such a representation could be made even after accrual of third-party rights, but within a reasonable time of the same coming to the notice of the aggrieved applicant-public servant. What would constitute reasonable time would necessarily depend on the facts of each particular case and decided accordingly.

35. We hold that except in cases where final orders are passed on appeals/revisions/memorials/representations which are statutorily provided,

limitation for the purpose of filing an original application under Section 19 of the 1985 Act, in view of the above-referred decisions and Sections 21 and 20 thereof, has to be reckoned keeping in mind the date of accrual of the cause of action and the proximity of the date of the representation, and the period of one year for filing an original application has to be counted from the date of expiry of six months from date of such a representation if no order were passed thereon. Needless to observe, the cause of action cannot be deferred by making a highly belated representation and awaiting its outcome. We also make it clear that different considerations would arise in a case of a continuous wrong, which has to be decided in the light of the decision of this Court in ***Union of India v. Tarsem Singh***[24].

36. On such premise as explained above, the respondent should have, if she felt aggrieved by the action of the appellants of granting her benefits of financial upgradation under the MACP Scheme instead of the ACP Scheme, availed the remedy before the Tribunal immediately after her rights were affected. She ought not to have waited for so long for ventilating her grievance through a belated representation. Filing of such belated representation, which was rejected in no time, did not have the effect of postponing the cause of action and stretching the period of limitation so as to render the O.A. as filed within time.

37. Both fora, i.e., the Tribunal as well as the High Court, did not rule on the objection of maintainability of the O.A. despite such objection being sound. The reasons that we have assigned would lead to the irresistible conclusion

[24] 2008 INSC 930 = (2008) 8 SCC 648

that the O.A. was time-barred and should not have been entertained by the Tribunal. The High Court too erred in law by failing to entertain the challenge to the Tribunal's order on the specious ground that the decision in ***B.D. Kadam*** (supra) covered the issue without, however, examining whether the O.A. was maintainable.

38. Having ruled thus, we cannot ignore a vital fact. The respondent has retired in 2018. The Tribunal's order has been implemented and she has received certain financial benefits. During the winter years of her life, financial support will become essential to ensure that she can live a life of dignity and purpose, exercising her right to a fulfilling existence. Regard being had to the same and bearing in mind the provision contained in Article 15(3) of the Constitution enabling the State to make special provisions *inter alia* for women and that Article 41 thereof provides guidance for the policy of the State to be aimed at providing assistance in cases of *inter alia* old age, we, in due exercise of our power under Article 142 of the Constitution of India and considering this case as a very special case, refrain from directing the respondent to refund any surplus amount received by her over and above her entitlement.

39. The appeal, accordingly, stands disposed of without interfering with the impugned order.

.....J
(DIPANKAR DATTA)

.....J
(RAJESH BINDAL)

NEW DELHI;
APRIL 24, 2025.

NATIONAL GREEN TRIBUNAL

Principal Bench, New Delhi

Application No. 30/2012
Tuesday, 18th of December, 2012

Quorum:

1. **Hon'ble Shri Justice V. R. Kingaonkar (Judicial Member)**

2. **Hon'ble Shri Dr. Devendra Kumar Agrawal (Expert Member)**

BETWEEN:

1. **ANKUR**
   Through
   Its Foounder Member Vaishali Patil
   Shankar Rama Complex
   Chinchpada Road near Govt. Hospital
   Flat No. 102, First Floor,
   Pen, District- Raigarh
   Maharashtra **…Applicant**

A N D

1. **MAHARASHTRA STATE ENVIRONMENT IMPACT ASSESSEMENT AUTHORITY**
   Through the Secretary
   Environment Department
   Room No. 217, 2nd floor,
   Mantralaya Annexe
   Mumbai 400032

2. MAHARSHTRA POLLUTION CONROL BOARD
Through the Member Secretary
Kalpataru Point, 3rd & 4th floor,
Sion Matunga Scheme Road No. 8
Opp. Cine Planet Cinema
Near Sion Circle, Sion (East), Mumbai- 400 022

3. M/S MINERALS AND METALS
34, Auhutosh, NepeanSea Road, Mumbai,
Maharashtra 400006 ……..**Respondents**

(Advocates appeared: Mr. Ritwick Dutta, Advocate alongwith Mr. Asim Saroda and Ms. Srilekha Sridhar for Applicant and Mr. Mukesh Verma, Advocate alongwith Mr. Pawan Shukla for Respondent No. 1 & Respondent No. 2 and Mr. Vivek Vishnoi, Advocate alongwith Mr. Sangram Desai for Respondent No.3).

JUDGEMENT

1. This is an application filed under Sections 14 and 15 of the National Green Tribunal Act, 2010 (for short, NGT Act). The applicant is allegedly a Public Trust. The application is filed through its founder member. The applicant seeks revocation of the Environmental Clearance (for short, EC) dated 27th February, 2009, granted to Respondent No. 3 (M/s Minerals & Metals) for its iron ore open mine situated at Village Kalane, Taluka Dodamarg (District Sindhudurg) and for restoration of the environment of the area by removal of mining waste dumped at adjoining agricultural lands of the villagers.

2. Briefly stated, case of the applicant is that the Respondent No. 3 has violated conditions of the Environmental Clearance (EC) dated 27.2.2009. The mining area of 32.25 hac. is permitted for conducting the mining activity by the Respondent No. 3. The Respondent No. 3, however, encroached on the adjoining agricultural land as well as common land of the villagers. The Respondent No. 3 also has dumped the mining waste on adjoining land bearing Survey No. 60. With the result, about 10-12 Acres of that land has been buried under the mining waste. The Cashew plantation along with species of trees like Ain, Asan, Nana, Sesum and Kindas are also buried under the dumped mining waste. The Respondent No. 3 is using the Government sanctioned road for transportation of the ore extracted from the mine. A large number of uncovered heavy vehicles are plied on that road. The traffic of such heavy vehicles causes Air and noise pollution in the area. The mining operation is being undertaken without taking protection to avoid spillage, avoid overloading of trucks, and to provide a wooden side board of at least 9" height to cover the transportation vehicles by means of tarpaulin. Besides, silt from the mining area is drifted to old river of the village which flows about 100 meters away from the mining area. The Respondent No. 3 did not construct protection wall around the mining area.

3. The applicant further alleges that though several complaints were made by the villagers to various authorities yet the Respondent No. 3 i.e. project proponent continued to commit breach of the conditions of the EC. The site inspection carried out by Deputy Director, Directorate of Geology and Mining during period between 27.12.2011 to 29.12.2011 revealed that the mining activity was being carried out beyond the leased area. The Respondent No. 3, due to dumping of the solid waste, has overburdened the adjoining agricultural lands. The mining activity is being carried out without complying conditions of the EC. The air and noise pollution caused by the mining activity is hazardous to health of the villagers. The Respondent No. 3 has destroyed

agricultural land of the farmers and also caused damage to the ecology and environment of the area. The applicant further says that by applying precautionary principle the harm caused to the environment is required to be prevented by revocation of the EC dated 27.2.2009 and also by restoration of the environment. Moreover, the Respondent No. 3 needs to be mulcted with liability to pay compensation to the affected villagers.

4. The application is resisted by the Respondent No. 3 (project proponent) on various grounds. According to the Respondent No.3, the application is filed with mala fide intention to obtain undue and illegal benefits from him. The application is barred by limitation. The application does not raise any serious environmental issue. The Respondent No. 3 also challenges *locus standi* of the applicant on the ground that the applicant –Trust is having activities at Pen, a Taluka place which is about 500 Km from Dodamarg Taluka, where the mining activity is going on. Moreover, the applicant is not a registered Trust as alleged by it. The Respondent No. 3 alleges that the application is filed without any supporting evidence and is actuated by malice. The Respondent No. 3 alleges that one Ganpat Dattatray Desai is at the back of the litigation, initiated for the purpose of blackmailing the Respondent No. 3 and out of vengeance. The Respondent No. 3 alleges that said Ganpat Desai and Mansingh Desai are accused persons in Criminal case No. 18/2009 registered at Dodamarg Police Station for offences under sections 302, 143, 147, 148, 149, 324, 323, 506 and 427 of the Indian Penal Code (for short, IPC). They alongwith other accused had hatched up conspiracy to murder one Yusuf Shaikh, who was employed as security guard at the site of the mining of the Respondent No. 3. The Respondent No. 3 further alleges that the mining waste is not dumped anywhere except on part of Survey No. 60, hissa No. 1/1-1/5. The owner of the said land has entered in to an agreement whereby the Respondent No. 3 has been allowed to stack the waste material on that land which is uncultivable and barren. The

Respondent No. 3 further submitted that he has already taken required permission from the Revenue Department for converting that land to non-agricultural use. The Respondent No. 3 denied that the mining activity has caused harm to the ecology and environment. It is further denied that the EC conditions have been violated. On these premises, the Respondent No. 3 sought dismissal of the application.

5. Considering the pleadings of the parties, the following issues are formulated. We have recorded findings on these issues in the last paragraph of the Judgment.

6. The issues are as follows:-

1. Whether the applicant has *locus standi* to file the application, being aggrieved person within the meaning of Section 18?
2. Whether the Respondent No. 3 has expanded the mining activity by dumping the mining waste on adjacent land bearing Survey No. 60 and therefore has caused loss to 10-12 Acres area of agricultural lands, due to burial of plants like Ain, Asan, Nana, Sesum and Kindas which is loss to the ecology and environment?
3. Whether the Respondent No. 3 has caused Air pollution due to plying of trucks loaded with iron ore without taking proper precaution to avoid spillage?
4. Whether the Respondent No. 3 has caused water pollution by drifting the silt of the mine in the village river?

7. First of all, we shall examine whether the applicant has *locus standi* to file the application. For this purpose, it is necessary to refer Section 18 of the NGT Act. A person entitled to file application under Section 18, besides any aggrieved person as shown under Section 16 of the NGT Act, should fall within categories mentioned in Section 18 Sub clause (2). It is pertinent

to note that Section 16 of the NGT Act deals with jurisdiction of the Tribunal to deal with appeals. The present application is filed under Section 14 & 15 of the NGT Act. Therefore, the applicant must show that he is the fit person to submit such an application.

8. It will be useful to refer Section 18 of the NGT Act. Section 18 reads as below:

Section 18 : Application or Appeal to Tribunal.

(1) "Each application under Sections 14 and 15 or an appeal under Section 16 shall be made to the Tribunal in such form, contain such particulars, and be accompanied by such documents and such fees as may be prescribed.

(2) "Without prejudice to the provisions contained in Section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by__

(a) The person, who has sustained the injury; or
(b) The owner of the property to which the damage has been caused; or
(c) Where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or
(d) Any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or
(e) Any person aggrieved, including any representatives body or of the National Green Tribunal Act, 2010."

9. According to the applicant, the application can be filed by the applicant Trust which represents the affected agriculturists. It is the argument of Learned Counsel for the applicant that the applicant is "an aggrieved" person. It is argued that the applicant is an organization which takes care of the interest of agriculturists.

It is submitted by the Learned Counsel for the applicant that the applicant is a duly registered Trust and therefore is entitled to file such application because the mining activity of the Respondent No. 3 is detrimental to the interest of the adjoining land holders in particular and the villagers in general.

10. The applicant has placed on record copy of the resolution which authorises Vaishali Partil to take necessary steps in order to protect" Constitutional Rights of the farmers". Perusal of the copy of the resolution shows that address of the office of the organization is given as "ANKUR, Shankar Rama Complex, Chichpada Road near Govt. Hospital, Flat No. 102, First Floor, Pen, District Raigarh- Maharashtra. The copy of the resolution further shows that the applicant Trust is registered under the Mumbai Trust Act 1950, Vide Registration No. E-1890 (Pune). The Respondent No. 3 has filed on record copy of the Public Trust register maintained by Pune Division office in respect of the Trust No. 1890. It appears that said Trust is registered in name of Smt. Prabha Karandikar, Public Trust and the address of the Trust is different from that of the trust shown by the applicant. The Respondent No. 3 also has produced the extract of the registration book. The documents show that objects of the said Trust and Ankur Trust are different. That trust is not formed with an object to help the agriculturists. The applicant, however, has not filed any document to show the specific objects of the applicant Trust. What appears from the record is that "Ankur" is the trust registered as per registration E-1809 (Pune). It appears that Shri Raj Anthony is the person to whom the registration certificate was issued. The address of said trust (Ankur) is shown as "12 Pandurang Niwas, Alandi Road, Pune. We have no material before us to show that subsequently the address of said Trust was changed and the office was shifted to Pen- District Raigarh. We have also no material to show that said Trust (Ankur) was formed with an object to protect constitutional rights of the farmers. It goes without saying, therefore, that the applicant has no *locus*

standi to file the instant application. Secondly, the address shown on the certificate of registration of the Trust and the Registration No. (E-1890) do not match with the description shown in the copy of resolution. The copy of the resolution shows that the Trust is registered vide No. E-1890(Pune). It is stated by Vaishali Patil in her affidavit that this is an inadvertent typographical mistake. Assuming, for sake of argument that it is a typographical mistake, then also without any supporting document it is difficult to say that the object of the applicant Trust is to ensure and protect welfare of the farmers.

11. Having regard to the Trust address shown on the copy of resolution, it is amply clear that that the office of the said Trust is at Pen (District -Raigarh). The mining activity of the Respondent No. 3 is at Village Kalane (District Sindhudurg). Judicial notice may be taken of the fact that Village Kalane is far away from Pen, may by around 300/400 Kms. We do not have any record which shows that the applicant Trust is authorized to protect rights of the farmers in all the districts, including District Sindhudurg. The farmers who are said to have been adversely affected by the mining activity have not come forward to file the application. It appears that the applicant has filed affidavits of Mansigh Desai and Ganpat Dattatray Desai. The Respondent No. 3 has filed copy of charge sheet in Sessions case No. 17/2010. It appears that both the above named persons, along with other accused persons, are facing prosecution for offences under Section 302, 143, 147, 148, 149, 324, 323, 506, 427 and 188 of the IPC. It appears that they allegedly committed murder of one security guard who was employed by a security agency, for the purpose of safeguarding the mining activity of the Respondent No. 3. It is, but natural that above persons have reason to grind axe against the Respondent No. 3. Both of them have not joined the application as applicants. However, they have filed affidavits in support of the application with certain oblique intention. In other words, the application is not filed with an intention to safeguard rights of the farmers. It

appears to have been filed to retaliate the charges leveled against Ganpat Desai and Mansingh Desai. The application is of vindictive nature and filed at the behest of the above named persons. We are of the opinion, therefore, the that applicant has no *locus standi* to file this application. The Issue No. 1 is, therefore, answered in the negative.

12. The averments in the application show that the main issue projected by the applicant is in respect of alleged encroachment on the agricultural field of the farmers and the common land of the villagers. The exact words used by the applicant in the last sentence of paragraph 2 of the application may be reproduced as follows:-

"The main issue is that the project proponent has encroached upon the agricultural field of the farmers and other common land of the village. "

13. The application does not show, however, on which agricultural fields the project proponent has encroached. There is no map prepared by any authorized agency to show the alleged encroachments. The applicant could have filed copy of the measurement map prepared by the District Inspector of Land Records (DILR). The applicant has not obtained any such authentic record about the issue of encroachment. Moreover, the issue of encroachment is the lis between concerned private parties and the Respondent No.3. That cannot be an issue related to the environment, particularly, about adverse impact of the environment. Hence the so-called main issue stated in paragraph 2 of the application is without any substantial foundation as well as irrelevant.

14. Another contention of the applicant is that the project proponent (Respondent No. 3) has overburned a part of land Survey No. 60 by way of dumping mining waste thereon. It

appears that the Respondent No. 3 has obtained a part of Survey No. 60 on basis of an agreement from Vinyak Patil i.e.Survey No. 60, hissa No. 1/1-1/A. It further appears that a part of Survey No. 60 is being used by the project proponent as per consent letter given by owner of Survey No. 60, hissa No. 1/5-1/31-1/33. The applicant on the other hand, has not proved that the Respondent No. 3 has dumped the mining waste on land of any other farmer. Nor there is any site inspection plan placed on record. On the other hand, the project proponent placed on record documents (Annexure R/3-5 and Annexure R/3-6) which go to show that he converted the agricultural lands for non- agricultural use prior to the alleged dumping of the mining waste on the part of Survey No. 60, bearing hissa No. 1/1-1/5. It appears that the Indian Bureau of Mines (for short, IBM) approved this modified plan vide letter dated 3-2-2011.

15. One of the contention of Learned Counsel for the applicant is that the Respondent No. 3 (project proponent) unlawfully expanded the mining activity. It is argued that approval of the IBM is of no avail. It is further argued that the Respondent No. 3 was not legally entitled to dump the mining waste on adjoining land because such an activity amounts to modification of the mining Plan, without any approval and EC of the MoEF. We do not agree. The use of the adjacent land with consent of the land owners for dumping of the mining waste cannot be termed as expansion of the mining activity or modification of the mining plan as such.

16. It appears from the record that the Respondent No. 3 has carried out certain excessive mining activity by way of extraction of the ore beyond the permissible limits. It appears that the District Collector has taken necessary action for recovery of the penalty and price of the ore illegally extracted from the mine in question. The issue is subjudice in the proceedings initiated by

the District Collector under the Maharashtra Land Revenue Code 1966, and under Section 21 of the MMRD Act, 1957.

17. The applicant heavily relied upon report of Madhav Gadgil committee. The applicant also relied upon the inspection report of Deputy Director of Geology and Mining, Kolhapur. It appears that subsequently the Deputy Director of Geology and Mining issued letter dated 22.5.2011 whereby clarification is given to the effect that due to oversight the encroached area was shown as Survey No. 57/5 and the mining area was shown as Survey No. 57/1-4. The Deputy Director clarified the mistake. It is clarified that actually the mining area is Survey No. 57/1, 2, 3(P) comprising of 32.30 hectares. It is also stated that there is error in respect of alleged encroached area shown to be part of Survey No. 57/5 though, it is Survey No. 57/3-(P) and Survey No. 57/4(P). As stated before, the issue regarding so-called encroachment is not an environmental issue. It appears that the joint inspection Report of District Mining Officer, Deputy Director of Mining and Director of Mining is to the effect that the Respondent No. 3 extracted ore beyond the limits of the mining area, out of Survey No. 57/3 and 57/4. In case, the Respondent No. 3 has extracted more ore, the Competent Authority may take suitable action for recovery of the Net Present Value (for short, NVP) of such extracted ore. The Competent Authority may recover penalty from the Respondent No. 3. The Competent Authority may discontinue the license for operating the mine after giving notice to the Respondent No. 3.

18. The applicant made faint attempt to show that the Respondent No. 3 has overburned the adjoining land (Survey No. 60) by way of dumping the mining waste. The applicant has filed affidavits of Suresh Narayan Desai and Mansingh Desai. The affidavits of these persons are identical with each other. As stated before, they have some ill will against the respondent No. 3 due to the criminal prosecution. The applicant failed to establish that the respondent No. 3 overburned the adjoining lands. In our

opinion, the application is filed without any scientific data or report of an expert like Government land measurer. Hence we have come to the conclusion that the applicant failed to prove the allegation in the context of over dumping and thereby causing loss to the agricultural produce or the trees. The map prepared on basis of Google map or the information by way of affidavits of interested persons cannot be treated as reliable and acceptable data. It is not proved that the Respondent No. 3 has caused Air and/ or noise pollution as alleged.

19. We deprecate the practice of filing such application in the form of P.I. L. We find that the applicant has no *locus standi* yet filed the application at the behest of disgruntled persons who did not wish to come forward as applicants. We however, do not think it proper to impose costs on the applicant because there appears extraction of more than permissible quantity of the ore from the leased mine. The Respondent No. 3 also acted unfairly and as such it would be proper to direct the parties to bear their own costs.

20. In view of the foregoing discussion, we are of the opinion, that the application is without merits. It is liable to be dismissed. We are further of the opinion that the issue regarding extraction of more quantity of ore in excess of the outer limit shown in the license will have to be kept upon. The other issues are answered in negative. The Competent Authority may take proper action against the Respondent No. 3 for recovery of the value of the ore extracted from the mine, beyond the permissible limits. In the result, the application is dismissed with no order as to costs.

(Dr. Devendra Kumar Agrawal)
Expert Member

(Justice V.R. Kingaonkar)
Judicial Member

BEFORE THE NATIONAL GREEN TRIBUNAL

(PRINCIPAL BENCH), NEW DELHI

APPEAL No. 54/2012

22nd March, 2013

CORAM:

1. **Hon'ble Shri Justice V.R. Kingaonkar (Judicial Member)**
2. **Hon'ble Shri Justice U.D. Salvi (Judicial Member)**
3. **Hon'ble Shri P.S. Rao (Expert Member)**
4. **Hon'ble Shri Ranjan Chatterjee (Expert Member)**
5. **Hon'ble Shri Bikram Singh Sajwan (Expert Member)**

B E T W E E N:

Rana Sengupta
52/D/9/4, Babu Bagan, Dhakuria
Kolkata-700 031
West Bengal ….Appellant

A N D

1. Union of India
   Through the Secretary, Ministry of Environment and Forests
   Paryavaran Bhawan, CGO Complex
   Lodhi Road
   New Delhi 110003

2. State of West Bengal
   Through its Secretary
   Department of Environment
   Block G, 2nd Floor, Writers Building
   Kolkata
   West Bengal

3. M/s Rashmi Metaliks Limited
   Having its registered office at
   Village Gokulpur
   P.O. Shyamraipur, P.S. Kharagpur
   District Paschim Mednipur
   West Bengal

4. West Bengal Pollution Control Board
   Through its Member Secretary
   Paribesh Bhawan
   10A, Block LA, Sector III, Bidhan Nagar
   Kolkata-700098
   West Bengal .....Respondents

(Advocates appeared : Mr. M.P. Jha, Advocate for the Appellant. Mr. Vikramjeet, Advocate for Respondent No. 1, Mr. Bikas Kar Gupta, Advocate for Respondent No. 2, Mr. Pawan Upadhyay, Advocate for Respondent No. 3 and Mr. Amit Agrawal, Advocate along with Ms. Asha Nayar Basu, Advocate for Respondent No. 4)

J U D G M E N T

This Appeal is filed by one Rana Sen Gupta, who claims to be a public spirited citizen- working for welfare of people, particularly for those whose concerns might otherwise would remain un-represented. He challenges the order of Environmental Clearance (EC) granted by the Respondent No. 1 (MoEF) vide communication dated 01.06.2012 in favour of Respondent No. 3 (M/s. Rashmi Metaliks Ltd.). The EC is granted for expansion of existing Steel Plant by adding 1.5 million TPA Beneficiation cum Pellet Plant to produce 1.2 MTPA pellets with Producer Gas Plant by the Respondent No. 3 (M/s. Rashmi Metaliks Ltd.,) referred to hereinafter as "Project Proponent".

2. Admittedly, the Project Proponent was granted EC dated 12.06.2008 for its project of Steel Plant of 5 lakh T.P.A. capacity. The Project Proponent desired to manufacture steel billets etc. within the limit of 5 lakh TPA. So, the Project Proponent submitted a proposal to the W.B. Pollution Control Board (Respondent No. 4). The Respondent No. 4(W. P. C. B) granted consent to establish the project on 02.02.2009. Thereafter, the Project Proponent sought further consent of Respondent No. 4 to establish and operate a manufacturing plant of TMT Rods upto 9600 tons per month. The Respondent No. 4 granted consent to establish the said unit on 18.05.2009 and also granted consent on 15.7.2010 to operate the unit. So also, the Respondent No. 4 granted consent dtd. 23.12.2010 to manufacture of pellets as sought by the Project Proponent, to the extent of 15,500 tons per month.

3. Undisputedly, the Project Proponent again desired to manufacture Ductile Iron Pipes to the extent of 2 lakh T.P.A. The Project Proponent accordingly applied for necessary permission. The Respondent No. 4 (WB PCB) granted necessary permission to install Ductile Iron Pipe production unit vide permission letter dated 09.10.2009. The Respondent No. 4 granted consent to establish the project of Ductile Iron Pipe as per the proposal of the Project Proponent vide communication dated 11.11.2009. Subsequently, the Respondent No. 4 granted consent to operate the said production unit on 12.01.2011. Thus, the Project Proponent was manufacturing 1,86,000 Tonnes of pellets, 1,15,200 Tonnes of TMT Rods along with 1,41,996 Tonnes of Ductile Iron Pipes. Comprehensively considered, the total production capacity of all those products comes to 4,43,196 TPA. Obviously, it was below the permissible limit of 5,00,000 T.P.A. which was permissible in accordance with the EC that was originally granted by the Respondent No. 1 (MoEF) on 12.06.2008.

4. The Project Proponent desired to expand the industrial activity by adding 15,00,000 T.P.A. Beneficiation cum Pellet Plant with producer Gas Plant. The expansion could not be done without further EC of the Respondent No. 1. Therefore, the Project Proponent submitted a fresh proposal to the Respondent No. 1 for grant of EC to the proposed expansion. The proposal was considered by the Respondent No. 1. ToR was issued by the Respondent No. 1 on the basis of Environmental Impact Appraisal/Assessment (EIA). It was followed by public hearing held under Chairmanship of Additional District Magistrate, Paschim Medinipur (W.B.) on 11.11.2011. A representative of the Project Proponent narrated the draft

proposal and described the project details. The Respondent No. 1 considered the viability of the project after the public hearing, appraisal was done and thereafter the EC was granted to the Project Proponent vide the impugned communication dated 01.06.2012 for expansion of capacity to an additional 1.5 Million T.P.A. Beneficiation cum Pellet Plant. Feeling aggrieved, the Appellant has preferred the Appeal.

5. The Appellant has come out with a case that the Project Proponent concealed information regarding the Ductile Iron Pipe Plant that was being operated prior to the proposed expansion. The Respondent No. 1 (MoEF) failed to consider that the Project Proponent had omitted to include the pre-existing Ductile Iron Pipe Plant in the EIA Report which was presented before granting the impugned EC. The MoEF also failed to consider the fact that the Project Proponent did not submit Environmental Impact Assessment (EIA) report, taking into account the impact of pre-existing Ductile Iron Pipe Plant, and therefore, the proposal for the expansion of project in question, was improper. The information furnished by the Project Proponent was misleading and incorrect. The Appellant further alleges that the proposal should have been rejected in view of deliberate concealment by the Project Proponent of the information pertaining to existence of the previous Ductile Iron Pipe Plant. He seeks to rely upon Para 8(vi) of the Notification issued by the MoEF on 14.09.2006. Though, challenge of the EC granted to the earlier Ductile Iron Pipe Plant had failed due to dismissal of Appeal No. 32/2011 filed by the Appellant, yet comprehensive impact on environment ought to have been considered and particularly element of concealment of information by the Project Proponent ought to have been considered as substantial reason to

reject the proposal. The enhanced emission of carbon-di-oxide due to the proposed expansion of the industrial activity would cause irreparable damage to the eco-system and the environment of adjoining area and adversely affect the health of public. But these aspects are overlooked by the Respondent No. 1. The previous EC granted by the SEIAA to the Project Proponent also was illegal and improper. The Appellant further states that the Project Proponent has not provided for adequate green belt as per the conditions enumerated in the EC granted in the past and, therefore, the proposed expansion of the project should not have been allowed by the Respondent No. 1.

6. By filing separate counter affidavits, the Respondents resisted the Appeal. They submitted that the grant of EC for manufacturing project of 2 lakh T.P.A. capacity on 09.10.2009 cannot be challenged by the Appellant. They submitted that dismissal of Appeal No. 32/2011 filed by the Appellant has now sealed the issue regarding grant of said EC for the Ductile Iron Pipe Plant. They submitted that now the Appellant is trying to mix-up the issue pertaining to the earlier EC with that of the impugned EC for expansion of the project. They further submitted that there was no concealment of any fact by the Project Proponent. They submitted that the expansion of the industrial activity falls within the project/activity item 3(a) of the Schedule appended to the MoEF Notification dated 14.09.2006 and as such the assessment/appraisal was done as required under the relevant regulations. They further submitted that the expansion of the project is legal and proper. They denied truth into the allegation that the conditions of the previous EC were violated by the Project Proponent. Consequently, they sought dismissal of the Appeal.

7. In addition, the Project Proponent alleges that the Appellant has no *locus-standi* to file the present Appeal. It is alleged that the Appellant cannot be treated as "aggrieved person". It is also submitted that the Appellant is unconcerned with the environmental impact of the project in question. It is pointed out that the Appellant is inhabitant of Dhakuria, Kolkata whereas the project is situated at village Gokulpur (District Paschim Mednipur). According to the Project Proponent, the Appellant is a busybody and has filed the Appeal without there being any element of so called public interest or alleged concern for environmental damage or public welfare. On these premises, the Project Proponent and other respondents sought dismissal of the Appeal.

8. We have heard Learned Counsel for the parties in *extenso*. We have carefully gone through the record.

9. Mr. M.P. Jha, Learned Counsel for the Appellant argued that the impugned grant of Environmental Clearance is bad in law for the reason that the Project Proponent concealed the fact that a Ductile Iron Pipe Plant was already being operated in the same premises. He argued that the Project Proponent obtained EC from the SEIAA of W.B. for expansion of the industrial activity, in the context of the Ductile Iron Pipe Plant (DIPP) which, in fact, could not have been granted because such project falls within category 'A' of Schedule appended to the Notification of MoEF issued on 14.09.2006. According to him, Para 8 (vi) of the Said Notification provides for cancellation of the previous EC or rejection of the proposed EC where there is deliberate concealment and / or false submission or misleading information. The Application of the Project Proponent was, therefore, liable for rejection. He

argued that the environmental impact ought to be comprehensively considered having regard to pre-existing industrial projects which were already made operational in the same area. He would submit, therefore, that the impugned grant of EC is invalid and is liable to be quashed.

10. Mr. Pawan Upadhyay, Learned Counsel for the Respondent No. 3 (Project Proponent) submitted that there is no concealment of any important information while seeking the EC for the expansion of the industrial activity by adding 1.5 million T.P.A. Beneficiation cum Pellet Plant including production of 1.2 million T.P.A. Pellets with Producer Gas Plant. He contended that there was no additional load, in any manner, on the environment because the expanded project was not likely to produce any obnoxious substance in as much as the quantity of effluent discharge was “NIL”. He argued further that the Appellant purposefully attempted to mix-up the issue pertaining to grant of EC for setting up steel plant of 5 lakh TPA and the subsequent permission for expansion of the industrial activity by installation of Ductile Iron Pipe Plant for manufacturing 2 lakh TPA Ductile Iron Pipe Plant. He contended that the installation of Ductile Iron Pipe Plant falls in category ‘B’ under the project/activity 3(a) of Schedule of the Environment Clearance Regulations, 2006 and therefore, necessary clearance was sought from the SEIAA of W.B. He pointed out that the said EC is not the issue involved in the present appeal. For, it is no more *res-integra* in view of dismissal of previous Appeal No. 32/2011 by this Tribunal. He contended that the grounds shown in the Memorandum of Appeal are carved out only with a view to raise some kind of challenge to the EC granted for expansion of the project notwithstanding the

fact that the Appellant failed to raise any such issue during the course of public consultation process. It is argued that the Appellant has absolutely no concern with the environmental issues nor is he affected by the grant of EC in question. It is argued further that the Appellant cannot be termed as "aggrieved person" and as such has no *locus-standi* to prefer appeal under Section 16 of the National Green Tribunal Act, 2010 (for short, NGT Act). It is argued that the appeal is unfounded, filed with ulterior motive and deserves dismissal with exemplary costs.

11. Learned Counsel, Mr. Vikramjeet, Mr. Bikas Kar Gupta and Mr. Amit Agrawal appearing for Respondents No. 1, 3 and 4, respectively, adopted similar stance in keeping with the contentions of Mr. Pawan Upadhyay. They submitted that the Appellant is a busybody and has unnecessarily filed such a baseless litigation. So they too sought dismissal of the Appeal.

12. Having heard Learned Counsel for the parties, in our opinion, the following points arise for the purpose of deciding the appeal. They are:-

(i). Whether the Appellant is "aggrieved person" and has *locus-standi* to prefer the appeal?

(ii). Whether the Project Proponent concealed any material information or furnished false or misleading information deliberately, during the course of screening, scoping or appraisal of the expansion project which ought to have been considered as a reason for rejection of the application for EC to expand the project or cancellation of prior EC already granted for installation of Ductile Iron Pipe Plant?

(III). Whether the impugned grant of EC for expansion of the steel plant by adding 1.5 million TPA Beneficiation cum Pellet Plant and the Gas Plant is otherwise illegal as it would add more pollution burden and tantamounts to unsustainable development?

Re: Point No. (i)

13. So far as *locus-standi* of the Appellant is concerned, it would be appropriate to examine what he has pleaded in the Memorandum of Appeal. He alleged that although he has no personal interest in the matter, yet because he is working for the welfare of the people, particularly for those whose concern might have otherwise remained unrepresented, he is aggrieved. Secondly, he states that he has been raising the issue of non-compliance of environmental norms by the Project Proponent and had filed earlier Appeal No. 32/2011 with a view to stall installation of Ductile Iron Pipe Plant Project. He says that he is a public spirited citizen with working experience in steel and iron industry and has full knowledge of the impact of these industries on ecology, environment and human lives. These are the reasons given by him to demonstrate that he is competent to file the appeal.

Section 16 of the NGT Act, 2010 provides appellate jurisdiction to the Tribunal. The opening words of Section 16 go to show that “any person aggrieved” by order made granting EC can prefer appeal under Section 16(h) of the NGT Act, 2010. The expression “person aggrieved by” imply some or other reason which might have aggravated the person to undertake the legal remedy. Such a person must demonstrate that he is directly or indirectly concerned with the adverse environmental impact which is likely to be caused

due to granting of EC by the competent authority. The Appellant, admittedly, resides at Babu Bagan, Dhakuria area of Kolkata. The main project and expansion area of the subsequent project is situated at Shyamraipur (District Paschim Medinipur). It is not the case of the Appellant that he has any property in the adjoining area of village Shyamraipur. It is not his case that he is personally adversely affected due to the installation of the expansion project in question. He vaguely states that he is a public spirited citizen with experience of working with steel and iron industries and has full knowledge of the impact of these industries on ecology, environment and human lives. He vaguely proclaims that he is working for the welfare of the people and particularly who have remained unrepresented.

14. We do not find any tangible material which would plausibly show that the Appellant has credentials as expert in the field of steel and iron industries and we are at a loss to know in what manner he is working for the welfare of unrepresented members of the public. It is not his case that he represents any NGO. His self-proclaimed status as “public spirited citizen” is of no much avail. There is absolutely no record to show that he participated in the public consultation process and raised any issue regarding the environment or socio-economic adverse impact on account of establishment of the proposed project. The only reason that he has unsuccessfully preferred Appeal No. 32/2011 against granting of earlier EC for production of Ductile Iron Pipe Plant is of no much significance and is irrelevant. Moreover, that appeal came to be dismissed and there is no finding of this Tribunal that the Appellant is to be treated as “an aggrieved person”. Considering forgoing discussion, we have

come to the conclusion that the Appellant has no locus-standi to prefer the present appeal. He cannot be treated as an aggrieved person and the appeal filed by him cannot be entertained. This answers the point no. 1.

Re: Point No. (ii)

15. Now, it is to be borne in mind that the Project Proponent (R-3) was, admittedly, granted Environmental Clearance vide communication dated 12.06.2008 for installation and of operation of the steel plant for 5 lakh million TPA, MBF-SMS. The proposal for setting up of such steel plant was approved by the MoEF. The total land to be utilized for setting up of the steel plant is 188 acres. What appears from the record is that the Project Proponent did not fully utilize the production capacity of 5 lakh TPA when the plant was made operational at the initial stage. The Project Proponent expanded the industrial activity after submitting application dated 17.06.2009 to the Department of Environment, Government of W.B., Kolkata. The appraisal was done by the State Level Expert Appraisal Committee (SEAC). Thereafter, recommendation was made to the State Environmental Impact Assessment Authority (SEIAA). The SEIAA accorded Environmental Clearance to the expansion of the project in accordance with the MoEF Notification dated 14.09.2006. Copy of the communication dated 09.10.2009 (Annex-R-1) filed with affidavit of the Respondent No. 2 reveals that the Project Proponent categorically stated that the Environmental Clearance was needed for installation of Ductile Iron Pipe Plant for manufacturing of Ductile Iron Pipes to the extent of 2 lakh TPA at the existing unit (Kharagpur). Obviously, the expansion was within limit of the production capacity (5 lakh TPA) for which Environmental Clearance was accorded by the MoEF in 2008.

16. The contention of the Appellant that such expansion of the project activity ought to have been brought to the notice of the MoEF when the further expansion was sought vide communication dated 19.11.2011 and dated 12.03.2012 is untenable. Such omission cannot be treated as deliberate concealment of any material information which would necessarily entail cancellation of the prior Environmental Clearance granted to the Project Proponent or rejection of the subsequent application for expansion of the project in question. The Appellant seeks to rely on Regulation 8 (vi) of the Environmental Clearance Regulations, 2006. The relevant regulation may be re-produced for ready reference as shown below:-

"8.

(i). xxxxxxxxxxxxx

(ii). Xxxxxxxxxxxxx

(iii). Xxxxxxxxxxxxx

(iv). Xxxxxxxxxxxxx

(v). xxxxxxxxxxxxx

(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 nature justice."*

Perusal of the above regulation goes to show that such drastic action will be called for only when it is noticed that there is deliberate concealment or submission of false or misleading information to the MoEF in the process of screening, scoping or appraisal or decision of an application. We do not find any such concealment made by the Project Proponent when the expansion of the project in question was sought. The earlier Environmental Clearance for installation of Ductile Iron Pipe Plant, approved by the competent authority of Department of Environment, W.B. was within approved capacity of 5 lakh TPA. That approved project was also to be established in the same campus of 188 acres. The Appellant could not pinpoint as to how it was necessary for the Project Proponent to give details of such earlier Environmental Clearance accorded after the Environmental Clearance dated 12.06.2008. There is no provision under the regulation which makes it incumbent on the Project Proponent to give details of the earlier approved expansions sought within the permitted limit of the project which was initially granted by the MoEF.

17. Another limb of the argument advanced by the Learned Counsel for the Appellant is that the production of the Ductile Iron Pipes vide the second expansion approved by the SEIAA on 09.10.2009 cannot be legal and proper. The Learned Counsel for the Appellant submits that the project for production of Ductile Iron Pipes falls in the category of Item 5(k) of the Schedule 2 appended to the Environmental Clearance Notification, 2006. He argued that such activity of Ductile Iron Pipes production commences with induction of furnace and also involves installation of magnesium convener belt, zinc coating machines, cement curing system so on and so forth. We do not

agree. On consideration of schedule appended to the Environmental Clearance Regulation 2006, it is amply clear that the said project falls in category B of item 3(a). It is difficult to say that it falls in the category of any other item shown under the Schedule appended to the Environmental Clearance Regulation, 2006. Needless to say that the Project Proponent did not conceal any material information nor gave any false information while seeking the Environmental Clearance for expansion of the project in question vide the application dated 19.11.2011 and communication dated 12.03.2012 submitted to the MoEF. This answers point no. (ii).

Re: Point No. (iii)

18. Coming to the third point involved in this Appeal, it is worthy to note that main argument of the Learned Counsel for the Appellant, Mr. M.P. Jha is that the Environmental Clearance granted on 01.06.2012 is bad in law in as much as it was granted without application of mind. He argued that the Project Proponent expanded the industrial activities during the period between the first Environmental Clearance granted in 2008 and the impugned Environmental Clearance granted on 01.06.2012 in piecemeal manner with a view to avoid the necessity of cumulative environmental appraisal. He argued that holistic environmental appraisal could not be done by the MoEF due to piecemeal expansion of the project by the Project Proponent. Chief bone of his contention is that comprehensive environmental impact was not considered by the MoEF while granting the Environmental Clearance dated 01.06.2012. He pointed out that the EIA report does not indicate the impact of expansion of the industrial activity due to installation of Ductile Iron Pipe Plant

prior to the impugned order dated 01.06.2012. It is on this basis that Mr. M.P. Jha urged to quash the impugned order of granting the Environmental Clearance.

19. As stated earlier, Environmental Clearance granted by the State Environmental Authority vide communication dated 09.10.2009 was challenged by the Appellant vide Appeal no. 32/2011. This Tribunal dismissed the said appeal. The obvious fall out of dismissal of the said appeal (Appeal No. 32/2011) is that the previous order dated 09.10.2009 cannot be now challenged and has become final. The Appeal Memo and rejoinder filed by the Appellant go to show that the Appellant has attempted to resurrect life into bygone litigation in respect of the Environmental Clearance order dated 09.10.2009. The allegation of the Appellant is that the said order dated 09.10.2009 is nullity, is without any merit and hence must be rejected. The Appellant cannot be allowed to challenge that order on the basis of so called newly invented fallacious grounds.

20. We cannot assume that the MoEF did not consider comprehensive environmental impact of the expansion project. The purpose of expansion of the project is amply clear from the application of the Appellant as well as the discussion which took place in the EAC meeting. The Project Proponent sought expansion of steel plant (05. Million TPA MBF-SMS) by adding 1.5 million TPA Beneficiation cum Pellet Plant to produce 1.2 million TPA pellets with producer Gas Plant. The additional industrial activity was to be carried out in the same land consisting of 188 acres. The steel plants unit is listed at serial no. 3(a) under Category 'A' of the Schedule of the MoEF Notification dated 14.09.2006. The impugned EC is granted by the MoEF subject to

outcome of Writ Petition no. 1587(W) of 2011 which is pending before the Hon'ble High Court of Kolkata. Needless to say the MoEF considered various aspects including the fact that no additional land was required, as well as Iron ore, coal, bentonite and limestone are the raw materials which would be used. It was also taken into account that such material would be transported by the Railways. The Railway Yard exists inside the complex of the industrial unit. The MoEF also considered the fact that dust generated during operation of the industrial activity will be controlled by installation of ESP and Bag Filters. The comprehensive consideration of the relevant aspects by the MoEF is manifested from the discussion which preceded the impugned EC.

21. We have gone through the reply filed by the Respondent No. 1 (MoEF). The Respondent No. 1 supports the impugned order. According to the MoEF, the Terms of Reference (TOR) includes the cumulative impact on the environment which may occur within the radius of 10 k.m. as well as the additional impact due to operation of the proposed expansion project. It is stated further that the EIA report and the Environment Management Plan (EMP) had been duly considered. It is further stated that the EIA report considers the installation of Ductile Iron Pipe production Plant. It need not be reiterated that the Ductile Iron Pipe production Plant was within the limit of 5 lakh TPA capacity for which the first Environmental Clearance was granted in 2008.

22. It appears from the record that the Appellant initiated the proceedings for the permission of the MoEF for the expansion of its project by addition 15 lakh TPA Beneficiation cum Pellet Plant with producer Gas Plant beyond the earlier Environmental Clearance granted for production capacity to the extent

of 5 lakh TPA. It appears that the Public Hearing was convened on 11.11.2011 under the Chairmanship of Additional District Magistrate, Pashchim Medinipur, (W.B.). The meeting was co-chaired by the Dr. Dipanjana Maulik, Environmental Engineer of WB Pollution Control Board. The meeting was attended by the villagers. The Appellant was not present in the said meeting, although, notice of the meeting was duly published. The local villagers have not raised any objection to the establishment of the industrial unit, particularly, the impugned expansion of the industrial activity as sought by the Project Proponent.

23. There cannot be two opinions about proposition that Section 20 of the National Green Tribunal Act, 2010 mandates the Tribunal, while passing any order or decision, to apply the principles of sustainable development, the precautionary principle and the polluters pay principle. In the context of the project in question, there is hardly any material to show that it would cause excessive emission from the plant which may cause pollution beyond tolerable degree. The concept of "sustainable development" implies development which would not severally degrade the environment. That does not mean absence of environmental impact but means a minimal impact which can be endured / tolerated by human beings. It also means that environment will not be degraded to such a degree that future generation will be deprived of a clean and healthy environment to a reasonable degree. It is common knowledge that everything is changing in this world. So also the environment. In "Lafarge Umiam Mining Private Limited vs. Union of India" **(2011) 7 SCC 338** the Apex Court observed :-

"75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapable requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognized by the concept of "sustainable development". It is equally well settled by the decision of this Court in Narmada Bachao Andolan v. Union of India that environment has different facets and care of the environment is an ongoing process. These concepts rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of a due diligence exercise). In such cases, the margin of appreciation doctrine would apply.

76. Making these choices necessitates decision, not only about how risks should be regulated, how much protection is enough, and whether ends served by environmental protection could be pursued more effectively by diverting resources to other uses. Since the nature and degree of environmental risk posed by different activities varies, the implementation of environmental rights and duties requires proper decision-making based on informed reasons about the ends which may ultimately be pursued, as much as about the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life."

24. It is necessary to strike a balance between development and environment protection to facilitate economic growth as well to secure

adequate adherence to the cause of environment. We mean to say, there cannot be any lop sided approach in environment related matters.

25. We have gone through the short affidavit filed by the Appellant on 19.03.2013. The affidavit does not give any new dimension to the issues under consideration. The Appellant, however, referred to certain allegations extracted from the pleadings in Writ Petition No. 1587(W) of 2011. That Writ Petition is filed by Sk. Sajad Ali, son of Oyahed. We are not directly concerned with the pleadings put forth in that Writ Petition filed by some other party. The Kolkata High Court has not granted any interim relief in that matter. We do not think that pleadings in that Writ Petition have any direct bearing on the issues raised in the present appeal.

26. We have perused copy of the minutes of proceedings of Public Hearing dated 11.11.2011. On perusal of the minutes of the proceedings, it is amply clear that members of the village locality had participated in the course of Public Hearing. It further appears that video recording of the Public Hearing was conducted and the text of the proceeding was made available in public domain. What appears from the record of the Public Hearing is that most of the issues raised by the villagers pertain to construction of metal road, provision for job opportunities and construction of a cement concrete bridge or improvement of road transport. It was also urged that the Project Proponent shall provide a children park. The authorized officer of the Project Proponent, namely, Shri S. Patwari assured that the existing road would be converted into a metal road. He also assured that the local school's improvement work

would be undertaken. He also assured that the local skilled job seekers may submit their applications to the Personnel Department of Factory Management for consideration. One cannot be oblivious of the fact that the area is affected by left wing extremists. Availability of employment is likely to partly help proper management of the left wing extremist activities. It appears that one, Shri Pradeep Behra is the only villager who requested to ensure proper emission control measures. The response of Shri S. Patwari was that the emission problem would not increase due to proposed expansion. It is explicit that the villagers were made aware of the nature of the proposed expansion and there was proper public consultation. The proceedings were signed by the seventy seven (77) villagers who attended the meeting. As pointed out before, the Appellant did not attend that meeting. The Appellant has not demonstrated as to how the expansion of the industrial unit is likely to substantially add pollution in the area. There cannot be duality of opinion that the expansion of the project will add some burden on the pollution in the area. Yet there is no tangible material to show that the pollution level will become intolerable on account of the expansion of the project. We mean to say, the Appellant has not placed on record any scientific data in support of the contention that the pollution level will be excessively increased due to the expansion of the industrial activities.

27. Considering totality of the foregoing discussion, we have no hesitation in holding that the Appellant failed to prove that the proposed expansion of the project is detrimental to the cause of environment. We hold that expansion of

the industrial activity as approved by the MoEF is within the permissible limits of sustainable development. This answers the point no. (iii).

28. The net result of the findings recorded on the points no. (i) to (iii) is that the Appeal is destitute of merits. Therefore, it fails. We have noticed that the Appellant indulged in the litigation without proper cause, though he is not an aggrieved party as such. It is high time to discourage such practice of fuelling the litigation without any substantial reason. Hence the Appeal is dismissed with direction that the Appellant shall deposit a cost of Rs. 15,000/- into the Legal Aid Fund of National Green Tribunal Bar Association. The Appeal is accordingly disposed of as dismissed. In case the cost is not deposited by the Appellant within a period of four (4) weeks, the Registrar to take proper action for recovery of the said amount as provided under Order XXI R 30 of the C.P. Code or any other provision envisaged under Order XXI or the provisions of the National Green Tribunal Act, 2010.

……., JM
(V. R. Kingaonkar)

……., JM
(U. D. Salvi)

……., EM
(P.S. Rao)

……., EM
(Ranjan Chatterjee)

……., EM
(B.S. Sajwan)

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(2024) 16 Supreme Court Cases 781

(BEFORE B.R. GAVAI AND B.V. NAGARATHNA, JJ.)

STATE OF UTTAR PRADESH AND OTHERS .. Appellants;

Versus

UDAY EDUCATION AND WELFARE TRUST AND ANOTHER .. Respondents.

Civil Appeals Nos. 2407-12 of 2021† with Nos. 2547-48 of 2020, 3132-38 of 2022, 3141 of 2022, 3142-46 of 2022†, 3147-49 of 2022 and 4061-62 of 2022, decided on October 21, 2022

A. **Environment Law — Forests, Wildlife and Zoos — Forest Produce/Felling of Trees/Felled Trees/Sawmills/Timber/Wood-based Industries — Forest based industries — Bar/Licence/TWP/Permission/Quota/Illegality/Irregularity — Licence — Irregularity — Establishment of new wood based industries (WBIs) — Cancellation of licences issued — Validity — No infirmities in issuance of licence — Cancellation of licence, held, illegal**

— Court permitted grant of additional licences if additional timber was found to be available, in accordance with 2016 Guidelines — FSI conducted survey and submitted its report — In said report estimation showing that sufficient timber was available legally to run new WBIs which was done by FSI by applying scientific method and had arrived at conclusion based on satellite data — Held, NGT erroneously brushed aside such a scientific exercise and set aside licences issued for establishment of new wood based industries

— Felling of trees in prohibited category — When permissible — Procedural safeguards — Regard to

— NGT has brushed aside a scientific exercise of FSI by merely recording finding that figures arrived at were by estimation and not realistic — NGT given finding that FSI survey also takes into consideration prohibited trees, felling of which is not permissible — Held, when estimation was done by FSI by applying scientific method and had arrived at conclusion based on satellite data, such a report could not have been brushed aside by NGT lightly

— Further, Notification dt. 7-1-2020 issued by Government of Uttar Pradesh provides that prohibited trees shall not be felled till 31-12-2025 except under unavoidable circumstances, such as when a tree is dead or dying or it constitutes a danger to persons or property, or its felling is necessary for executing development work approved by Government, or if fruit bearing capacity of such tree has declined substantially — Such trees cannot be felled unless permission to fell such tree has been obtained in writing from competent authority — Tree owners are also required to maintain 10 trees in place of each tree felled — It is thus clear that there is no absolute prohibition for felling trees which are in prohibited category — Prohibited trees also include

† Arising from the Judgment and Order in *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531 (National Green Tribunal, OA No. 335 of 2019, dt. 18-2-2020) and *Uday Education & Welfare Trust* v. *State of U.P.*, 2020 SCC OnLine NGT 3361 (National Green Tribunal, RA No. 40 of 2020 in OA No. 313 of 2019, dt. 2-12-2020) **[Reversed]**

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trees like mango, jamun, etc. which are fruit bearing trees — After a particular number of years, fruit bearing capacity of such trees drastically reduces and as such, farmers normally fell such trees and go in for replantation of orchard — Apart from that, CEC itself approved availability of timber for State of Uttar Pradesh in its report dt. 19-4-2007, which included 17.77 lakh cubic metres of prohibited trees — Said report of CEC was approved by Supreme Court vide its order dt. 18-5-2007

— Further in pursuance of order of NGT a Committee of Experts submitted its report giving therein details about availability of timber — Not only this, but in pursuance of directions issued by NGT, another detailed affidavit was filed on behalf of State Government, giving therein details about availability of timber — It was specifically stated in said affidavit that eucalyptus and poplar are main species of TOF (trees outside forest) and 80% of wood is derived there from — It was further pointed out that farmers in State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen — It was also pointed out that there would be an expected investment of about Rs 3000 crores in State with establishment of new WBIs — Same would employ more than 80,000 people, mostly in rural areas of State — However, all these factors have been ignored by NGT

— NGT grossly erred in deducting availability of timber from prohibited trees — By now, it is more than settled that courts should not enter into an area that is domain of experts. — FSI, which is undisputedly an expert body, had arrived at its estimation based on scientific method — NGT could not have sat in appeal over opinion of expert

— When 2016 Guidelines (issued by Ministry of Environment and Forest and Climate Change) itself provided for consumption of timber by WBIs based on report of IPIRTI (Indian Plywood Industries Research and Training Institute), there was no purpose to again get assessment done by IPIRTI — Thus, plea that even after SLC decided to get assessment done by IPIRTI not had done so not tenable as it had strong reasons for not doing so — Thus, decision-making process has not been vitiated either on account of illegality, irrationality or procedural impropriety — Therefore, when a body having expertise in the field, i.e. FSI, upon a scientific study, has concluded that there is sufficient timber available in State impugned orders of NGT not sustainable in law — Regulatory Framework, Bodies and Judicial Intervention — National Green Tribunal Act, 2010, S. 20

B. **Environment Law — Forests, Wildlife and Zoos — Forest Produce/ Felling of Trees/Felled Trees/Sawmills/Timber/Wood-based Industries — Forest based industries — Bar/Licence/TWP/Permission/Quota/Illegality/ Irregularity — Establishment of new wood based industries (WBIs) — Sanction of granting licences having regard to sustainable development**

— For sustainable development of State and on account of availability of timber, sanction of granting licences can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to

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— Therefore, State Government directed to ensure that while granting permission for felling trees of prohibited species, it should strictly ensure that permission is granted only when conditions specified in Notification dt. 7-1-2020 are satisfied — State Government shall also ensure that when such permissions are granted to applicants, applicants scrupulously follow mandate in said notification of planting 10 trees against 1 and maintaining them for five years

C. **Environment Law — National Green Tribunal Act, 2010 — Ss. 19(1) and 20 — Establishment of new wood based industries (WBIs) — Cancellation of licences issued — Validity — Held, cancellation is illegal without notice to affected persons — When NGT exercised its judicial powers, it could not have ignored principles of natural justice, which, even under S. 19(1), it is bound to follow**

D. **Environment Law — National Green Tribunal Act, 2010 — Ss. 19 and 20 — Challenge to licence issued to forest based industries — Credentials and bona fides of original applicants — Applicants not involved in any activity with regard to protection of environment; they had not been engaged in promoting plantation; aims and objectives of original applicants not clear; and sources of funding, etc. also not known**

— Though NGT have a power to take suo motu cognizance however, when credentials and bona fides of a litigant approaching NGT are seriously disputed, same cannot be ignored — Before a litigant is permitted to knock doors of justice and seek orders which have far-reaching effects of affecting employment of thousands of persons, stopping investment in State, prejudicing interests of farmers; credentials and bona fides of applicants must be tested

E. **Administrative Law — Judicial Review — Generally — Nature and Scope — Duty of the court is to confine itself to question of legality — Its concern should be: whether a decision-making authority exceeded its powers; committed an error of law; committed a breach of rules of natural justice; reached a decision which no reasonable tribunal would have reached or; abused its powers**

— Therefore, it is not for court to determine whether a particular policy or particular decision taken in fulfilment of that policy is fair — It is only concerned with manner in which those decisions have been taken — Extent of duty to act fairly will vary from case to case

— Shortly put, grounds upon which an administrative action is subject to control by judicial review can be classified as under: (i) Illegality: This means decision-maker must understand correctly law that regulates his decision-making power and must give effect to it; (ii) Irrationality, namely, *Wednesbury* unreasonableness and; (iii) Procedural impropriety

— Above are only broad grounds but it does not rule out addition of further grounds in course of time

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In pursuance of the order passed by the Supreme Court dated 5-10-2015 in *T.N. Godavarman Thirumulpad*, (2016) 13 SCC 586, the Ministry of Environment and Forest and Climate Change (MoEFCC) issued the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 vide Notification No. S.O. 3456 (E) dated 11-11-2016.

Subsequent to the 2016 Guidelines, timber assessment for trees outside forest (TOF) in the State of Uttar Pradesh for wood based industries (WBIs) was done for the period between February 2017 and December 2017 by the Forest Survey of India (FSI). The FSI thereafter submitted its report, which contains district wise, species wise and diameter class wise number of stems (trees), volume and annual potential production of timber from TOF in rural areas of all the districts of the State.

In pursuance of the 2016 Guidelines, the matter was placed before the State Level Committee (SLC) for grant of licences to various WBIs. The SLC in its meeting considered the matter about the grant of licences to various WBIs after taking into consideration the availability of wood in the State of Uttar Pradesh for determining the amount of timber available for new WBIs. In the said meeting, it was also decided that, in order to determine the correct number of new licences to be issued to WBIs under different categories against the timber available in the State, a reassessment may be done by the Indian Plywood Industries Research and Training Institute (IPIRTI).

In the meeting of the SLC, held on 7-9-2018, since it was found that the capacity of plywood units is taken as fixed by the 2016 Guidelines, which, in turn, was based on the assessment of IPIRTI, a decision was taken that there was no need for the fresh assessment of the capacity by IPIRTI.

In pursuance of the aforesaid decision, between 12-12-2018 and 31-12-2018, online letters of offer were issued to 1348 successful applicants. Subsequently, in the months of February and March 2019, provisional licences were issued to 1215 successful applicants in the 8 categories to set up their WBIs. Subsequent thereto, on 1-3-2019, a notice was issued by the Government of Uttar Pradesh communicating the grant of provisional licences to the newly selected WBIs.

Being aggrieved thereby, original application came to be filed by Uday Education and Welfare Trust before the NGT. Vide order dated 28-3-2019, the NGT directed the State Government to submit a report from the Joint Committee.

Being aggrieved by the notice dated 1-3-2019 issued by the State Government, original applications also came to be filed by Samvit Foundation and U.P. Timber Association respectively before the NGT.

Vide the impugned order dated 18-2-2020, the NGT allowed the said original applications and quashed and set aside the notice dated 1-3-2019 issued by the State Government for establishing new WBIs and all the provisional licences given.

Thus, the present appeals in the Supreme Court.

The respondent contended that FSI, while conducting the survey, has not taken into consideration the rotation period and, therefore, the survey is erroneous on the said count.

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Allowing the appeals, the Supreme Court

Held :

The Supreme Court in *T.N. Godavarman*, (1997) 2 SCC 267 passed a subsequent order on 4-3-1997 directing that all unlicensed sawmills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. (Paras 40 and 41)

Vide order dated 9-5-2002, the Supreme Court constituted CEC for monitoring of the implementation of the orders passed by it and for placing non-compliances of the cases before the Supreme Court. (Para 42)

Vide order dated 1-9-2006, the Supreme Court allowed licences to be issued to the closed sawmills, veneer and plywood units as per availability of timber and eligibility and seniority as per CEC recommendation. (Para 44)

In pursuance of the orders passed by the Supreme Court, SLC was constituted by the State of Uttar Pradesh for verification and compilation of information about closed WBIs. (Para 45)

The Supreme Court considered the report of CEC and passed the following order on 18-5-2007: (*T.N. Godavarman Thirumulpad case*, (2010) 13 SCC 325, SCC pp. 325-26, paras 4-5): The matters relate to sawmills, plywood and veneer units. CEC has considered the availability of wood for the industries, which was assessed as 43.70 lakh cu m from trees outside forests and 02.00 lakh cu m from government forests. It has also assessed the units into four categories. The Supreme Court accepted the CEC's recommendations. The sawmills, plywood and veneer units may be permitted, on the basis of the recommendations made by CEC. Licences may be given by the State Level Committees (SLCs). (Para 48)

In view of the permissions granted by the Supreme Court, the licences were granted to the unlicensed sawmills which were closed on account of the orders passed by the Supreme Court taking into consideration the availability of timber between 2007 and 2010. However, said licences were granted only to the units which were closed and not to the new units. (Para 51)

The matter again came up for consideration before the Supreme Court on 30-4-2010, when the Supreme Court passed order granting of additional licences if additional timber was found to be available (*T.N. Godavarman Thirumulpad case*, (2010) 13 SCC 316, SCC p. 319, para 12). (Paras 52 and 53)

Matter again came up for consideration before the Supreme Court on 5-10-2015 with regard to WBIs: (*T.N. Godavarman Thirumulpad case*, SCC p. 613, paras 130-31). Vide the order dated 5-10-2015, SLCs were authorised to take decisions regarding the grant of licence/permission to the WBIs. Vide the said order, it was also directed to constitute SLC under the Chairmanship of the Principal Chief Conservator of Forests with a representative of MoEFCC and an officer of the State Forest Department/Industries Department not below the rank

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of the Chief Conservator of Forests/equivalent rank. The Supreme Court further directed the SLCs to be constituted in each State/Union Territory for which the SLC was not yet constituted. The MOEF was also authorised to issue appropriate guidelines in conformity with the orders and directions issued by the Supreme Court and also the existing guidelines to the SLCs relating to the assessment of timber availability for WBIs. Appeals could be filed before MoEFCC against the decision of the SLC. (Paras 55 and 56)

T.N. Godavarman Thirumulpad v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 612 (2); *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 325; *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 3 SCC 312; *T.N. Godavarman Thirumulpad (50)* v. *Union of India*, (2013) 8 SCC 198; *T.N. Godavarman Thirumulpad (57)* v. *Union of India*, (2008) 16 SCC 337; *T.N. Godavarman Thirumulpad* v. *Union of India*, 2006 SCC OnLine SC 1439; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 600; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 316, *considered*

In accordance with the directions issued by the Supreme Court vide order dated 5-10-2015, MoEFCC issued 2016 Guidelines on 11-11-2016. The 2016 Guidelines provided for the constitution of the SLC as well as the powers and functions of SLC. Under Clause 4 of the 2016 Guidelines, the SLC was authorised to assess the availability of timber for wood based industrial units in the State/UT every five years. The SLC was also authorised to approve appropriate locations for setting up of wood based industrial units. It was also authorised to approve the name of wood based industrial units which may be considered for grant of fresh licence or enhancement of the existing licensed capacity. (Para 57)

In pursuance of the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh under the Chairmanship of Principal Chief Conservator of Forest/ Head of Forest Department on 17-5-2017. Vide Notification dated 11-9-2017, MoEFCC amended the 2016 Guidelines. (Para 60)

Subsequently, in accordance with the 2016 Guidelines, the SLC assessed the availability of timber for WBIs in the State of Uttar Pradesh, through the FSI. For assessing the availability of timber, the FSI conducted a survey and arrived at the annual potential production of timber from TOF in rural areas of all the districts of the State. FSI assessed the annual potential production from TOF at 77.74 lakh cubic metres. Subsequent to the survey and assessment, the SLC in its meeting dated 4-5-2018 considered the matter for grant of licence to various WBIs.

On the basis of the decision of the SLC, e-lottery was held. After following the procedure, provisional licences were issued to 1215 successful applicants in 8 categories of WBIs in February and March 2019. After the issuance of provisional licences, on 1-3-2019, the State Government issued a notice with regard to grant of provisional licences to the newly selected WBIs which came to be challenged before the NGT by way of filing the original applications by the respondents. The NGT after passing various interlocutory directions finally passed the impugned order and quashed and set aside the notice dated 1-3-2019 issued by the State Government and provisional licences given in pursuance thereof. (Para 62)

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In accordance with the 2016 Guidelines, the FSI conducted scientific survey and submitted its report in March 2018. (Para 66)

FSI considered various aspects before concluding and submitting its 101 page report. (Para 70)

Estimation as arrived at by the FSI was by applying a proper and adequate scientific method. (Para 71)

However, it is surprising that the NGT has brushed aside such a scientific exercise conducted by FSI by merely recording a finding that the figures arrived at were by estimation and not realistic. (Para 72)

Forest Survey of India (FSI) has published a paper on "Trees Outside Forest Resources in India". The contributors to the said paper are (*1*) Dr Subhash Ashutosh, DG, FSI; (*2*) Prakash Lakhchaura, DDG, FI, (*3*) Kamal Pandey, DD, FI; (*4*) Dr Sourav Ghose, Proj. Scientist D; (*5*) Sushila Tripathi; and (*6*) H.K. Tripathi. The paper shows that the timber and panel products of trees outside forest (TOF) origin have emerged as the major alternative to timber from forests and thus TOF have significantly obviated pressure from forests. The report shows that, the extent of TOF in the country has been assessed at 29.38 m hectare, which is around 8.94% of the total geographical area of the country. The report further shows that based on the recommendations of the National Commission on Agriculture (NCA, 1976), the Government of India launched a social forestry programme in the late seventies on a large scale. The paper further shows that, these days satellite data in a wide range of spectral, spatial, radiometric and temporal resolutions are available from various Remote Sensing Agencies of several countries. It further shows that there has been a rapid advancement in the development of digital image processing software. It, therefore, observes that the desired mapping of natural resources with reasonable accuracy is possible. The report refers to the methodology of assessment of TOF in different countries of the world and refers to various authorities. It refers to different types of methodologies used for different periods; the first one being from 1991 to 2001; the second period being from 2001 to 2016; and the third period being from 2016 onwards. The report shows that the State of Maharashtra has the highest potential annual yield of timber in India followed by the States of Uttar Pradesh and Karnataka. (Para 73)

It could thus be seen that the FSI has also emphasised the need of promoting TOF. It has been observed that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economy of the rural area, and environmental amelioration in the urban area and feed WBIs with raw material and thus generate significant employment. (Para 75)

When the estimation was done by the FSI by applying the scientific method and had arrived at the conclusion based on satellite data, such a report could not have been brushed aside by the NGT lightly. (Para 76)

Insofar as the finding of the NGT that the survey also takes into consideration the prohibited trees, the felling of which is not permissible, it will be relevant to note that the Notification dated 7-1-2020 issued by the Government of Uttar Pradesh

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provides that the prohibited trees shall not be felled till 31-12-2025 except under unavoidable circumstances, such as when a tree is dead or dying or it constitutes a danger to persons or property, or its felling is necessary for executing development work approved by the Government, or if the fruit bearing capacity of such tree has declined substantially. Such trees cannot be felled unless permission to fell such tree has been obtained in writing from the competent authority. The tree owners are also required to maintain 10 trees in place of each tree felled. It is thus clear that there is no absolute prohibition for felling the trees which are in the prohibited category. However, the same can be done only in exceptional circumstances. (Para 77)

It is to be noted that the prohibited trees also include trees like mango, jamun, etc. which are fruit bearing trees. After a particular number of years, the fruit bearing capacity of such trees drastically reduces and as such, the farmers normally fell such trees and go in for replantation of the orchard. Apart from that, CEC itself approved the availability of timber for the State of Uttar Pradesh in its report dated 19-4-2007, which included 17.77 lakh cubic metres of prohibited trees. The said report of the CEC was approved by the Supreme Court vide its order dated 18-5-2007. (Para 78)

Further in pursuance of the order of the NGT dated 28-3-2019, a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3-8-2019. Not only this, but in pursuance of the directions issued by the NGT on 18-12-2019, another detailed affidavit was filed on behalf of the State Government on 21-1-2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and 80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs 3000 crores in the State with the establishment of new WBIs. The same would employ more than 80,000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the NGT. (Para 79)

As such, the NGT has grossly erred in deducting the availability of timber from the prohibited trees. By now, it is more than settled that the courts should not enter into an area that is the domain of the experts. FSI, which is undisputedly an expert body, had arrived at its estimation based on the scientific method. The NGT could not have sat in appeal over the opinion of the expert. (Para 80)

The NGT has failed to take into consideration the stand of MoEFCC, which also supported the stand of the State that sufficient timber was available legally to run the new WBIs. (Para 82)

Insofar as the contention of the respondents that, though in the meeting of the SLC dated 4-5-2018, it was decided to get the assessment done by IPIRTI, the SLC in its meeting dated 7-9-2018 did a volte face and decided not to get the assessment done from IPIRTI, the perusal of the minutes of the meeting of

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the SLC dated 7-9-2018 would reveal that it was found that the IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was noticed that, as per the report of the FSI, the TOF available was 77,74,522 cubic metres. Adding the timber available in the forest area of 2,57,273 cubic metres, the total quantity of availability of timber was 80,31,795 cubic metres. It is to be noted that the SLC had taken note of the letter dated 29-8-2018 issued by the Director, IPIRTI, where he had communicated that no assessment pertaining to the annual consumption of timber by veneer and Plywood Industries was undertaken by the IPIRTI during the last two years in any State of the country. It was found that the 2016 Guidelines itself provided for annual consumption of timber based on the report of IPIRTI. In this premise, it was found that there was no need to conduct a fresh study/assessment for the consumption of timber by WBIs by IPIRTI. It was decided to accept the figures as provided in the 2016 Guidelines. (Para 83)

It can thus be seen that the decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. (Para 84)

Scope of judicial review

Scope of judicial review has been succinctly explained by the Supreme Court in *Tata Cellular*, (1994) 6 SCC 651 thus: The duty of the court is to confine itself to the question of legality. Its concern should be:

> (*1*) Whether a decision-making authority exceeded its powers?
>
> (*2*) Committed an error of law,
>
> (*3*) committed a breach of the rules of natural justice,
>
> (*4*) reached a decision which no reasonable tribunal would have reached or,
>
> (*5*) abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

> (*i*) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
>
> (*ii*) Irrationality, namely, *Wednesbury*, (1948) 1 KB 223 (CA) unreasonableness.
>
> (*iii*) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. (Para 84)

R. v. *Secy. of State for the Home Deptt., ex p Brind*, (1991) 1 AC 696 : (1991) 2 WLR 588 (HL), *relied on*

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Applying the aforesaid principle to the present case, it cannot be said that the decision-making process in the present case has been vitiated either on account of illegality, irrationality or procedural impropriety. (Para 85)

Tata Cellular v. *Union of India*, (1994) 6 SCC 651; *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA); *R.* v. *Secy. of State for the Home Deptt., ex p Brind*, (1991) 1 AC 696 : (1991) 2 WLR 588 (HL), *followed*

Uday Education & Welfare Trust v. *State of U.P.*, 2019 SCC OnLine NGT 1307; *Samvit Foundation* v. *State of U.P.*, 2019 SCC OnLine NGT 2227, *considered*

It cannot be disputed that Section 20 of the NGT Act itself directs the Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other. (Para 88)

It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck. (Para 89)

As already discussed hereinabove, the majority of TOF, is from two species i.e. poplar and eucalyptus. These trees are fast growing. If a market is available for the said trees, there will be impetus to the farmers for large-scale plantations. The rotation in these species is quite fast. This will, in turn, increase the green coverage. NGT has taken a lopsided view. It has failed to take into consideration the concerns expressed by the State. The NGT has committed patent error in ignoring the expert's report and sitting in appeal over the same. The NGT has also failed to take into consideration the stand taken by MoEFCC, which supported the stand of the State. As already discussed hereinabove, the State had emphasised many advantages of granting new licences to WBIs. It was also emphasised that the timber from the State of Uttar Pradesh was being exported to the State of Haryana. However, none of these aspects have been considered by the NGT. Therefore, the impugned orders of the NGT are not sustainable in law. (Para 95)

There is another reason, why the order of the NGT would not be sustainable. Though, on the date on which the review applications were rejected, 1215 provisional licences were already granted and 633 units had already been established and commenced production, the NGT has passed the impugned order1 which adversely affects their interest. Either some of such industries ought to have been impleaded in their representative capacity or a public notice should have been given so that such licence-holders could have represented their case. However, the said contention is lightly brushed aside by the NGT by holding that, since the issue is related to the general decision of the State which is applicable uniformly to all the proposed provisional licencees, it is not necessary to consider the issue raised in the impleadment applications. It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow. (Para 96)

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Another aspect that needs consideration is that a serious issue was raised before the NGT by the appellants in present case with regard to the credentials and bona fides of the original applicants. (Para 97)

One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants i.e. Uday Education and Welfare Trust and Samvit Foundation could not answer the specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information. (Para 98)

NGT, cannot be equated with other Tribunals and in environmental matters, it will also have a power to take suo motu cognizance. However, when the credentials and bona fides of a litigant approaching the NGT are seriously raised, the same cannot be ignored. (Para 99)

Municipal Corpn., Greater Mumbai v. *Ankita Sinha*, (2022) 13 SCC 401, *impliedly distinguished*

Before a litigant is permitted to knock the doors of justice and seek orders which have far-reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bona fides of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. (Para 100)

Though the Supreme Court allowed the appeals, setting aside the orders of the NGT, and upheld the action of the State Government in granting licences, the State and its authorities reminded that it is their duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases. (Paras 101 to 106)

Samatha v. *State of A.P.*, (1997) 8 SCC 191; *State of H.P.* v. *Ganesh Wood Products*, (1995) 6 SCC 363; *Essar Oil Ltd.* v. *Halar Utkarsh Samiti*, (2004) 2 SCC 392; *Indian Council for Enviro-Legal Action* v. *Union of India*, (1996) 5 SCC 281; *Maharashtra Land Development Corpn.* v. *State of Maharashtra*, (2011) 15 SCC 616; *Glanrock Estate (P) Ltd.* v. *State of T.N.*, (2010) 10 SCC 96; *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267, *followed*

Though for the sustainable development of the State and on account of the availability of the timber, sanction of granting licences can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. Therefore, the State Government directed to ensure that while granting permission for felling trees of the prohibited species, it should

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strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7-1-2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years. (Para 107)

Samvit Foundation v. *State of U.P.*, 2020 SCC OnLine NGT 531; *Vaneer Welfare Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3367; *Uday Education & Welfare Trust* v. *State of U.P.*, 2020 SCC OnLine NGT 3361; *U.P. Timber Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3354, *reversed*

Samvit Foundation v. *State of U.P.*, 2019 SCC OnLine NGT 2746; *Uday Education & Welfare Trust* v. *State of U.P.*, 2019 SCC OnLine NGT 2139; *State of U.P.* v. *Uday Education & Welfare Trust*, 2020 SCC OnLine SC 1441; *Kshitij Agnihotri* v. *Union of India*, 2018 SCC OnLine NGT 1752; *Common Cause* v. *Union of India*, (2017) 9 SCC 499; *Mantri Techzone (P) Ltd.* v. *Forward Foundation*, (2019) 18 SCC 494; *Pragnesh Shah* v. *Arun Kumar Sharma*, (2022) 11 SCC 493, *cited*

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The Judgment of the Court was delivered by

B.R. GAVAI, J.— For the reasons stated in the applications for impleadment/intervention, the same are allowed. This bunch of appeals challenges the order dated 18-2-2020[1], passed by the learned National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the learned NGT") in Original Applications Nos. 313, 335 and 396 of 2019, thereby quashing and setting aside the Notice dated 1-3-2019 issued by the State of Uttar Pradesh for establishing new wood based industries (hereinafter referred to as "WBIs") and also setting aside all the provisional licences given in pursuance thereof.

1 *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531

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2. The appeals also challenge the orders dated 18-3-2020[2], 2-12-2020[3], and 21-12-2020[4] vide which the review applications filed by the State of Uttar Pradesh and the provisional licence-holders have been rejected.

3. Civil Appeals Nos. 2407-2412 of 2021 are filed by the State of Uttar Pradesh. The rest of the civil appeals are filed by the provisional licence-holders, who were granted licences in pursuance of the notice dated 1-3-2019, issued by the State of Uttar Pradesh.

Factual background

4. For the sake of convenience, we will refer to the facts as found in Civil Appeals Nos. 2407-2412 of 2021 filed by the State of Uttar Pradesh.

5. There are series of orders passed by this Court and the Central Empowered Committee (hereinafter referred to as "CEC") appointed by this Court, issuing various directions for prohibiting/regulating the felling of trees as well as the establishment of WBIs. We will refer to them extensively in the subsequent paragraphs.

6. In pursuance of the order passed by this Court dated 5-10-2015 in *T.N. Godavarman Thirumulpad* v. *Union of India*[5], the Ministry of Environment and Forest and Climate Change ("MoEFCC" for short) issued the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 (hereinafter referred to as "the 2016 Guidelines") vide Notification No. S.O. 3456 (E) dated 11-11-2016.

7. Subsequent to the 2016 Guidelines, timber assessment for trees outside forest ("TOF" for short) in the State of Uttar Pradesh for WBIs was done for the period between February 2017 and December 2017 by the Forest Survey of India ("FSI" for short). The FSI thereafter submitted its report, which contains districtwise, specieswise and diameter classwise number of stems (trees), volume and annual potential production of timber from TOF in rural areas of all the districts of the State.

8. In pursuance of the 2016 Guidelines, the matter was placed before the State Level Committee ("SLC" for short) for grant of licences to various WBIs. The SLC in its meeting held on 4-5-2018, considered the matter about the grant of licences to various WBIs after taking into consideration the availability of wood in the State of Uttar Pradesh for determining the amount of timber available for new WBIs. In the said meeting, it was also decided that, in order to determine the correct number of new licences to be issued to WBIs under different categories against the timber available in the State, a reassessment may be done by the Indian Plywood Industries Research and Training Institute ("IPIRTI" for short).

2 *Vaneer Welfare Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3367
3 *Uday Education & Welfare Trust* v. *State of U.P.*, 2020 SCC OnLine NGT 3361
4 *U.P. Timber Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3354
5 (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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9. In the meeting of SLC, held on 7-9-2018, since it was found that the capacity of plywood units is taken as fixed by the 2016 Guidelines, which, in turn, was based on the assessment of IPIRTI, a decision was taken that there was no need for the fresh assessment of the capacity by IPIRTI.

10. In pursuance of the aforesaid decision, e-lottery was held on 12-12-2018 for grant of licences to various WBIs for the establishment of WBIs in 8 categories. Between 12-12-2018 and 31-12-2018, online letters of offer were issued to 1348 successful applicants. Subsequently, in the months of February and March 2019, provisional licences were issued to 1215 successful applicants in the 8 categories to set up their WBIs. Subsequent thereto, on 1-3-2019, a notice was issued by the Government of Uttar Pradesh communicating the grant of provisional licences to the newly selected WBIs.

11. Being aggrieved thereby, Original Application No. 313 of 2019 came to be filed by Uday Education and Welfare Trust before the learned NGT in March 2019. Vide order dated 28-3-2019[6], the learned NGT directed the State Government to submit a report from the Joint Committee comprising of the representative of Principal Secretary (Forest), U.P. and the Principal Chief Conservator of Forest, U.P. to examine the issues.

12. Being aggrieved by the Notice dated 1-3-2019 issued by the State Government, Original Applications Nos. 335 and 396 of 2019 also came to be filed by Samvit Foundation and U.P. Timber Association respectively, before the learned NGT.

13. In pursuance of the directions issued by the learned NGT, the Joint Committee Report came to be submitted on 3-8-2019. Vide order dated 6-8-2019[7] passed in Original Applications Nos. 313, 335 and 396 of 2019, the learned NGT directed the State Government to review the notice dated 1-3-2019 with regard to the establishment of new WBIs by 1350 units strictly in terms of the judgment of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India*[5]. Vide order dated 1-10-2019[8], the learned NGT directed the status quo to be maintained.

14. The State of Uttar Pradesh filed an Interlocutory Application No. 732 of 2019 in OAs Nos. 313, 335 and 396 of 2019, seeking modification of the order dated 6-8-2019[7] and the order dated 1-10-2019[8]. Vide order dated 18-12-2019[9], the learned NGT issued directions to the State Government to provide certain data. Subsequently, vide the impugned order dated 18-2-2020[1], the learned NGT allowed the said original applications and quashed and set aside the Notice dated 1-3-2019 issued by the State Government for establishing new WBIs and all the provisional licences given.

6 *Uday Education & Welfare Trust* v. *State of U.P.*, 2019 SCC OnLine NGT 1307
7 *Samvit Foundation* v. *State of U.P.*, 2019 SCC OnLine NGT 2746
5 (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)
8 *Uday Education & Welfare Trust* v. *State of U.P.*, 2019 SCC OnLine NGT 2139
9 *Samvit Foundation* v. *State of U.P.*, 2019 SCC OnLine NGT 2227
1 *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531

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15. Being aggrieved thereby, Civil Appeal (Diary) No. 12004 of 2020 was filed before this Court. Vide order dated 26-10-2020[10], this Court dismissed the said appeals as withdrawn with a liberty to file review application before the learned NGT. Vide orders dated 18-3-2020, 2-12-2020[3], and 21-12-2020[4], the learned NGT rejected the review applications.

16. The appellants, therefore, approached this Court being aggrieved by the orders passed by the learned NGT in the original applications as well as in the review petitions.

Submissions

17. We have heard Shri Vikas Singh, Shri P.S. Patwalia and Mr Rana Mukherjee, learned Senior Counsel appearing on behalf of the State of Uttar Pradesh, Shri V. Giri, Shri Syed Waseem Qadri, Shri V.K. Uniyal, Shri Vinay Navare, Shri V.K. Shukla, learned Senior Counsel, Ms Prerna Singh, and Mr Rudraksh Gupta, learned counsel appearing on behalf of the appellants, who were granted provisional licences. We have also heard Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel appearing on behalf of Respondent 1.

18. Shri Vikas Singh, learned Senior Counsel, submitted that the decision of the State Government to establish WBIs is in accordance with the 2016 Guidelines issued by MoEFCC. He submits that the timber requirement by 1215 new WBIs, which were issued provisional licences is only 12.35 lakh cubic metres per year, whereas the total timber available in the State is 80.30 lakh cubic metres per year. It is, therefore, submitted that, as such, the requirement is not even 20% of the total availability of timber.

19. The learned Senior Counsel submitted that the only authorised agency in the country to conduct a survey of the forest as well as TOF is FSI. It is submitted that the object of IPIRTI is not to conduct a survey of either forest or TOF. It is submitted that, as a matter of fact, the learned NGT itself has directed such a study to be conducted by FSI, which has already undertaken similar studies for many States like Punjab, Maharashtra and others. It is submitted that when the survey with regard to availability of timber in the State of Uttar Pradesh was done by the very same agency, the learned NGT fell in gross error in again directing the State Government to conduct such a survey through FSI.

20. It is submitted that even MoEFCC had supported the stand taken by the State of Uttar Pradesh and, therefore, the learned NGT ought not to have interfered with the decision of the State Government.

21. Shri P.S. Patwalia, learned Senior Counsel also submitted that the decision of the State Government was in tune with the decision of this Court dated 18-5-2007 and 5-10-2015 passed in *T.N. Godavarman Thirumulpad* v. *Union of India*[5]. It is submitted that when an expert body like the FSI had done an elaborate study, there was no reason for the learned NGT to have sat in appeal over the same. He further submits that though a detailed affidavit has

10 *State of U.P.* v. *Uday Education & Welfare Trust*, 2020 SCC OnLine SC 1441
3 *Uday Education & Welfare Trust* v. *State of U.P.*, 2020 SCC OnLine NGT 3361
4 *U.P. Timber Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3354
5 (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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been filed on behalf of the State of Uttar Pradesh in compliance with the order of the learned NGT dated 18-12-2019[9], regarding the availability of timber, the learned NGT has totally ignored the same.

22. Shri V. Giri, learned Senior Counsel, submits that the learned NGT erred in passing orders which have vitally affected the rights of the citizens who were granted provisional licences. He submits that the order impugned is totally in breach of the principles of natural justice. It is submitted that, from the perusal of the record, it is clear that the State of Haryana while calculating its requirement for wood also takes into consideration the import from the State of Uttar Pradesh. It is submitted that when there is excess wood available in the State of Uttar Pradesh, there is no reason why the same should be permitted to be exported to the State of Haryana at the cost of entrepreneurs in the State of Uttar Pradesh.

23. Shri Vinay Navare, learned Senior Counsel, submitted that the timber used in the WBIs is from the trees which are agro-based. He submits that though the State of Uttar Pradesh had adopted an elaborate procedure right from June 2018 till the grant of licences, the applicants before the learned NGT had taken no steps. Shri Navare submits that only after the provisional licences were issued and 632 out of 1215 WBIs provisional licence-holders had already been established and commenced operations, the applications were entertained and the orders were passed to the prejudice of the WBIs. It is submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as "the NGT Act") mandates following of the principles of natural justice. It is submitted that though the applications for impleadment were made by the WBIs, the applicants were not granted an opportunity of being heard.

24. Shri V.K. Uniyal, learned Senior Counsel submitted that the learned NGT had erred in using the word "allotted". It is submitted that there is no question of allotment of timber to the WBIs and they are required to purchase the same from the open market.

25. Shri V.K. Shukla, learned Senior Counsel submitted that the State Government decided to grant provisional licences for 8 different categories of WBIs. The requirement of raw material for different categories of WBIs is different. It is submitted that the learned NGT has grossly erred in considering all categories of WBIs together and setting aside the licences granted to all of them. It is submitted that the said industries are established in pursuance of the National Agro Forestry Policy of 2014 and as such the learned NGT ought not to have interfered.

26. Ms Prerna Singh, learned counsel appears for the appellants, who have been granted provisional licences for plywood (press only) category. She submits that for plywood (press only) industries, there is no requirement of consumption of timber directly. It is submitted that initially veneer is manufactured out of round/fresh timber. Veneer then so manufactured is glued and pressed together to manufacture plywood. It is submitted that the learned NGT has considered the requirement of timber as twice the actual requirement.

9 *Samvit Foundation* v. *State of U.P.*, 2019 SCC OnLine NGT 2227

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She submits that in the State of Uttar Pradesh, veneer is manufactured in surplus, which is exported to the State of Haryana.

27. Shri Rudraksh Gupta, learned counsel, submits that the learned NGT has failed to take into consideration the report of the National Poplar Commission of India.

28. All the learned counsel appearing on behalf of the appellants, in unison, submit that the original applicants before the Court were not bona fide litigants. It is submitted that there are reasons to believe that the proceedings were initiated at the instance of either the existing WBIs in the State of Uttar Pradesh to prevent competition or they were filed at the instance of the WBIs in the State of Haryana who were importing timber from the State of Uttar Pradesh at cheaper rates.

29. Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of Respondent 1, on the contrary, submits that this Court has repeatedly held that the principles of sustainable development, the precautionary principle and the polluter pays principle are to be followed consistently. He raised a preliminary objection on the ground that in view of Section 22 of the NGT Act, the scope of an appeal before this Court could be limited to that of Section 100 of the Code of Civil Procedure, 1908. It is, therefore, submitted that unless a substantial question of law is raised, the appeal could not be tenable.

30. Shri Dhruv Mehta submits that this Court vide order dated 12-10-1996[11] has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15-3-2005 to buttress his submission that WBIs can be permitted only if they exclusively use timber derived from poplar and eucalyptus species or agriculture waste products. It is submitted that the said guidelines also specifically provided that if the unit is found to have used any timber other than poplar and eucalyptus whether from a legal source or otherwise, the license granted to the unit shall be liable to be cancelled. He further relies on the report of CEC dated 12-10-2006. He submits that an assessment has to be done on the basis of the districtwise survey about timber availability from the TOF category. He submits that the said report of CEC itself would reveal that the assessment of the State is much less than what was initially projected by the State Government. He submits that unless the timber availability for the new WBIs is assessed and the SLC examines and recommends its approval, it is not permissible to establish new WBIs.

31. Shri Mehta further submits that the report of CEC dated 18-4-2007, accepted by this Court vide its order dated 18-5-2007[12], would show that the availability of timber for WBIs in the State of Uttar Pradesh is only 45.70 lakh cubic metres per year. The learned Senior Counsel submits that taking into consideration the fact that presently many imported machines from China are being used, the capacity of the existing units has gone much higher and,

11 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
12 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 325

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therefore, the timber which is available in the State of Uttar Pradesh would not be sufficient to meet the demand of the existing industries.

32. Shri Mehta submits that when SLC in its meeting dated 4-5-2018 had decided to get a report from IPIRTI, there was no occasion for it to review its decision in its subsequent meeting dated 7-9-2018. He submits that the Senior Officer of the Forest Department of the rank of Chief Conservator of Forest, Kanpur Division, Kanpur recommended that the report from IPIRTI should be obtained before deciding to issue the new licences. It is submitted that the letters of the said officer dated 11-9-2019 and 20-4-2018 have been ignored by the SLC.

33. Shri Dhruv Mehta further submits that Annexure I to the 2016 Guidelines is in contravention of the recommendations of CEC, which takes the requirement of timber for plywood unit as "NIL".

34. The learned Senior Counsel submits that vide Notification dated 20-7-2012, the State of Uttar Pradesh had notified 7 species of trees in the prohibited category. However, vide another Notification dated 31-10-2017, the said trees were taken out of the prohibited category. The learned NGT had set aside the said Notification of 2017 by order dated 11-9-2018[13]. It is submitted that the said order of the learned NGT has been accepted by the State of Uttar Pradesh and a fresh Notification has been issued on 7-1-2020, again bringing the said trees in the prohibited category. The learned Senior Counsel submits that while assessing the availability of timber, the trees under the said prohibited category have also been taken into consideration. He submits that if 20.75 lakh cubic metres is deducted from the availability of the timber, then the timber available in the State would be much less.

35. The learned Senior Counsel further submits that the survey has not been conducted for all the districts and has been conducted only for 30 districts and, therefore, the survey itself is erroneous.

36. The learned Senior Counsel further submits that FSI, while conducting the survey, has not taken into consideration the rotation period and, therefore, the survey is erroneous on the said count also. The learned Senior Counsel, in support of his submissions, relies on the judgment of this Court in *Common Cause* v. *Union of India*[14], *Mantri Techzone (P) Ltd.* v. *Forward Foundation*[15], *Municipal Corpn., Greater Mumbai* v. *Ankita Sinha*[16] and *Pragnesh Shah* v. *Arun Kumar Sharma*[17].

37. Shri Dhruv Mehta, relying on the judgment of this Court in *Ankita Sinha*[16], submits that this Court itself has considered the learned NGT to be a special Tribunal and held that it will even have jurisdiction to take suo motu cognizance of the environmental issues. He, therefore, submits that the

13 *Kshitij Agnihotri* v. *Union of India*, 2018 SCC OnLine NGT 1752
14 (2017) 9 SCC 499
15 (2019) 18 SCC 494
16 (2022) 13 SCC 401
17 (2022) 11 SCC 493

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arguments made on behalf of the appellants with regard to locus are without substance.

38. Shri Vikas Singh, learned Senior Counsel, in rejoinder, submits that the only distinction between the prohibited trees and non-prohibited trees is that the non-prohibited trees can be felled without permission, whereas the prohibited trees can be felled only in certain circumstances and only after the requisite permission is granted. He submits that the perusal of the FSI survey would reveal that even after the timber requirement for 1215 new units is taken into count, the State, still, will have 26.36 lakh cubic metres in reserve. He submits that if the new WBIs are permitted, it would result in more farmers going in for agro forestry in the State, which, in turn, will increase the forest cover. It is submitted that said 1215 units are likely to give employment to around 80,000 people. The learned Senior Counsel, therefore, submits that the impugned orders deserve to be quashed and set aside.

Earlier orders of this Court

39. For appreciating the rival submissions, it will be apposite to refer to certain orders passed by this Court.

40. This Court in *T.N. Godavarman*[11] passed an order on 12-12-1996. The relevant part thereof is as under: (SCC pp. 271-72, para 5)

> "*5.* … 6. Each State Government should within two months, file a report regarding:
>
> (*i*) the number of sawmills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
>
> (*ii*) the licenced and actual capacity of these mills for stock and sawing;
>
> (*iii*) their proximity to the nearest forest;
>
> (*iv*) their source of timber.
>
> 7. Each State Government should constitute within one month, an Expert Committee to assess:
>
> (*i*) the sustainable capacity of the forests of the State qua sawmills and timber-based industry;
>
> (*ii*) the number of existing sawmills which can safely be sustained in the State;
>
> (*iii*) the optimum distance from the forest, qua that State, at which the saw mill should be located."

41. Vide subsequent order dated 4-3-1997[18], this Court directed thus: (SCC p. 315, para 6)

> "*6.* All unlicensed sawmills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant

11 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
18 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 3 SCC 312

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of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks."

42. Vide order dated 9-5-2002[19], this Court constituted CEC for monitoring of the implementation of the orders passed by this Court and for placing non-compliances of the cases before it.

43. Vide order dated 29-10-2002[20], this Court further directed thus: (SCC p. 348, paras 44-45)

"*44*. No State or Union Territory shall permit any unlicensed sawmills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any sawmills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance with this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.

45. It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences."

44. Vide order dated 1-9-2006[21], this Court allowed licences to be issued to the closed sawmills, veneer and plywood units as per availability of timber and eligibility and seniority as per CEC recommendation.

45. In pursuance of the orders passed by this Court, SLC was constituted by the State of Uttar Pradesh for verification and compilation of information about closed WBIs.

46. The FSI conducted its assessment and assessed the annual availability of wood from TOF in the State of Uttar Pradesh at 55.61 lakh cubic metres vide report dated 3-4-2007.

47. On the basis of the report of the FSI, the SLC assessed the annual availability of timber for WBIs from TOF at 53.01 lakh cubic metres. CEC further reduced the same to 43.70 lakh cubic metres. However, it added 2.00 lakh cubic metres per year as timber available from government forests, and, therefore, assessed the annual availability of timber at 45.70 lakh cubic metres.

48. It is to be seen that in its report itself, the CEC included 17.77 lakh cubic metres of timber from the prohibited species. This Court considered the report of CEC and passed the following order on 18-5-2007[12]: (*T.N. Godavarman Thirumulpad case*[12], SCC pp. 325-26, paras 4-5)

"*4*. The matters relate to sawmills, plywood and veneer units. CEC has considered the availability of wood for the industries, which was assessed as 43.70 lakh cu m from trees outside forests and 02.00 lakh cu m from

19 *T.N. Godavarman Thirumulpad (50)* v. *Union of India*, (2013) 8 SCC 198
20 *T.N. Godavarman Thirumulpad (57)* v. *Union of India*, (2008) 16 SCC 337
21 *T.N. Godavarman Thirumulpad* v. *Union of India*, 2006 SCC OnLine SC 1439
12 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 325

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government forests. It has also assessed the units into four categories. We accept the CEC's recommendations. The sawmills, plywood and veneer units may be permitted, on the basis of the recommendations made by CEC. Licences may be given by the State Level Committees.

5. If there are any objections regarding grant of licences, the parties would be at liberty to submit their applications before the CEC for consideration."

49. It could thus be seen that in 2007 itself, this Court had accepted the recommendations of the CEC wherein the CEC had computed the total availability of timber and had also taken into consideration the availability of timber from the prohibited category.

50. Vide order dated 29-2-2008[22], this Court considered the issue regarding the manufacturing of medium density fibre board (MDF) and particle board in the States of Punjab, Uttarakhand and Karnataka. While considering the same, this Court passed the following order: (*T.N. Godavarman Thirumulpad case*[22], SCC pp. 601-602, para 34)

"*34*. The matter relates to manufacturing of Medium Density Fiber board (MDF) and particle board in the States of Punjab, Uttarakhand and Karnataka. CEC has filed its report and stated that there is a growing trend to use more and more MDF/particle board in place of industrial timber. The MDF/particle board help in reducing the pressure on natural forests. The lops and tops and small wood available from the plantations of eucalyptus, poplar, etc. raised on the non-forest area can be used by MDF/particle board plants."

51. In view of the permissions granted by this Court, the licences were granted to the unlicensed sawmills which were closed on account of the orders passed by this Court taking into consideration the availability of timber between 2007 and 2010. However, it is to be noted that the said licences were granted only to the units which were closed and not to the new units.

52. The matter again came up for consideration before this Court on 30-4-2010[23], when this Court passed the following order: (*T.N. Godavarman Thirumulpad case*[23], SCC p. 319, para 12)

"*12*. … (*ii*) after meeting the requirement of the licensed wood-based industry, the units permitted by this Hon'ble Court and the units whose category is yet to be finalised, the plywood/veneer units falling in Category IV may be considered for grant of license to the extent of timber availability and strictly in the order of seniority, subject to the one-time payment of Rs 9 lakhs per *press* in respect of the veneer units and compliance with the other conditions that have been stipulated. The one-time payment of penalty will be in addition to the normal licence fee and the other charges, if any, payable to the U.P. Forest Department. As decided earlier, the abovesaid amount should be kept in a designated interest bearing bank account and

22 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 600
23 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 316

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should be utilized only after the scheme in this regard is approved by this Hon'ble Court;"

53. It could thus be seen that this Court permitted granting of additional licences if additional timber was found to be available.

54. The CEC in its meeting held on 26-5-2010 with the SLC and representatives of WBIs Associations in the State of Uttar Pradesh, after taking into consideration the capacity of timber for vertical band saw (VBS) sawmill, modified/reduced the value of capacity of timber for VBS sawmills up to 10 hp from 540 to 270 cubic metres per year for the State of Uttar Pradesh in line with other States. As such, additional 9,58,230 cubic metres of timber became available for licences from 3,549 such VBS units. In view of this position between 2010 and 2015, licences came to be issued by the State of Uttar Pradesh to unlicensed WBIs, which were closed earlier by the order of this Court, as per the criteria recommended by the CEC and accepted by this Court.

55. The matter again came up for consideration before this Court on 5-10-2015[5] with regard to WBIs, when this Court passed the following order: (*T.N. Godavarman Thirumulpad case*[5], SCC p. 613, paras 130-31)

"*Category I: Matters relating to wood-based industries*

130. We have heard Shri Harish Salve, learned amicus curiae, Shri Ranjit Kumar, learned Solicitor General of India, Shri K.K. Venugopal, learned Senior Counsel and other learned Senior Counsel/counsel. Accordingly, we pass the following orders:

130.1. The State Level Committees for Wood-Based Industries ("SLCs") are, subject to the compliance with the prescribed guidelines and procedure, authorised to take decisions regarding the grant of license/permission to the wood-based industries.

130.2. In each State/UT for which the SLC has so far not been constituted, the SLC under the Chairmanship of the Principal Chief Conservator of Forests with a representative of the Ministry of Environment and Forest and Climate Change ("MoEFCC") and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank will immediately be constituted.

130.3. The MoEF is authorised to issue appropriate guidelines in conformation with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to assessment of timber availability for wood-based industries and grant of license/permission to the wood-based industries including addition of new machineries and also utilization of amounts recovered from the wood-based industries and connected matters.

130.4. Any person aggrieved by the decision taken by the SLC may file an appeal before MoEFCC seeking appropriate relief within 60 days' time. If, for any reason, any person is aggrieved by the orders so

5 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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passed in the appeal, he may prefer an appropriate petition/application/appeal before the appropriate forum/Court for grant of appropriate relief(s).

131. We also permit MoEFCC to condone the delay, if any, in filing an appeal, if sufficient cause is made out by the applicant(s)/appellant(s)."

56. It is thus seen that vide the said order, SLCs were authorised to take decisions regarding the grant of license/permission to the WBIs. Vide the said order, it was also directed to constitute SLC under the Chairmanship of the Principal Chief Conservator of Forest with a representative of MoEFCC and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank. This Court further directed the SLCs to be constituted in each State/Union Territory for which the SLC was not yet constituted. The MOEF was also authorised to issue appropriate guidelines in conformity with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to the assessment of timber availability for WBIs. Appeals could be filed before MoEFCC against the decision of the SLC.

MoEFCC Guidelines

57. In accordance with the directions issued by this Court vide order dated 5-10-2015[5], MoEFCC issued 2016 Guidelines on 11-11-2016. The 2016 Guidelines provided for the constitution of the SLC as well as the powers and functions of SLC. Under Clause 4 of the 2016 Guidelines, the SLC was authorised to assess the availability of timber for wood based industrial units in the State/UT every five years. The SLC was also authorised to approve appropriate locations for setting up of wood based industrial units. It was also authorised to approve the name of wood based industrial units which may be considered for grant of fresh license or enhancement of the existing licensed capacity.

58. Clause 5 of the 2016 Guidelines provides for the assessment of the availability of timber for wood based industrial units. It requires that the quantity of timber would be assessed by commissioning the study, preferably in collaboration with institutes/universities of repute, once in five years. Under Clause 6 of the 2016 Guidelines, the timber requirement for various units as assessed by IPIRTI was given in Annexure I. The said Annexure I reads thus:

"The Indian Plywood Industry Research and Training Institute (IPlRTI), Bangalore an autonomous body under the Ministry of Environment, Forest and Climate Change has assessed the timber requirement per unit for peeling length of 4 feet and 8 feet size in the plywood/veneer units as 5 cu m and 11 cu m respectively per day on an average of 8 working hours per day. By assuming that the peeling units work for 8 hours per day on an average for 300 days in a year the normal timber requirement of the peeling length of 4 feet size in veneer units is 1500 cu m. The total timber requirement for the standalone veneer units may be assessed by calculating the equivalent number of 4 feet length

5 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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machines and by taking its normal installed capacity as 1500 cu m per annum.

The timber requirement of a plywood unit may be taken as 'nil' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as the raw material produced by the veneer units. The plywood units use presses of various sizes such as 8 × 4 × 6, 8 × 4 × 12, 8 × 4 × 15, 4 × 4 × 7, 4 × 4 × 10. A 8 × 4 × 10 capacity press can produce up to 10 plywood pieces of 8' × 4' size per hour whereas a 8 × 4 × 15 capacity press can produce up to 15 plywood pieces of 8' × 4' size per hour and so on. The normative installed capacity of the plywood units will accordingly depend upon the number and the type of presses. This number and type of presses installed in each of the plywood unit may be assessed and thereafter equivalent number or presses of 8 × 4 × 10 capacity may be calculated. The normative annual timber requirement for an integrated plywood unit having a 8 × 4 × 10 capacity press may be taken as 2000 cu m per annum, and accordingly the total requirement of timber for the plywood units should be calculated."

59. It could thus be seen that even as per the assessment of the IPIRTI, the timber requirement of a plywood unit is required to be taken as "NIL" on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as raw material. It could thus be seen that the plywood units use presses of various sizes.

60. In pursuance of the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh under the Chairmanship of Principal Chief Conservator of Forest/Head of Forest Department on 17-5-2017. Vide Notification dated 11-9-2017, MoEFCC amended the 2016 Guidelines.

61. Subsequently, in accordance with the 2016 Guidelines, the SLC assessed the availability of timber for WBIs in the State of Uttar Pradesh, through the FSI. For assessing the availability of timber, the FSI conducted a survey and arrived at the annual potential production of timber from TOF in rural areas of all the districts of the State. FSI assessed the annual potential production from TOF at 77.74 lakh cubic metres. Subsequent to the survey and assessment, the SLC in its meeting dated 4-5-2018 considered the matter for grant of license to various WBIs. The SLC decided to get the reassessment done by IPIRTI to determine the correct number of new licences to be issued to WBIs under different categories against the available timber. However, subsequently, the SLC, in its meeting dated 7-9-2018, found that IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was also found that the State of Haryana had adopted the timber consumption figures based on the CEC figures of 2007. It was therefore unanimously resolved by the SLC that there was no need for any fresh study/assessment for the consumption of timber by WBIs to be conducted by IPIRTI and to adopt the figures for WBIs as were referred to in the 2016 Guidelines. It further found that the CEC in its meeting dated 26-5-2010 had reduced the annual consumption of timber of sawmills up to 10 hp or less hp to 270 cubic metres from 540 cubic metres.

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62. On the basis of the decision of the SLC, e-lottery was held. After following the procedure, provisional licences were issued to 1215 successful applicants in 8 categories of WBIs in February and March 2019. After the issuance of provisional licences, on 1-3-2019, the State Government issued a notice with regard to grant of provisional licences to the newly selected WBIs which came to be challenged before the learned NGT by way of filing the aforesaid original applications by the respondents. The learned NGT after passing various interlocutory directions finally passed the impugned order and quashed and set aside the Notice dated 1-3-2019 issued by the State Government and provisional licences given in pursuance thereof. As such we are required to examine the correctness of the decision of the learned NGT.

Considerations

63. The learned NGT while passing the impugned order[1] has set aside the notice of the State of Uttar Pradesh on the following grounds:

63.1. That the WBIs can be allowed to operate only after ensuring timber and raw material availability to sustain such industries and this has to be determined in actual terms and not on mere assumptions.

63.2. That it is difficult to accept the stand of the State of Uttar Pradesh that there was availability of timber/raw material to sustain the new WBIs.

63.3. That it is the stand of the State of Uttar Pradesh that the total potential availability of timber per year in the State of Uttar Pradesh is 80.30 lakh cubic metres, which includes 2.56 lakh cubic metres from the government forests and 77.74 lakh cubic metres from TOF. Out of 80.30 lakh cubic metres, 71.8 lakh cubic metres were stated to be available from 22 species and 8.50 lakh cubic metres from the other species. Out of 22 species, there are 10 species that are prohibited from felling and as such, 20.75 lakh cubic metres from these 10 species are liable to be excluded.

63.4. That the major contribution is from eucalyptus (28 lakh cubic metres) and Poplar species (15 lakh cubic metres), a total of which is 43 lakh cubic metres. Thus, the figure is not actual but presumptive.

63.5. That the standard error percentage adopted by the FSI is not correct and is much higher.

63.6. That the total availability of timber for consumption including that from the government forests would not be more than 40-45 lakh cubic metres per year.

63.7. That the potential availability of 77.74 lakh cubic metres from TOF as given in the affidavit has been overestimated.

64. It is to be noted that after this Court allowed the licences to be issued to the closed sawmills vide order dated 1-9-2006[21], the SLCs were constituted. The permissions were to be granted on the recommendations of the CEC. Vide order dated 18-5-2007[12], this Court had also accepted the recommendation of the CEC. Vide another order dated 30-4-2010[23], this Court permitted additional

1 *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531
21 *T.N. Godavarman Thirumulpad* v. *Union of India*, 2006 SCC OnLine SC 1439
12 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 325
23 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 316

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licences to be granted if additional timber was available. Accordingly, licences were granted between 2010 and 2015. Vide subsequent order dated 5-10-2015[5], this Court allowed the grant of license/permission to unlicensed WBIs in the country. This Court had directed the reconstitution of the SLCs for WBIs. In pursuance of the directions issued by this Court, the 2016 Guidelines were issued by MoEFCC. As per the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh on 17-5-2017.

65. One of the duties which was cast upon the SLC was to assess the availability of timber for wood based industrial units in the State. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute, once in five years.

66. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. It will be relevant to refer to the relevant part of the Foreword of the said report of the FSI.

> "In the recent past, a number of requests were received for establishment of wood based industries in the State for which the raw material would come from outside the forest areas. Since accurate assessment of TOF is needed for effective planning and management, Uttar Pradesh Forest Department requested FSI to make Agro-Climatic zone wise assessment on the basis of inventory already done during its regular course of inventory conducted in the State. As per the final report, the total stems as estimated from the study is 299.43 million with a volume of 79.40 m. cum. The total yield in the Uttar Pradesh is estimated 7.8 million cum.
>
> The report gives an assessment of the growing stock existing outside State forest reserves. The report has also indicated districtwise, specieswise and girth classwise number of stems and volume in each Agro-Climatic Zone wise of inventoried districts. I am confident that this report would provide useful data for arriving at informed policy and programme interventions to give a fillip to forestry sector in the State besides providing benchmark data for tree crop in non-forest area."

67. After conducting the survey, the FSI has come to a finding that the State of Uttar Pradesh had an annual potential production of 77,74,521 cubic metres of timber. For conducting the survey, the FSI acquired satellite data for the inventoried districts of Uttar Pradesh State from National Remote Sensing Centre, Hyderabad. The entire gambit of scientific methodology was applied. The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. It will be relevant to refer to the following part of the report of the FSI:

> "The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. Estimates of stems per ha and volume per ha were generated according to species and diameter class for block, linear and scattered stratum under each district. Estimated stems and their volumes were generated according to species and diameter class by aggregating stem per hectare and volume per hectare over the entire

5 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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Rural CNF Area of each stratum for each district by combining the estimated stems and volumes under block, linear and scattered stratum. By aggregating the estimates of stems and volume of all the three strata, the estimates of stems and volumes according to species and diameter class has been prepared for rural area separately."

68. The FSI had also divided the State of Uttar Pradesh into 9 Agro-climatic zones to generate the estimate of growing stock and annual potential production. Districtwise production was estimated before concluding that 77,74,521 cubic metres of timber was the annual potential production. The contention of the respondents that the rotation method was not applied is totally incorrect. It will be relevant to refer to Para 5.4 of the said report, which reads thus:

"5.4. *Estimates of Annual Potential Production of Wood from TOF (Rural)*

Yield of a forest depends on several factors such as its structure, growth, density, productive capacity of site, etc. The estimate of yield been generated for rural area using growing stock estimates. The Uttar Pradesh Forest Department was supplied the complete list of tree species which were found in the survey. The Uttar Pradesh Forest Department was asked to indicate tree species being used as 'timber' and 'non-timber' and rotation period of specified timber species. *The Uttar Pradesh Forest Department informed that they do not have rotation period of all species and requested Forest Survey of India to use their rotation period used for estimation of annual potential production of wood.* The species are arranged into two groups; one containing the species having timber values and another containing rest by agro-climatic zone wise. The yield has been calculated using Von Mentel formula as given below:

Yield = 2GS/R

Where GS: Growing Stock

R: rotation period

Using the information of timber value, growing stock and rotation period in the above mentioned formulae specieswise yield were calculated. The Agro-Climatic Zone wise yield has been given in Annexure 11."

(emphasis supplied)

69. The standard error was also determined by applying the appropriate scientific method.

70. The FSI, hence, considered various aspects before concluding and submitting its 101 page report.

71. It could thus be seen that the estimation as arrived at by the FSI was by applying a proper and adequate scientific method.

72. However, it is surprising that the learned NGT has brushed aside such a scientific exercise by merely observing that the figures arrived at were by estimation and not realistic.

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73. The FSI has published a paper on "Trees Outside Forest Resources in India". The contributors to the said paper are (*1*) Dr Subhash Ashutosh, DG, FSI; (*2*) Prakash Lakhchaura, DDG, FI, (*3*) Kamal Pandey, DD, FI; (*4*) Dr Sourav Ghose, Proj. Scientist D; (*5*) Sushila Tripathi; and (*6*) H.K. Tripathi. The paper shows that the timber and panel products of TOF origin have emerged as the major alternative to timber from forests and thus TOF have significantly obviated pressure from forests. The report shows that, the extent of TOF in the country has been assessed at 29.38 m hectare, which is around 8.94% of the total geographical area of the country. The report further shows that based on the recommendations of the National Commission on Agriculture (NCA, 1976), the Government of India launched a social forestry programme in the late seventies on a large scale. The paper further shows that, these days satellite data in a wide range of spectral, spatial, radiometric and temporal resolutions are available from various Remote Sensing Agencies of several countries. It further shows that there has been a rapid advancement in the development of digital image processing software. It, therefore, observes that the desired mapping of natural resources with reasonable accuracy is possible. The report refers to the methodology of assessment of TOF in different countries of the world and refers to various authorities. It refers to different types of methodologies used for different periods; the first one being from 1991 to 2001; the second period being from 2001 to 2016; and the third period being from 2016 onwards. The report shows that the State of Maharashtra has the highest potential annual yield of timber in India followed by the States of Uttar Pradesh and Karnataka.

74. It will be relevant to refer to the conclusion of the said paper, which is as follows:

> "**5. Conclusion**
>
> TOF play a significant role in the socio-economic lives of people both in rural and urban areas of the country by enriching the people and society at large economically as well as ecologically. The management of TOF assumes high significance in the country for realising much higher potential which it offers in generating wood based economy and ecosystem services including carbon sequestration. Periodic assessment of TOF resources including its spatial distribution is prerequisite for its scientific management in the country. FSI is mandated with this task however there is need for continuous improvement in the methodology and inclusion of more number of variables in the assessment. The organisation will have to be further strengthened particularly in terms of manpower, to address the emerging information needs on TOF. There has been regular refinement in methodologies in the last three decades to quantify TOF resources using various statistical designs and estimates with better precision. The advancement of technologies in the field of remote sensing, satellite image processing and availability of high resolution satellite data made the methodology much precise and easier. The progression of science may further refine the existing method of TOF assessment in near future.

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TOF also act as an important source for timber and fuel wood to meet the demands of fast growing population of the country. There is a need to put focus on increasing the growing stock per hectare or yield of TOF by better management and planning. There is also a need for a separate policy on TOF to ensure its expansion and sustainable management for multiple ecological benefits, timber production, carbon sequestration and for obviating pressure from the natural forests.

Occupying nearly 9% of the geographical area of the country, TOF are significant natural, renewable resource which make vital contribution to the agro-ecology, socio-economy of the rural areas, environmental amelioration in the urban areas and feed wood based industries with the raw material and thus generate significant employment. TOF form a nearly 38% of the carbon sink in forest and tree cover of the country. TOF offers the path for achieving the national policy goal of 33% of forest and tree cover in the country. Through expansion of TOF, particularly in agro-forestry and on culturable wastelands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030."

75. It could thus be seen that the FSI has also emphasised the need of promoting TOF. It has been observed that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economy of the rural area, and environmental amelioration in the urban area and feed WBIs with raw material and thus generate significant employment.

76. It is our considered view that, when the estimation was done by the FSI by applying the scientific method and had arrived at the conclusion based on satellite data, such a report could not have been brushed aside by the learned NGT lightly.

77. Insofar as the finding of the learned NGT that the survey also takes into consideration the prohibited trees, the felling of which is not permissible, it will be relevant to note that the Notification dated 7-1-2020 issued by the Government of Uttar Pradesh provides that the prohibited trees shall not be felled till 31-12-2025 except under unavoidable circumstances, such as when a tree is dead or dying or it constitutes a danger to persons or property, or its felling is necessary for executing development work approved by the Government, or if the fruit bearing capacity of such tree has declined substantially. Such trees cannot be felled unless permission to fell such tree has been obtained in writing from the competent authority. The tree owners are also required to maintain 10 trees in place of each tree felled. It is thus clear that there is no absolute prohibition for felling the trees which are in the prohibited category. However, the same can be done only in exceptional circumstances.

78. It is to be noted that the prohibited trees also include trees like mango, jamun, etc. which are fruit bearing trees. After a particular number of years, the fruit bearing capacity of such trees drastically reduces and as such, the farmers normally fell such trees and go in for replantation of the orchard. Apart from that, it is to be noted that the CEC itself approved the availability of timber for the State of Uttar Pradesh in its report dated 19-4-2007, which included 17.77 lakh cubic metres of prohibited trees. The said report of the CEC was approved by this Court vide its order dated 18-5-2007[12].

12 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 325

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79. It is further to be noted that in pursuance of the order of the learned NGT dated 28-3-2019[6], a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3-8-2019. Not only this, but in pursuance of the directions issued by the learned NGT on 18-12-2019[9], another detailed affidavit was filed on behalf of the State Government on 21-1-2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and 80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs 3000 crore in the State with the establishment of new WBIs. The same would employ more than 80,000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the learned NGT.

80. As such, the learned NGT has grossly erred in deducting the availability of timber from the prohibited trees. By now, it is more than settled that the Courts should not enter into an area that is the domain of the experts. FSI, which is undisputedly an expert body, had arrived at its estimation based on the scientific method. The learned NGT could not have sat in appeal over the opinion of the expert.

81. It is relevant to note that MoEFCC, in pursuance of the directions issued by the learned NGT had filed its opinion on 18-12-2019. It will be relevant to refer to Para 8 of the said opinion.

> "8. That based on the examination of available documents in light of the provisions of the Wood Based Industries (Establishment and Regulation) Rules, 2016, MoEFCC is of the opinion that the State of U.P. has followed the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 (as amended in 2017) issued by MoEFCC. The availability of wood in the State has also been assessed by the SLC through FSI. The Ministry is, therefore, of the view that the SLC may approve setting up of new industries in the State if it is satisfied that sufficient timber is available legally to run the new wood based industries."

82. The learned NGT has failed to take into consideration the stand of MoEFCC, which also supported the stand of the State that sufficient timber was available legally to run the new WBIs.

83. Insofar as the contention of the learned counsel for the respondents that, though in the meeting of the SLC dated 4-5-2018, it was decided to get the assessment done by IPIRTI, the SLC in its meeting dated 7-9-2018 did a volte face and decided not to get the assessment done from IPIRTI, the perusal of the minutes of the meeting of the SLC dated 7-9-2018 would reveal that it was found that the IPIRTI had not done any new study/assessment of the

6 *Uday Education & Welfare Trust* v. *State of U.P.*, 2019 SCC OnLine NGT 1307
9 *Samvit Foundation* v. *State of U.P.*, 2019 SCC OnLine NGT 2227

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consumption of timber by various WBIs in any State/Union Territory. It was noticed that, as per the report of the FSI, the TOF available was 77,74,522 cubic metres. Adding the timber available in the forest area of 2,57,273 cubic metres, the total quantity of availability of timber was 80,31,795 cubic metres. It is to be noted that the SLC had taken note of the letter dated 29-8-2018 issued by the Director, IPIRTI, where he had communicated that no assessment pertaining to the annual consumption of timber by veneer and plywood industries was undertaken by the IPIRTI during the last two years in any State of the country. It was found that the 2016 Guidelines itself provided for annual consumption of timber based on the report of IPIRTI. In this premise, it was found that there was no need to conduct a fresh study/assessment for the consumption of timber by WBIs by IPIRTI. It was decided to accept the figures as provided in the 2016 Guidelines.

84. It can thus be seen that the decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. The scope of judicial review has been succinctly explained by this Court in *Tata Cellular* v. *Union of India*[24], which has been consistently followed in a catena of cases. This Court, in the said case, observed thus: (SCC pp. 677-78, para 77)

> "*77.* The duty of the court is to confine itself to the question of legality. Its concern should be:
>
> 1. Whether a decision-making authority exceeded its powers?
> 2. Committed an error of law,
> 3. Committed a breach of the rules of natural justice,
> 4. Reached a decision which no reasonable tribunal would have reached or,
> 5. Abused its powers.
>
> Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:
>
> (*i*) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
>
> (*ii*) Irrationality, namely, *Wednesbury*[25] unreasonableness.
>
> (*iii*) Procedural impropriety.

24 (1994) 6 SCC 651

25 *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)

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The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R.* v. *Secy. of State for the Home Deptt., ex p Brind*[26], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, 'consider whether something has gone wrong of a nature and degree which requires its intervention'."

85. Applying the aforesaid principle to the present case, it cannot be said that the decision-making process has been vitiated either on account of illegality, irrationality or procedural impropriety.

86. With regard to the contention of Shri Dhruv Mehta, learned Senior Counsel, that Annexure I to the 2016 Guidelines providing the timber requirement of a plywood unit to be taken as "NIL" is contrary to the CEC recommendations is concerned, we do not find any substance in the said submission. Firstly, the 2016 Guidelines have been issued by MoEFCC in pursuance of the directions issued by this Court dated 5-10-2015[5]. In any case, the raw material for plywood industries is "veneer" and the raw material for veneer is "timber". We find substance in the contention of the appellants that, if timber is to be considered again as a raw material for plywood, then it will amount to showing the consumption of the same timber more than once, which is, in fact, not consumed. It is not in dispute that veneer is a raw material for plywood, which is derived from timber. The same timber is used for deriving veneer and such veneer, which is used for manufacturing plywood, cannot be counted twice. In any case, as long as the 2016 Guidelines which are issued in pursuance of the directions issued by this Court are not set aside, the contention in that regard is without substance.

87. That leads us to consider the contention of the respondents that this Court has repeatedly emphasised the principles of sustainable development, the precautionary principle and the polluter pays principle. No doubt that the protection of the environment is of utmost importance. It is the duty of this generation to protect the environment for future generations.

Conclusion

88. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.

89. It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck.

26 (1991) 1 AC 696 : (1991) 2 WLR 588 (HL)

5 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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90. A body having expertise in the field i.e. the FSI, upon a scientific study, has concluded that there is sufficient timber available in the State of Uttar Pradesh. Not only that, but the respondents themselves have placed on record a project report on "Study to know the percentage and value of the raw material sourced through U.P. Forests by Plywood and Khair (Kattha) Industries in U.P." The said report is prepared by RAK Management Consultants on the instructions of the Department of Planning, Economic and Statistics Division, Government of Uttar Pradesh. The said report itself shows that the consultants, during the field survey, observed resentment among the plywood manufacturers against the process of issuing new licences to the WBIs by the State Government.

91. The report further goes on to show that on an average 1500-1700 trucks/tractor trollies of the eucalyptus and popular wood from all over Haryana, Punjab, Himachal Pradesh and Uttar Pradesh go to Yamuna Nagar, Haryana daily. Out of the said trucks/trollies, approximately 300-350 tractor trollies and some other small vehicles per day come from Uttar Pradesh. The report shows that approximately 5 to 6 lakh metric tons of timber per year is exported to Yamuna Nagar. The said material belongs to the western districts of Uttar Pradesh i.e. Muzaffarnagar, Saharanpur, Shamli, Baghpat and Meerut. It is stated that there is no sufficient market for this produce in the said area. The report further finds that the western districts of Uttar Pradesh i.e. Meerut, Muzaffarnagar, Saharanpur, Baghpat and Shamli, etc. do not have sufficient number of plywood and veneer units and as such, they are not sufficient for the entire farmers' produce available in the said area. The report itself shows that the western districts need around 80-85 plywood and veneer units. The report goes on further to show that there is dissatisfaction among the already existing industrialists about the assessment made by the FSI.

92. It is further to be noted that the State has specifically pointed out before the learned NGT that on the establishment of WBIs, an investment of about Rs 3000 crore was likely to be attracted in the State; employment opportunities to over 80,000 people will be available and the farmers of the State would get a more remunerative price. This would result in more impetus for large-scale plantation and agro-forestry. The State also emphasised that this will reduce dependence on traditional/cash crops and also reduce migration of people to urban areas. It is also emphasised that if the new WBIs are permitted, it will reduce the import of WBIs produce. However, all these aspects have not been taken into consideration by the learned NGT.

93. It will be relevant to note that the Forest Research Institute, Dehradun, Uttarakhand has published "Country Report of Poplars and Willows Period : 2012-2015". The Report states that the timber from poplar and willow is the backbone of vibrant plywood, board, match, paper and sports goods industries. The Report further states that in tune with Indian Agroforestry Policy, 2014, the plantation of poplar has been promoted. It further states that the Planning Commission of India has given special grants to certain States for the diversification of agriculture where farmers are advised to move away from paddy cultivation to sustain agricultural production. Poplar and eucalyptus

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are among the few trees promoted under this diversification plan. The Report states that poplar plays a significant role in rural development by generating employment for many categories of skilled, semi-skilled and unskilled workers.

94. The paper on "Trees Outside Forest Resources in India" published by the FSI, cited supra, also emphasises that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economic improvement of the rural areas, environmental amelioration in the urban areas and feed WBIs with raw material and thus generate significant employment. TOF form nearly 38% of the carbon sink in the forest and tree cover of the country. It states that TOF offers the path for achieving the national policy goal of 33% of forest and tree cover in the country. It states that through the expansion of TOF, particularly in agro-forestry and on culturable wastelands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030.

95. As already discussed hereinabove, the majority of TOF is from two species i.e. poplar and eucalyptus. These trees are fast growing. If a market is available for the said trees, there will be impetus to the farmers for large-scale plantations. The rotation in these species is quite fast. This will, in turn, increase the green coverage. We are of the considered view that the learned NGT has taken a lopsided view. It has failed to take into consideration the concerns expressed by the State. The learned NGT has committed patent error in ignoring the expert's report and sitting in appeal over the same. The learned NGT has also failed to take into consideration the stand taken by MoEFCC, which supported the stand of the State. As already discussed hereinabove, the State had emphasised many advantages of granting new licences to WBIs. It was also emphasised that the timber from the State of Uttar Pradesh was being exported to the State of Haryana. However, none of these aspects have been considered by the learned NGT. We are, therefore, of the considered view that the impugned orders of the learned NGT are not sustainable in law.

96. There is another reason, in our view, why the order of the learned NGT would not be sustainable. Though, on the date on which the review applications were rejected, 1215 provisional licences were already granted and 633 units had already been established and commenced production, the learned NGT has passed the impugned order[1] which adversely affects their interest. Either some of such industries ought to have been impleaded in their representative capacity or a public notice should have been given so that such licence-holders could have represented their case. However, the said contention is lightly brushed aside by the learned NGT by holding that, since the issue is related to the general decision of the State which is applicable uniformly to all the proposed provisional licencees, it is not necessary to consider the issue raised in the impleadment applications. It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the learned NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow.

1 *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531

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97. Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and bona fides of the original applicants.

98. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior Counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.

99. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in *Ankita Sinha*[16] to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take suo motu cognizance. However, when the credentials and bona fides of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.

100. We find that before a litigant is permitted to knock the doors of justice and seek orders which have far-reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bona fides of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. There is also scope to infer that it could be at the behest of the WBIs in the adjoining Yamuna Nagar District of Haryana where lakhs of tons of timber is exported from the State of Uttar Pradesh. There is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana. We would, therefore, only request the learned NGT that, when credentials and bona fides of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the bona fides and credentials of such litigants.

101. Though we are allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licences, we would like to remind the State and its authorities that it is their

16 *Municipal Corpn., Greater Mumbai* v. *Ankita Sinha*, (2022) 13 SCC 401

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duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases.

102. The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. In this regard, it will be apposite to refer to certain earlier pronouncements of this Court.

103. In *Samatha* v. *State of A.P.*[27], a three-Judge Bench of this Court after referring to the earlier judgment in *State of H.P.* v. *Ganesh Wood Products*[28] observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

104. In *Essar Oil Ltd.* v. *Halar Utkarsh Samiti*[29], this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in *Indian Council for Enviro-Legal Action* v. *Union of India*[30] were quoted as under: (*Indian Council for Enviro-Legal Action case*[30], SCC p. 296, para 31)

> "*31.* ... While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in

27 (1997) 8 SCC 191
28 (1995) 6 SCC 363
29 (2004) 2 SCC 392
30 (1996) 5 SCC 281

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hand, in other words, there should not be development at the cost of environment...."

105. In *Maharashtra Land Development Corpn.* v. *State of Maharashtra*[31] reference was made to *Glanrock Estate (P) Ltd.* v. *State of T.N.*[32] wherein it was observed as under: (*Glanrock Estate case*[32], SCC p. 109, paras 27-30)

"*27*. ... Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India* (Writ Petition No. 202 of 1995), it has been held that "inter-generational equity" is part of Article 21 of the Constitution.

28. What is inter-generational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then inter-generational equity would stand violated.

29. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The "precautionary principle" and the "polluter pays principle" flow from the core value in Article 21.

30. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about inter-generational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle."

106. Of course, one cannot ignore one of the several dicta of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India*[11] wherein this Court enunciated the definition of "forest" in the following words: (SCC pp. 269-70, para 4)

"*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. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof."

31 (2011) 15 SCC 616
32 (2010) 10 SCC 96
11 (1997) 2 SCC 267

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107. Though we find that for the sustainable development of the State and on account of the availability of the timber, sanction of granting licences can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. We, therefore, direct the State Government to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7-1-2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years.

108. In the result, the appeals are allowed. The impugned orders[1, 2, 3, 4] passed by the learned National Green Tribunal, Principal Bench, New Delhi in Original Applications Nos. 313, 335 and 396 of 2019 as well as in the review applications are quashed and set aside. Pending applications, if any, shall stand disposed of. No costs.

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1 *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531
2 *Vaneer Welfare Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3367
3 *Uday Education & Welfare Trust* v. *State of U.P.*, 2020 SCC OnLine NGT 3361
4 *U.P. Timber Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3354

Item No.04 Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)

Appeal No.05/2021/EZ
(I.A. No.78/2021/EZ)

IN THE MATTER OF:

Anand Kumar Jha
Son of Shri Bhalchandra Jha,
Resident of Type-B, Dakra,
Dakra Colliery,
Ranchi .....Appellant(s)

Versus

1. Union of India,
Through its Secretary,
Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhawan, Jor Bagh Road,
New Delhi-11003;

2. Jharkhand State Pollution Control Board,
Through its Member Secretary,
H.E.C., Dhurwa,
Ranchi-834004;

3. State of Jharkhand,
Through Chief Secretary,
Project Bhawan, Doranda,
Ranchi-834002;

4. Damodar Valley Corporation (DVC),
Through its Chairman-cum-Managing Director DVC Towers,
VIP Road, Kolkata-700054

.....Respondent(s)

Date of hearing: 15.05.2023

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Appellant(s) : Mr. Kaustav Dhar, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Apurba Ghosh, Advocate for R-1,
Mr. Ashok Prasad, Advocate for R-2 (in Virtual Mode),
Ms. Aishwarya Rajyashree, Adv. for R-3 (in Virtual Mode),
Mr. Sanjay Upadhyay, Advocate a/w
Mr. Prasun Mukherjee, Advocate and
Mr. Deepak Agarwal, Advocate for R-4

ORDER

1. This Appeal has been filed by the Appellant seeking quashing of the Environmental Clearance dated 28.04.2021 granted to the Respondent No.4, Damodar Valley Corporation (DVC), for Tubed Coalmine Project of 6 MTPA in the District of Latehar, Jharkhand.

2. The contention of the Appellant is that the said mining block is located in an area of 460 ha; the EIA report of the project does not estimate the background concentration of Mercury (Hg) and Chromium (Cr) in Particulate Matter as required by Standard ToR No.15; there is no detailed timeline, maps etc. provided in the EIA report with respect to Additional ToR No.15; no details have been given in the EIA report regarding ecological restoration and mine reclamation plan prepared with local/native species found in the area as was required by Additional ToR No.3; the Palamau Tiger Reserve and other Protected areas are in close proximity to the site of the Tubed Coalmine Project and there is no presence of Schedule-I species which appears to be unlikely.

3. In the present Appeal the Environmental Clearance dated 28.04.2020 is under challenge, as such the Tribunal raised a preliminary objection regarding limitation.

4. Learned Counsel for the Appellant has relied upon the judgment of the Hon'ble Supreme Court dated 23.09.2021 in *Miscellaneous Application No. 665 of 2021 in SMW(C) No. 03 of 2021; Re: Cognizance for Extension of Limitation*. It is mentioned therein that the limitation period has itself been extended by the Hon'ble Supreme Court by the said judgment in cases where limitation would have expired during the period from 15.03.2020 till 02.10.2021.

5. The Respondent No.4, Damodar Valley Corporation, has filed counter-affidavit dated 26.04.2022 wherein a preliminary objection of limitation has been taken. The second ground of objection is whether the Appellant can be permitted to maintain the present Appeal as an 'aggrieved person'.

6. We will first take up the second issue namely as to whether the Appellant can be said to be an aggrieved person within the meaning of Section 16 and 18 of the National Green Tribunal Act, 2010 to entitle him to maintain the present Appeal. Section 16 of National Green Tribunal Act, 2010, reads as under: -

> *"**16. Tribunal to have appellate jurisdiction**-*
> *Any person aggrieved by, -*
>
> *(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*
>
> *(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*
>
> *(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*
>
> *(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);*
>
> *(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State*

Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

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

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

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

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

7. Section 18 of the National Green Tribunal Act, 2010 reads as under: -

> ***18. Application or appeal to Tribunal-***
>
> *(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.*
>
> *(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by--*
>
> *(a) the person, who has sustained the injury; or*
>
> *(b) the owner of the property to which the damage has been caused; or*
>
> *(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or*
>
> *(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or*
>
> *(e) any person aggrieved, including any representative body or organization."*

8. In the paragraph-1 under the heading 'Facts' in the Memo of Appeal the Appellant has described himself as a resident of Village Dakra in Ranchi District of Jharkhand and he *"is stated to be concerned by the environmental impact of the mining activities of the Respondent No.4 in the State of Jharkhand".* It is stated that the Appellant has been observing for the past several years that the air quality in various parts of the State of Jharkhand especially in the region around the coal mines has severely deteriorated due to large number of coal mines in Jharkhand. The Appellant is stated to have observed that due to pollution being caused, there is an

increase in the respiratory illness in the persons residing in the region and he has been raising the issue of pollution and other environmental issues due to coal mines in electronic and other media. It is also stated that the Appellant being a resident of Jharkhand is concerned by the grant of Environmental Clearance to Tubed Coal Mines Project of Respondent No.4 and hence has filed the present Appeal.

9. In our opinion, merely saying that he is concerned with pollution in Jharkhand, the Appellant cannot be said to be a 'person aggrieved' within the meaning of Section 16 and Section 18 of the National Green Tribunal Act, 2010. The Tubed Coal Mines Project of the Respondent No.4 is located in Latehar District of Jharkhand. The Appellant is not a resident of Latehar District nor has he stated that he is a resident of any of the villages which may fall within the area of operation of the Tubed Coal Mines Project of the Respondent No.4. The Project Proponent in its counter-affidavit has stated that the place of residence of the Appellant is about 200 km from the Project site.

10. Among the various issues raised for assailing the grant of Environmental Clearance to the Respondent No.4 one of the grounds taken by him is that 'Public Consultation' was not conducted as per the EIA Notification, 2006 and that the process of 'public consultation' has not been done in the present case while granting Environmental Clearance to the Project of Respondent No.4.

11. Nowhere in the body of the Appeal has the Appellant claimed that he had sought hearing during public consultation as a matter of right but was not given such opportunity. None of the persons who

live in the vicinity of the villages covered by the Tubed Coal Mines Project of the Respondent No.4 are present before this Tribunal to complain that they were not provided opportunity of public hearing and that public consultation was not held as per the EIA Notification, 2006.

12. In this view of the matter, we hold that the Appellant is not a person aggrieved within the meaning word "any person aggrieved" under Section 16 and Section 18 of the National Green Tribunal Act, 2010.

13. Mr. Sanjay Upadhyay, learned Counsel for the Project Proponent submitted that it is also not disclosed in the body of the Appeal other than what has been reproduced hereinabove and which is based upon the Appellant's own disclosure, to show what are his credentials and *bonafides* in approaching the Tribunal. Reliance has been placed on the judgment of the Hon'ble Supreme Court in *Civil Appeal No.2407-2421 of 2021, State of Uttar Pradesh & Ors. vs. Uday Education and Welfare Trust & Anr.*

14. The Hon'ble Supreme Court in *Civil Appeal No.2407-2412 of 2021, The State of Uttar Pradesh & Ors. Etc. Etc. vs. Uday Education and Welfare Trust & Anr. Etc. Etc.* and connected cases, has held that when issues and objections to the credentials and *bonafides* of litigants approaching the National Green Tribunal are seriously raised, the same cannot be ignored. Before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and *bonafides* of the Applicants must be tested. The Hon'ble Supreme Court, therefore, laid stress

that when credentials and *bonafides* of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to affect the rights of many, the National Green Tribunal should ensure the *bonafides* and credentials of such litigants. The Hon'ble Supreme Court also observed that the Tribunal must examine questions as to what were the aims and objectives of the Applicants and what are their sources of funding etc. Merely filing some Public Interest Litigations in the past would not suffice. Paragraphs-96 to 99 of the said judgment read as under: -

> *"96. Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and bonafides of the original applicants.*
>
> *97. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.*

98. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in the case of Ankita Sinha and Others (supra) to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take suo motu cognizance. However, when the credentials and bonafides of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.

99. We find that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bonafides of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. There is also scope to infer that it could be at the behest of the WBIs in the adjoining Yamuna Nagar district of Haryana where lakhs of tons of timber is exported from the State of Uttar Pradesh. There is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana. We would, therefore, only request the learned NGT that, when credentials and bonafides of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the bonafides and credentials of such litigants."

15. In the present case, nothing has been indicated by the Appellant as to why he is **only** concerned by the environmental impact of the mining activities of the 'Respondent No.4' in the State of Jharkhand as stated by him in paragraph-1 of the **"FACTS".** What is his source of funding to maintain the Appeal or to take up such

environmental issues has not been disclosed. Assailing the Environmental Clearance, several scientific and technical facts and documents have been referred to by the Appellant; what is his source of funding and source of obtaining such documents, has not been disclosed. Not a single person who may be said to be a resident of any village affected by the mining operation of the Tubed Coal Mines Project of the Respondent No.4 is before us. Therefore, a serious shadow of doubt is cast upon the credentials and *bonafides* of the Appellant to maintain the present Appeal and in our considered view he cannot be said to be a 'person aggrieved' within the meaning of Section 16 and Section 18 of the National Green Tribunal Act, 2010 and, therefore, this Appeal is not maintainable at the behest of the Appellant.

16. The next preliminary issue raised by the Respondent No.4 is with regard to limitation. The Tribunal even on the first date while entertaining the Appeal had raised the issue of limitation and the same had been kept open for decision.

17. Mr. Sanjay Upadhyay, learned Counsel for the Respondent No.4, Damodar Valley Corporation, submitted that though the Environmental Clearance was granted to the Respondent No.4 on 28.04.2020 for 06 million tonnes per annum of the Tubed Coal Mines Project and uploaded on the Website of DVC (www.dvc.gov.in) under the head 'Business' sub-heading 'mining', the recommendations for grant of Environmental Clearance was made in the 51st Meeting of Expert Appraisal Committee on 05.12.2019, the Minutes of which were uploaded on the portal and, therefore, the decision of the Expert Appraisal Committee was already in public domain and, therefore, in the knowledge of the

Appellant whereas the present Appeal has been filed after a delay of almost one and half years challenging the Environmental Clearance granted to Respondent No.4.

18. The learned Counsel has also referred to the provisions of Paragraph-8 of the MoEF&CC Notification dated 14.09.2006 also known as 'EIA Notification, 2006' and submitted that Paragraph-8 provides that the regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the Applicant within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environmental Impact Assessment Report, and where Environmental Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents.

19. Reference has also been made to Paragraph-8 (ii) which provides that the regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement and intimation of this decision shall be simultaneously conveyed to the Applicant.

20. Paragraph-8 (i) & (ii) of the EIA Notification, 2006, read as under: -

"8. Grant or Rejection of Prior Environmental Clearance (EC)-

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days."

21. According to the Respondent No.4, the recommendations for Environmental Clearance was made in the 51st Meeting of the Expert Appraisal Committee on 05.12.2019, Minutes of which were uploaded on the website/portal on 13.12.2019. Under sub

paragraph-(i) of paragraph-8 of the EIA Notification, 2006, the period of hundred and five days (105) would end on 28.03.2020. The period of limitation has been extended by the Hon'ble Supreme Court in view of the outbreak of COVID-19 pandemic in *Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, Re: Cognizance for Extension of Limitation* and connected cases, and on 23.03.2020 the Hon'ble Supreme Court directed extension of the period of limitation in all proceedings pending before the Courts and Tribunals with effect from 15.03.2020 till further orders and which has been further extended till 28.02.2022. The present Appeal was filed on 08.10.2021 i.e. within the extended period of limitation and, therefore, the same cannot be said to be barred by limitation.

22. However, since we have already held the Appeal to be not maintainable considering the *bonafides* and credentials of the Appellant we dismiss this Appeal as not maintainable.

23. In view of the above, the Appeal No.05/2021/EZ is dismissed.

24. Interlocutory Applications, if any stand disposed of accordingly.

25. There shall be no order as to costs.

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

May 15, 2023
Appeal No.05/2021/EZ
(I.A. No.78/2021/EZ)
MN

Gmail ENVIRO LEGAL DEFENCE FIRM <eldflegal@gmail.com>

Service in Dilip Kumar Samantaray Vs. State of Odisha & Ors. [OA. No. 14 of 2026]

1 message

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Dear Sir/Ma'am

Please find attached copy of the Compilation of Judgments filed on behalf of Respondent No. 08 Vedanta Ltd. in the above mentioned case.

Thanks & Regards
--
Sameer Manher
Clerk
Enviro Legal Defence Firm
29, Presidential Estate LGF,
Nizamuddin East New Delhi – 110013
Ph. No. 011-40573181

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