**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**
**WESTERN ZONE BENCH AT PUNE**
**APPEAL NO. 144 OF 2025**



**IN THE MATTER OF:**

VIJAYKUMAR KARSANBHAI GADHAVI & ORS. ....APPELLANTS

VERSUS

UNION OF INDIA AND ORS. .... RESPONDENTS

**INDEX**

| | | |
|---|---|---|
| | Management of Dimakuchi Tea Estate 1958 SCC OnLine SC 4. | |
| 8. | **ANNEXURE A/7**<br>Copy of the relevant extracts of the judgment passed by the Hon'ble Supreme Court in the matter titled Securities and Exchange Board of India v. Ajay Agarwal, (2010) 3 SCC 765. | 356-366 |
| 9. | **ANNEXURE A/8**<br>Copy of the relevant extracts of the judgment passed by this Hon'ble Tribunal in the matter titled Vikrant Tongad v. DTTC, 2015 SCC Online NGT 3. | 367-386 |
| 10. | **ANNEXURE A/9**<br>Copy of the relevant extracts of the judgment passed by this Hon'ble Tribunal in the matter titled M/s. DRG Grate Udhyog vs. State of Madhya Pradesh and Ors. O.A. No. 96/ 2012. | 387-411 |
| | Proof of service | 412 |

NOTARY NARAN K. GADHAVI Mandvi-Kachchh. Reg. No. 22113 Expiry Dt. 08-06-2030 GOVERNMENT OF INDIA

**THROUGH**

**RAHUL CHOUDHARY** **KAUSTAV DHAR**
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**PLACE: PUNE/NEW DELHI**

**DATE: 31.07.2025**

NOTARIAL REGISTER
SR. No.:1503/2025
DATE :31 JUL 2025

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NOTARY NARAN K. GADHAVI Mandvi-Kachchh. Reg. No. 22113 Expiry Dt. 08-06-2030 GOVERNMENT OF INDIA

**ADDITIONAL AFFIDAVIT FILED ON BEHALF OF THE APPELLANTS**

I, Vijaykumar Karsanbhai Gadhavi, aged about 63 years, S/o Karsanbhai Gadhavi, R/o Village Panchotiya Vadi Vistar, P.O. Mota Layja, Pincode - 370465, do hereby solemnly affirm and declare on oath as under:

1. That I am the Appellant No. 1 in the above titled Appeal and conversant with the facts and circumstances of the case and competent to swear this Additional Affidavit.

N.K. GADHAVI SEAL NOTARY

2. That I have read and understood the order dated 27.06.2025 passed by this Hon'ble Tribunal in the above-captioned matter, and I am accordingly filing this additional affidavit pursuant to the liberty granted by this Hon'ble Tribunal vide the said order, for the purpose of placing on record the available information indicating that the proposed project area is a turtle nesting site:

> *"7. Learned counsel for the applicants has thereafter drawn our attention to page 90 of the paper-book (Annexure-A5), which is a map wherein the site in question is shown where the proposed pipelines are to be laid, which appears to go through a green patch, which is a condition said to be unclassified forest area, but in this, turtle nesting site is not shown. It is not made clear as to at how much distance from, the same is located. Hence, we direct the learned counsel for the applicants/appellants to indicate the same for better understanding of the matter in issue, by filing additional affidavit in that regard, which shall be filed before the next date".*

3. Hence, the Appellants herein are filing the additional affidavit along with Google Earth Satellite Imagery Maps and photographs with Geo-Coordinates in compliance of the order dated 27.06.2025 and some additional submissions.

**RTI Response from Forest Department Confirms Presence of Turtle Nesting Sites Around Proposed Project Area:**

4. The Appellants in this regard submit that a RTI reply dated 23.03.2022 received from the Forest Range Officer Mandvi, Kachchh West Forest Division clearly shows year wise data from 2011 to 2021 with regard to the number of eggs found, as well as the details of number the of dead turtles found between 2019 to 2022 which clearly makes it evident about the presence of turtles along the coast of Mandvi Taluka. Additionally, the RTI response includes a list of wild animals rescued from in and around Bada, such as Nilgai, Sarus Crane, Crocodiles, Striped Hyena, Peacocks, and others. The Appellants herein reproduces the tables as provided in the RTI Response:

**Details of turtle eggs hatched on the beach of Mandvi Taluka**

| SN | Year | No. of Eggs found | Details of the birth and release of the hatchlings into the sea. |
|---|---|---|---|
| 1 | 2020-2021 | 574 | 487 |
| 2 | 2019-2020 | 285 | 247 |
| 3 | 2018-2019 | 787 | 504 |
| 4 | 2017-2018 | 108 | 81 |
| 5 | 2016-2017 | 329 | 290 |
| 6 | 2015-2016 | 558 | 472 |
| 7 | 2014-2015 | 1266 | 1112 |
| 8 | 2013-2014 | 1452 | 1163 |
| 9 | 2012-2013 | 1789 | 1392 |
| 10 | 2011-2012 | 1400 | 1157 |

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**Details of Turtles found dead on the beach of Mandvi Taluka**

| SN | Date | Place | Number | Name |
|---|---|---|---|---|
| 1 | 09.04.2019 | On the beach of Modhwa | 1 | Green sea turtle |
| 2 | 01.05.2019 | Mandvi Windfarm Beach | 1 | Green sea turtle |
| 3 | 16.06.2019 | Mandvi Windfarm Beach | 1 | Green sea turtle |
| 4 | 25.07.2021 | On the shore of Dharbadi | 1 | Green sea turtle |
| 5 | 25.08.2021 | Mandvi Windfarm Beach | 1 | Green sea turtle |
| 6 | 03.10.2021 | On the beach of Kathada | 1 | Green sea turtle |
| 7 | 08.03.2022 | Mandvi Windfarm Beach | 1 | Green sea turtle |

In light of the RTI Response from the Forest Range Officer, the submission made by the Deputy Conservator, of the very same Department claiming that no endangered species are found in the project area, is not only factually inaccurate but also grossly misleading. (True Translated Copy of the RTI is already part of the record as ANNEXURE A/10 of the Appeal at Pg. No. 126-137)

5. Further, a RTI response received from the Range Forest Officer, Mandvi-Kachchh dated 06.02.2025 (erroneously typed as 06.02.2024), clearly affirms the presence of turtles on the Mandvi seashore. This official response substantiates the ecological significance of the proposed project area thereby confirming the presence of turtle nesting activity.

| SN | Information Sought | Response Received |
|---|---|---|
| 1. | Provide details of turtle eggs hatched on the seashore in Mandvi Range area from the year 2011/2012 to 2023/2024: | 8682 |
| 2. | Provide details of turtles found dead on the seashore in Mandvi Range area from the year 2011/2012 to 2023/2024: | 33 |
| 3. | Provide the species of turtles: | Green Sea Turtle |

Thus, the RTI reply demonstrates that a total of 8,682 turtle eggs were recorded between 2011 and 2024, and 33 dead turtles were found along the seashore of

Mandvi Taluka. These figures, officially provided by the Forest Department, establish the presence of turtles in the proposed project area.

True translated copy of the RTI Application filed on 10.01.2025 and RTI Response Received on 06.02.2025 are annexed herewith as **ANNEXURE A/1.**

6. The Appellants herein submit that the Forest Department has provided information only regarding the total number of eggs hatched on the seashore in Mandvi Range from the year 2011 to 2024, however, they did not provide any Location Details, Map, and Geo-Coordinates of Turtle Nesting Sites. In this regard, a RTI Application was filed on 18.04.2025 seeking exact locations of the turtle nesting sites on the beach of Mandvi Taluka. That the RTI Response from Range Forest Officer, Mandvi dated 15.05.2025 has stated that the location cannot be shared due to the risk/fear of poaching.

   True translated copy of the RTI Response dated 15.05.2025 received from Range Forest Officer, Mandvi is annexed herewith **ANNEXURE A/2.**

**Letter to Forest Department requesting Location Details, Map, and Geo-Coordinates of Turtle Nesting Sites in Mandvi Taluka:**

7. It is further submitted that in pursuance to the order dated 27.06.2025, the Appellants herein have written a letter dated 18.07.2025 to the Forest Range Officer, Mandvi Range, Kachchh West Forest Division, Bhuj thereby requesting to provide with the Location Details, Map, and Geo-Coordinates of Turtle Nesting Sites in Mandvi Taluka in view of the RTI Response dated 23.03.2022 and 06.02.2025 received from the Forest Range Officer Mandvi. However, till date no reply has been received.

   Copy of the Letter dated 18.07.2025 to Forest Range Officer, Mandvi Range, Kachchh West Forest Division, Bhuj is annexed herewith as **ANNEXURE A/3.**

N.K. GADHAVI SEAL NOTARY

**Maps Depicting Distances Based on Appellants' Personal Knowledge of Nesting Site Locations which are fenced and protected by the Forest Department:**

8. That the Forest Department has provided information about nesting activities as well as number of eggs hatched from 2011 onwards on the beach of Mandvi Taluka, however, no information was provided about exact location of those nesting sites either under the RTI or in response to the Letter dated 18.07.2025 sent to Forest Range Officer, Mandvi Range, Kachchh West Forest Division, Bhuj by the Appellants.

9. The Appellants, between the years 2022 and 2025, have documented the nesting sites located around the project area by capturing photographs of these sites, which are protected by the Forest Department. Additionally, the Appellants have prepared Google Earth satellite imagery based on the geo-coordinates of these nesting sites, indicating their respective distances from the project site as follows:

   i. **December, 2022** – Turtle nesting has been witnessed within 2.6 kms (22°51'34", 69°9'41") from the proposed project site in December, 2022 and the same are fenced and protected by the Forest Department.

   ii. **March, 2025** - Turtle nesting has been witnessed within 3 kms (Latitude - 22.896093°, Longitude – 69.100433°) from the proposed project site in March, 2025 and the same are fenced and protected by the Forest Department.

   iii. **July, 2025** - Turtle nesting has been witnessed within 6 kms (Latitude – 22.909246°, Longitude – 69.078471°) from the proposed project site in July, 2025 and the same are fenced and protected by the Forest Department.

   Thus, from the above instances, it is evident that turtle nesting has been consistently witnessed around the proposed project site.

   Copy of the Google Earth images as well as photographs of turtle nesting taken by the Appellants are annexed herewith as **ANNEXURE A/4.**

N.K. GADHAVI SEAL NOTARY

**Form A Part II filled by DCF require to disclose presence of wildlife/rare/endangered/unique species and the State Government must consider Direct and Indirect Impacts on their Habitat as per Rule 9(5)(e)(ii)(c) of the Forest Rules, 2022:**

10. It is submitted that Forest Clearance for the proposed project has been granted under Section 2 of the Forest (Conservation) Act, 1980. In accordance with Section 4 of the Act, the Forest (Conservation) Rules have been framed to facilitate the implementation of its provisions. As part of this process, Form A Part II is required to be filled by the Deputy Conservator of Forest while recommending Forest Clearance. Notably, Serial No. 8 of the said form mandates the disclosure of information regarding the significance of the forest land proposed for diversion, particularly from the perspective of wildlife conservation.

11. It is pertinent to note that the Deputy Conservator of Forest has filled Form A Part II, wherein under Serial No. 8(i), the response to the presence of wildlife in and around the forest land proposed for diversion has been given in negative, i.e., marked as "NO". That under Serial No. 8(v), the response to the presence of any rare/endangered/unique species of flora and fauna found in the area is also given in negative, i.e., marked as "NO".

***"8. (i) Details of wildlife present in and around the forest land proposed for diversion: No"***

***[.....]***

***(v) Whether any rare/endangered/unique species of flora and fauna found in the area: No"***

12. It is crucial to note that turtle nesting activity has been observed at locations situated approximately 2.6 km in December 2022, 3 km in March 2025, and 6 km in July, 2025 around the proposed project site. These nesting sites have been duly identified, fenced, and are being protected by the Forest Department. However, in complete contrast, the Deputy Conservator of the Forest Department has completely negated the presence of turtle nesting while filling Form A Part II.

13. It is crucial to understand the nesting site fidelity of Green Sea Turtles and Olive Ridleys which means the turtles tend to return to the same beach or area where they previously laid their eggs to nest again. Thus, they show a strong preference for coming back to the same location during each nesting season or even multiple times within the same season with repeat nesting within 4-6 km of the nests. That a study titled "**Strong site fidelity and longer internesting interval for solitary nesting olive ridley sea turtles in Brazil**" published in International Journal on Life in Oceans and Coastal Waters gave the findings that:

> *"Results:*
> *We investigated nest site fidelity at Pirambu, Lagoa Redonda and Santa Isabel beaches analyzing interesting intervals and renesting attempts separately. Renesting attempts showed no particular distribution pattern (Fig. 3). In contrast,* ***we found a pattern within internesting intervals' events: females renesting closer to a previous nest location. Distances registered for internesting intervals were significantly smaller than those found for renesting attempts (U = 2,345.5, N1 = 47, N2 = 126, P = 0.035). The average distance between internesting events was 4.83 ± 4.37 km (N = 126). The majority (mean ± confidence intervals) of internesting distances varied between 4.06 and 5.59 km."***

Copy of the study titled "Strong site fidelity and longer internesting interval for solitary nesting olive ridley sea turtles in Brazil" published in International Journal on Life in Oceans and Coastal Waters is annexed herewith as **ANNEXURE A/5.**

14. In the present context, is pertinent to note that the turtles who have nested at locations situated approximately 2.6 km in December 2022, 3 km in March 2025, and 6 km in July, 2025 around the proposed project site will repeat their re-nesting within 4 to 6 kms of their previous nests.

15. The Appellants herein submit that the project is proposed to come up at Bada Village, Mandvi Taluka, in Kachchh District. That a RTI Application was filed before the very same Forest Department i.e., the Range Forest Officer, Mandvi-Kachchh, seeking information regarding the presence of turtle eggs along the seashore of the Mandvi Range. That the response, dated 06.02.2025 clearly affirms the

presence of turtles on the Mandvi range. The RTI Response categorically states that 8682 number of turtle eggs hatched on the seashore in Mandvi Range area from the year 2011/2012 to 2023/2024. It further states that 33 number of dead turtles were found on the seashore in Mandvi Range area from the year 2011/2012 to 2023/2024.


**Approach of Purposive Construction must be taken to interpret the phrase "in and around" under Serial No. 8(i) & "in the area" under Serial No. 8(v) in Form A Part II:**

16. That the objective of the FC Act, 1980 and Rules made thereunder is for the conservation of forests and for matters connected therewith or ancillary or incidental thereto. That the language used in the Form A Part II of the Rules, 2022 clearly points out of the intention of the legislature to look into the impact on wildlife or any rare/endangered/unique species where the forest is being diverted. Further, this intention is strengthened in Rule 9(5)(e)(ii)(C) of FC Rules, 2022 which provides for considering the direct and indirect impact on the forest, wildlife and environment. The relevant part of the rule is hereby reproduced:


> ***"(c) the State Government or the Union territory Administration, as the case may be, before making his recommendation, has considered all issues having direct and indirect impacts on the diversion of forest land on the forest, wildlife and the environment;"***

It is clear from above that if correct picture and facts are not disclosed in Form A Part II, the Forest Advisory Committee/Regional Empowered Committee will not have occasions to look into direct and indirect impacts and the whole objective of the FC Act and Rules and the process of granting Forest Clearance stands defeated.

17. The Appellants herein submit that the phrase "in and around" as used under Serial No. 8(i) and "in the area" under Serial No. 8(v) in Form A Part II of FC Rules, 2022 and is required to be filled by the Deputy Conservator of Forest for recommending Forest Clearance. The phrase "in and around" refers to "the immediate area as well as the surrounding vicinity." It is important to note that if the meaning is plain, effect must be given to it considering the intention and the objective of the

legislature. The golden rule is that the words of a statute must *prima facie* be given the ordinary meaning.

18. Further, in this regard, the Appellants herein submit that to understand the true essence of the phrase "in and around" and "in the area" the Rule of Purposive Construction of interpretation needs to be followed. This doctrine helps in providing an interpretation to such a provision that the legislature actually intended including attainment of the object of the statute. Thus, it is crucial to understand the intention of the legislature. A statute is an edict of the legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. In this regard, it is important to understand the Latin Maxim, ***'sententia legis'*** which means 'the intention of the legislature' or 'the spirit of the law'. That a statute is to be construed according to the intention of the legislature and thus it is the duty of the judicature to act upon the true intention of the legislature. In this regard, the Hon'ble Supreme Court in the matter titled **Workmen of Dimakuchi Tea Estate vs. Management of Dimakuchi Tea Estate 1958 SCC OnLine SC 4** has held that:

> *"the words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained"*

Thus, the rule of reasonable interpretation in conjunction with liberal/purposive construction ought to be applied whereby that approach for interpretation must be applied which advances the objectives and legislative intent behind issuance of the FC Act and FC Rules.

Copy of the relevant extracts of the judgment passed by the Hon'ble Supreme Court in the matter titled Workmen of Dimakuchi Tea Estate vs. Management of Dimakuchi Tea Estate 1958 SCC OnLine SC 4 is annexed herewith as **ANNEXURE A/6.**

19. Further, the Appellants herein submit that in several cases, the judiciary has often applied the principle of 'purposive construction' while interpreting social welfare laws. Thus, the focus should not be only on the literal meaning of the words, but on the purpose and intent behind the law. In this approach, the provisions of the statute are given a broad and meaningful interpretation that helps to achieve the objective of the Act. The goal is to ensure that the law is effective in addressing the problems it was created to solve, and in preventing the harm or injustice it aims to eliminate. Therefore, instead of following a narrow or technical reading, the social welfare legislations should be applied in a way that supports its true spirit and intention. That in the present context, the Forest (Conservation) Act and the Rules is a social welfare legislation that protects and conserve the forests. In this regards, the Appellants herein submit that the Hon'ble Supreme Court in the matter titled **Securities and Exchange Board of India v. Ajay Agarwal, (2010) 3 SCC 765**, the Court held that:

> ***"34. It is a well-known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it."***

Copy of the relevant extracts of the judgment passed by the Hon'ble Supreme Court in the matter titled Securities and Exchange Board of India v. Ajay Agarwal, (2010) 3 SCC 765 is annexed herewith as **ANNEXURE A/7.**

20. Furthermore, the Appellants herein submit that this Hon'ble Tribunal in the matter titled **Vikrant Tongad v. DTTC, 2015 SCC Online NGT 3** vide judgment dated 12.02.2015 has held that if no checks and balances are provided and expert minds does not examine and assess the impacts of such projects or activities relating to development, consequences can be very devastating, particularly environmentally:

> *"18. Having deliberated upon the relevant provisions of the Regulations of 2006, now we would deal with the principles applicable to interpretations of such Entries.* ***The Hon'ble Supreme Court in its various judgments has stressed upon the liberal interpretation of a statute, if it is a***

***social welfare legislation***. *For instance, in the case of The Authorised Officer, Thanjavur v. S. Naganatha Ayyar, (1979) 3 SCC 466, the Court held that:*

> *"1. While dealing with welfare legislation of so fundamental a character as agrarian reform, the court must constantly remember that the statutory pilgrimage to 'destination social justice' should be helped, and not hampered, by judicial interpretation."*

***19. The Courts have also evoked the principle of purposive construction in relation to social welfare legislations. The statute and its provisions have to be given an expanded meaning that would tilt in favour of the object of the Act, curing or suppressing the evil by enforcing the law.*** *While interpreting an Entry in a Schedule to an Act, the ordinary rule of construction requires to be applied to understand the Entries. There is a functional difference between a body of the statute on the one hand and the Schedule which is attached thereto on the other hand. The Sections in these Acts are enacting provisions. In contrast, the Schedule in an Act sets down things and objects and contains their names and descriptions. The sections of and the Schedule to the Act, have to be cojointly read and construed, keeping in view the purpose and object of the Act while keeping a clear distinction between a fiscal and a social welfare legislation in mind.* ***Social welfare programmes projected by the State and object of the statute are of paramount consideration while interpreting and construing such Entries.*** *The law is always intended to serve the larger public purpose. In fact, welfare of the people is the supreme law and an enacted law should be administered lawfully, i.e., salus populi est suprema lex. It is not possible even for the legislature to comprehend and provide solution to all the evils or obstacles that are likely to arise in implementation of the enacted laws.* ***Therefore, the Tribunal must adopt an approach for interpretation of these Entries which would further the cause of the Act and the intent of the legislation and be not unduly influenced by the rule of restricted interpretation."***

***33. In case of a social or beneficial legislation, the Tribunal should adopt a liberal or purposive construction as opposed to the rule of literal construction. The words used therein are required to be given a liberal and expanded meaning.*** *The object and purpose of the Act of 1986 and the Schedule of Regulations of 2006 thereto was held to be of utmost relevance.* ***In the case of present kind, if no checks and balances are provided and expert minds does not examine and assess the impacts of such projects or activities relating to***

***development, consequences can be very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage.***

Copy of the relevant extracts of the judgment passed by this Hon'ble Tribunal in the matter titled Vikrant Tongad v. DTTC, 2015 SCC Online NGT 3 is annexed herewith as **ANNEXURE A/8.**

21. Furthermore, the Appellants herein submit that this Hon'ble Tribunal in the matter titled **M/s. DRG Grate Udhyog vs. State of Madhya Pradesh and Ors. O.A. No. 96/ 2012,** vide judgment dated 09.05.2013 has held that if words of a statute are interpreted mechanically, just focusing on the literal meaning without thinking about the real purpose behind the law, the helpful protective laws becomes ineffective. This Hon'ble Tribunal further relied upon Justice Iyer's observations, who stated that only looking at the literal words is like seeing just the skin but missing the soul. Thus, to understand and apply a statute, one must look at both its outer form (*deha*) and its inner spirit (*dehi*). Only then can the law truly serve its purpose:

> *"16. In that sense, it is even a beneficial legislation as it is intended to provide benefits to the society by ensuring prevention and control of air pollution. In the case of social welfare and even beneficial legislation, it is always advisable to adopt the principle of purposive construction. This doctrine helps in providing an interpretation to such a provision that the legislature actually intended including attainment of the object of the statute. At this stage, we may usefully refer to "Principles of Statutory Interpretation" by Justice G.P. Singh, 13th ed. 2012 where it has been stated as follows:*
>
> ***"A mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficent legislation to futility. As stated in IYER. J "to be literal in meaning is to see the skin and miss the soul."The judicial key to construction is the composite perception of the deha and dehi of the provision.....***
>
> *[...]*
>
> ***20. From the analysis of the above principle, it is crystal clear that in the case of a social or beneficial legislation, the Court or***

***Tribunals are to adopt a liberal and purposive construction as the above rule of literal construction. Social or beneficial legislation is intended to achieve a much greater purpose and the very purpose of enacting such law could be frustrated by application of stringent rules of construction".***

Copy of the relevant extracts of the judgment passed by this Hon'ble Tribunal in the matter titled M/s. DRG Grate Udhyog vs. State of Madhya Pradesh and Ors. O.A. No. 96/ 2012 is annexed herewith as **ANNEXURE A/9.**

22. Furthermore, this Hon'ble Tribunal in the **M/s. DRG Grate Udhyog (Supra)** has relied and reiterated the observations made by the Hon'ble Supreme Court in the Hindustan Lever Ltd. Case and Workmen of American Express Case to highlight how social welfare laws should be interpreted. It states that when interpreting laws which are meant to protect people's welfare, courts should not stick to a narrow or overly technical reading of the words in the law. That the meaning of the statute should not be unnaturally restricted or shrunk just to match a rigid, literal interpretation. Instead, should focus should be on the spirit, purpose, and context of the law — what the law is trying to achieve, why it was made, and the real-world situation in which it applies. Quoting Lord Wilberforce, the judgment also pointed out that law should not be stuck in an "island" of literal meaning. Rather, it must go beyond the exact words and consider the broader facts, background, and purpose behind those words:

*Useful reference can also be made to the dictum of the Supreme Court in relation to interpretation of Social Welfare Association in the case of Hindustan Lever Limited v. Ashok Vishnu Kate and Ors. (1996)ILLJ899SC where the court held as under:*

***"41. In this connection, we may usefully turn to the decision of this Court in Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation, (1985)IILLJ539SC wherein Chinnappa Reddy, J., in para 4 of the Report has made the following observations: The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to liliputian dimensions. In construing these legislations the imposture of literal construction***

***must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the context of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations."***

23. In the present context, it is important to emphasize that the underlying objective of the Forest (Conservation) Act, 1980, along with the Forest Conservation Rules, 2022, is not only to protect and preserve forest land but also to ensure the conservation of the wildlife habitats it supports. These legal provisions are designed to maintain ecological balance, safeguard biodiversity, and prevent the degradation of sensitive ecosystems. Therefore, any interpretation or implementation of these laws must be guided by the broader purpose of conserving both forests and the wildlife that depend on them.

24. That it is mandatory for the State Government as well as the Central Government to consider "all issues" which are having direct impact on forest, wildlife and environment as a result of the diversion of the forest land. The use of the expression "considered all issues" means that the relevant officer must apply his mind objectively to all issues related to the diversion and its impact on wildlife, forest and environment. It is evident that there is no consideration of this mandatory requirement since the Forest Department has negated the presence of any turtle nesting site in the project area and in the surrounding vicinity. It is thus crucial to note that the very intention of the legislature is diluted thereby not considering the presence of the turtle nesting sites as well as the direct and indirect impact the project will pose upon the turtles. Therefore, ignoring the ecological implications of the proposed project dilutes this legislative intent the protective objectives embedded in the law stands defeated.

SIGNED BEFORE ME

NARAN K. GADHAVI
ADVOCATE & NOTARY
MANDVI - KACHCHH.

31 JUL 2025

N.K. GADHAVI SEAL NOTARY

NOTARY NARAN K. GADHAVI Mandvi-Kachchh. Reg. No. 22113 Expiry Dt. 08-06-2030 GOVERNMENT OF INDIA

25. The Annexures attached with this Affidavit are true and correct copies.

DEPONENT

**VERIFICATION**

Verified on 31st day of 2025 that the contents of the above Affidavit are true and correct that no part of it is false and nothing material has been concealed therefrom.

DEPONENT

SIGNED BEFORE ME

NARAN K. GADHAVI
ADVOCATE & NOTARY
MANDVI - KACHCHH

31 JUL 2025


NOTARY
NARAN K. GADHAVI
NOTARIAL
Mandvi-Kachchh
Reg. No. 22113
Expiry Dt.
08-06-2030
GOVERNMENT OF INDIA
FIVE RUPEES
NOTARIAL

O/C

328

**Annexure A-1**

રૂબરૂ

(નમૂનો-ક)


મિત્રજીત વિજયકુમાર ગઢવી
Advocate
19-શ્રી હરિ નગર-1,માંડવી નલિયા રોડ,
માંડવી-કચ્છ, 370465
મો. 8141817001

તા:- 10/01/2025

પ્રતિ,
રેન્જ ફોરેસ્ટ ઓફિસર શ્રી
માંડવી રેન્જ, માંડવી-કચ્છ.

**વિષય:-માહિતી અધિકાર અધિનિયમ ૨૦૦૫ મુજબ માહિતી આપવા બાબત.**

જય ભારત સાથે જણાવવાનું કે હું ઉપરના નામ અને સરનામે રહું છું, મને નીચે મુજબની માહિતી, માહિતી અધિકાર અધિનિયમ ૨૦૦૫ મુજબ આપવા વિનંતી છે.

1. વર્ષ 2011/12 થી 2023/24 સુધી માંડવી રેન્જ (તાલુકા) વિસ્તાર માં દરિયા કાંઠે નીકળેલ કાચબાના ઇંડાની વિગતો આપવા વિનંતી.
2. વર્ષ 2011/12 થી 2023/24 સુધી માંડવી તાલુકાના દરિયા કાંઠે મૃત હાલતમાં મળેલ કાચબાની વિગતો આપવા વિનંતી.
3. મુદ્દા નંબર 1 અને 2 અંગે ની માહિતીમાં કાચબાની પ્રજાતિ જણાવવા વિનંતી.

હુ મિત્રજીત ગઢવી આથી જણાવવું છું કે માંગવામાં આવેલ માહિતી, માહિતી અધિકાર અધિનિયમ ૨૦૦૫ ની કલમ ૮ અથવા ૯ હેઠળ માહિતી જાહેર કરવાથી મુક્તિ આપેલ હોય તેવા વર્ગ હેઠળ આવરી લીધેલ નથી અને મારી ઉત્તમ જાણ મુજબ તે આપના વિભાગ ને લગતી છે.

આ અરજી ઉપર રૂ.૨૦ ની નોન જયુડીસીયલ સ્ટેમ્પ ચોટાડેલ છે.

માંડવી-કચ્છ

આપનો વિશ્વાસુ

( મિત્રજીત વી. ગઢવી )

Received
10/1/2025
રેન્જ ફોરેસ્ટ ઓફિસર
માંડવી રેન્જ

રેન્જ ફોરેસ્ટ ઓફીસરશ્રીની કચેરી
માંડવી નોર્મલ રેન્જ,
ફોરેસ્ટ કોલોની, શીતલા રોડ,
માંડવી–કચ્છ. પીનઃ૩૭૦૪૬૫
Email: mandvirfo@gmail.com ☎ : 02834 223607

ક્રમાંકઃ ક/૧૬૭-૬૮/૨૦૨૪–૨૫ તાઃ ૦૬/૦૨/૨૦૨૪

નમુનો ગ
(જુઓ નિયમ ૪ (૧))
**અરજદારને માહિતી આપવા બાબત**

પ્રતિ,
શ્રી મિત્રજીત વિજયકુમાર ગઢવી,
૧૯, શ્રી હરી નગર–૧
માંડવી–નલીયા રોડ,
માંડવી–કચ્છ.

**વિષયઃ–** જાહેર માહિતી અધિકાર અધિનિયમ ૨૦૦૫ તળે માહિતી પુરી પાડવા બાબત
**સંદર્ભઃ–** આપની તા.૧૦/૦૧/૨૦૨૫ વાળી અરજી અનુસંધાને

શ્રીમાન,

જાહેર માહિતી અધિકાર તળે માહિતી આપવા માટેની વિનંતી કરતી આપની તા.૧૦/૦૧/૨૦૨૫ વાળી અરજી અત્રેની કચેરીને તા.૧૦/૦૧/૨૦૨૫ ના રોજ મળેલ હતી જે અન્વયે જણાવવાનું કે આપના દ્વારા માંગવામાં આવેલ માહિતી અંગેના મુદા ની માહિતી સબબ નીચે વિગતે પ્રત્યુત્તર પાઠવવામાં આવેલ છે.

મુદા નં.૧ઃ સને ૨૦૧૧/૧૨ થી સને ૨૦૨૩/૨૪ સુધીમાં દરિયા કાંઠેથી મળેલ કાચબાના ઈંડાની સંખ્યા ૮૬૮૨ છે.

મુદા નં.૨ઃ સને ૨૦૧૧/૧૨ થી સને ૨૦૨૩/૨૪ સુધીમાં દરિયા કાંઠેથી મૃત હાલતમાં મળેલ કાચબાની સંખ્યા ૩૩ છે.

મુદા નં.૩ઃ કાચબાની પ્રજાત્તિઃ ગ્રીન સી ટર્ટલ છે.

આપ ઉપરના નિર્ણયથી નારાજ હોય તો નિર્ણય મળયાના તારીખથી દિન–૩૦ માં આપ પ્રથમ અપીલ અધિકારીશ્રી નાયબ વન સંરક્ષકશ્રી, કચ્છ પશ્ચિમ વન વિભાગ, અરિહંત નગર,ભુજને અપીલ કરી શકો છો.

આપનો વિશ્વાસુ,

જાહેર માહિતી અધિકારી,
અને રેન્જ ફોરેસ્ટ ઓફિસર,માંડવી

નકલ સાદર રવાના :– નાયબ વન સંરક્ષકશ્રી, કચ્છ પશ્ચિમ વન વિભાગ,ભુજ તરફ જાણ સારું.

O/C

(Sample-A)


Mitrajeet Vijaykumar Gadhvi

**Advocate**

19-Shri Hari Nagar-1, Mandvi Naliya Road,

Mandvi-Kutch, 370465

Md. 8141817001

Date – 10/01/2025

To,

Range Forest Officer Shri

Mandvi Range, Mandvi-Kutch.

---

Subject:-Provision of information as per the Right to Information Act, 2005.

Jai Bharat, I hereby inform you that I reside at the above name and address and am requested to provide the following information under the Right to Information Act, 2005.

1. Please provide details of turtle eggs hatched on the seashore in the Mandvi Range (Taluka) area from the year 2011/12 to 2023/24.

2. Request you to provide details of turtles found dead on the beach of Mandvi taluka from the year 2011/12 to 2023/24.

3. Please provide the species of turtle in the information regarding points 1 and 2.

I, Mitrajeet Gadhvi, hereby state that the information sought does not fall under the category exempted from disclosure under Section 8 or 9 of the Right to Information Act, 2005 and to the best of my knowledge, it pertains to your department.

A non-judicial stamp of Rs. 20 has been affixed on this application.

માંડવી-કચ્છ

આપનો વિશ્વાસુ

( મિત્રજીત વી. ગઢવી )

10/1/2025

રેન્જ ફોરેસ્ટ ઓફિસર
માંડવી રેન્જ

Range Forest Officer's Office
Mandvi Normal Range,
Forest Colony, Sheetla
Road, Mandvi-Kutch. Pin:370465
Email: mandvirfo@gmail.com
☎ : 02834 223607

Serial No.: K/197-98/2024-25

Date: 06/02/2024

Specimen c

(See Rule 4 (1))

Matter of providing information to the applicant

To,

Shri Mitrajeet Vijaykumar Gadhvi,

19, Shri Hari Nagar – 1,

Mandvi-Naliya Road,

Mandvi, Kutch

**Subject** – Provision of information under the Right to Public Information Act, 2005

**Reference** – Pursuant to your application dated 10/01/2025

Sir,

Your application dated 10/01/2025 requesting information under the Right to Information was received by this office on 10/01/2025, pursuant to which it is hereby informed that the following detailed reply has been sent to you regarding the information sought by you.

Issue No. 1: The number of turtle eggs found on the beach from 2011/12 to 2023/24 is 8682.

Issue No.2: The number of turtles found dead on the beach from 2011/12 to 2023/24 is 33.

Issue No. 3: Species of turtle: Green sea turtle.

If you are dissatisfied with the above decision, you can appeal to the First Appellate Officer, Deputy Conservator of Forests, Kutch West Forest Department, Arihant Nagar, Bhuj, within 30 days from the date of receipt of the decision.

Yours faithful,

Public Information Officer,

and Range Forest Officer, Mandvi

Copy of the letter of respect to the Deputy Conservator of Forests, Kutch West Forest Division, Bhuj. Good information.

**Annexure A-2**

Office of Range Forest Officer
Mandvi Normal Range,
Forest Colony, Sheetla Road,
Mandvi-Kutch. Pin:370465
Email: mandvirfo@gmail.com
☎ : 02834 223607

No.: K/ 35-36 /2025-26

Date: 15/05/2025

Sample c

## (See Rule 4 (1))

Information to be given to the applicant

per, –

—Shri Mitrajit Vijayakumar Gadhvi,
19, Sri Hari Nagar-1
Mandvi-Naliya Road,
Mandvi–Kutch.

Subject- Matter of provision of information under Public Right to Information Act, 2005

Reference – As per your application dated 18/04/2025

sir,

Your application dated 18/04/2025 requesting to provide information under Public Information Right was received by this office on 18/04/2025 to state that the information sought by you regarding the subject of information has been replied in detail below.

(1) Copies of Daily Work/Panchnama relating to sea turtle eggs hatched in Mandvi Range (Taluka) area from 2011/12 to 2024/25 and any departmental action taken at that location stating that the turtle is a Schedule-I animal and in the report. The details of the location have been mentioned but the full details cannot be given due to fear of poaching.

If you are aggrieved with the above decision, you can appeal to the First Appellate Officer Shri Naib Conservator of Forests, Kutch West Forest Division, Arihant Nagar, Bhuj within 30 days from the date of receipt of the decision.

Yours faithfully,

Public Information Officer,
and Range Forest Officer, Mandvi

Copy Regards Regards - Deputy Conservator of Forests, Kutch Western Forest Division, Bhuj.

O/C

**Annexure A-3**

**Date: 18.07.2025**

To

Forest Range Officer, Mandvi

Mandvi Range, Kachchh West Forest Division, Bhuj.

Mandvi Normal Range, Forest Colony, Sheetla Road,

Mandvi, Kachchh – 370465.

**Subject: Request for Location/Map/Geo-Coordinates of Turtle Nesting Sites in Mandvi Taluka in View of RTI Responses Dated 23.03.2022 and 06.02.2025 received from Forest Range Officer, Mandvi.**

Respected Sir/Ma'am,

The undersigned is a resident of Mandvi Taluka, Bada Village, and is one of the Appellants in Appeal No. 144/2025 challenging the Forest Clearance for the diversion of 0.9689 ha of forest land for laying part of seawater intake and effluent disposal in Kachchh District in favour of GHCL Ltd. is hereby writing to you requesting to provide the Location/Map/Geo-coordinates of Turtle Nesting Sites in Mandvi Taluka in reference to the RTI Responses Dated 23.03.2022 and 06.02.2025 received from Forest Range Officer, Mandvi.

In the Appeal No. 144/2025, the Appellants have mentioned about large noumber of turtles nesting in Mandvi Taluka area. The Appellants have relied upon their own account of witnessing such nesting for many years and also relied upon the RTI information received from Forest Range Officer, Mandvi dated 23.03.2022 and 06.02.2025.

When the matter was listed for hearing on 27.06.2025, the Hon'ble Tribunal desired that the location of the turtle nesting site mentioned in the Forest Department records may be marked on the map and coordinates may be provided to the Court.

Received
18/7/2025
રેન્જ ફોરેસ્ટ ઓફિસર
માંડવી રેન્જ

The RTI Response dated 23.03.2022 received from the Forest Range Officer Mandvi, Kachchh West Forest Division pertains year wise data from 2011 to 2021 with regard to the number of eggs found, as well as the details of number the of dead turtles found between 2019 to 2022 along the coast of Mandvi and Bada.

**Details of turtle eggs hatched on the beach of Mandvi Taluka**

| SN | Year | No. of Eggs found | Details of the birth and release of the hatchlings into the sea. |
|---|---|---|---|
| 1 | 2020-2021 | 574 | 487 |
| 2 | 2019-2020 | 285 | 247 |
| 3 | 2018-2019 | 787 | 504 |
| 4 | 2017-2018 | 108 | 81 |
| 5 | 2016-2017 | 329 | 290 |
| 6 | 2015-2016 | 558 | 472 |
| 7 | 2014-2015 | 1266 | 1112 |
| 8 | 2013-2014 | 1452 | 1163 |
| 9 | 2012-2013 | 1789 | 1392 |
| 10 | 2011-2012 | 1400 | 1157 |

## Details of Turtles found dead on the beach

| SN | Date | Place | Number | Name |
|---|---|---|---|---|
| 1 | 09.04.2019 | On the beach of Modhwa | 1 | Green sea turtle |
| 2 | 01.05.2019 | Mandvi Windfarm Beach | 1 | Green sea turtle |
| 3 | 16.06.2019 | Mandvi Windfarm Beach | 1 | Green sea turtle |
| 4 | 25.07.2021 | On the shore of Dharbadi | 1 | Green sea turtle |
| 5 | 25.08.2021 | Mandvi Windfarm Beach | 1 | Green sea turtle |
| 6 | 03.10.2021 | On the beach of Kathada | 1 | Green sea turtle |
| 7 | 08.03.2022 | Mandvi Windfarm Beach | 1 | Green sea turtle |

Additionally, another RTI Response dated 06.02.2025 (erroneously typed as 06.02.2024) received from the Range Forest Officer Mandvi-Kachchh pertains details of turtles egg hatched on the seashore of Mandvi range area as well as dead turtles found from the year 2011/2012 to 2023/2024.

| SN | Information sought | Response received |
|---|---|---|
| 1. | Provide details of turtle eggs hatched on the seashore in Mandvi Range area from the year 2011/2012 to 2023/2024 | 8682 |
| 2. | Provide details of turtles found dead on the seashore in Mandvi Range area from the year 2011/2012 to 2023/2024. | 33 |
| 3. | Provide the species of turtles. | Green Sea Turtle |

In light of the above, it is requested by the undersigned that the Location/Map/Geo-Coordinates of Turtle Nesting Sites in Mandvi Taluka may kindly be provided to the undersigned within two weeks so that the same can be placed on record before the National Green Tribunal.

Yours Sincerely,

**Name : Vijaykumar Karsanbhai Gadhavi**

**Address: 19- Shree Hari Nagar-1,**

**Layja Road, Mandvi-Kutch,**

**Pin Code: 370465.**

**Phone: 9426973303**

**Email: gilvavijay@gmail.com**

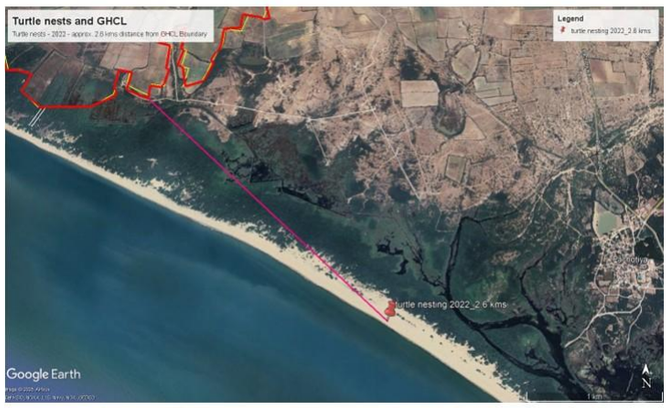
**Enclosed:**

1. Copy of the RTI Response dated 23.03.2022 received from the Forest Range Officer, Mandvi.
2. Copy of the RTI Response dated 06.02.2025 received from the Forest Range Officer, Mandvi.
3. Copy of the NGT Order dated 27.06.2025 in the matter titled Vijaykumar Karsanbhai Gadhavi & Ors. vs. Union of India & Ors. Appeal No. 144/2025.

**ANNEXURE A/4**

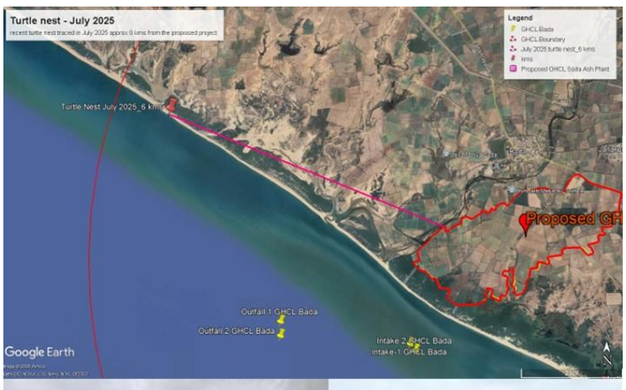
**COPY OF THE GOOGLE EARTH IMAGES AS WELL AS PHOTOGRAPHS OF TURTLE NESTING TAKEN BY THE APPELLANTS.**


## I. DECEMBER, 2022: 2.6 kms from project site

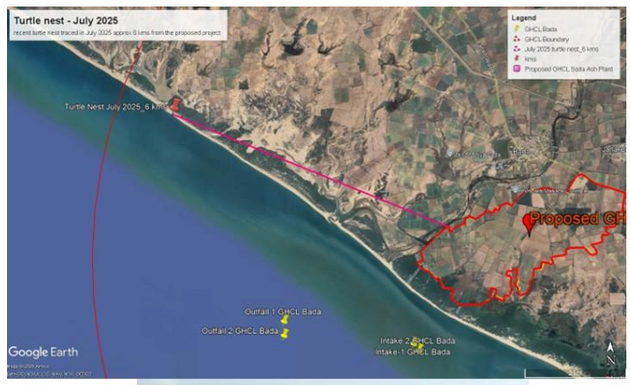



## II. APRIL, 2025: 3 kms from project site.


## III. JULY, 2025: 6 kms from project site.








**Annexure A-5**

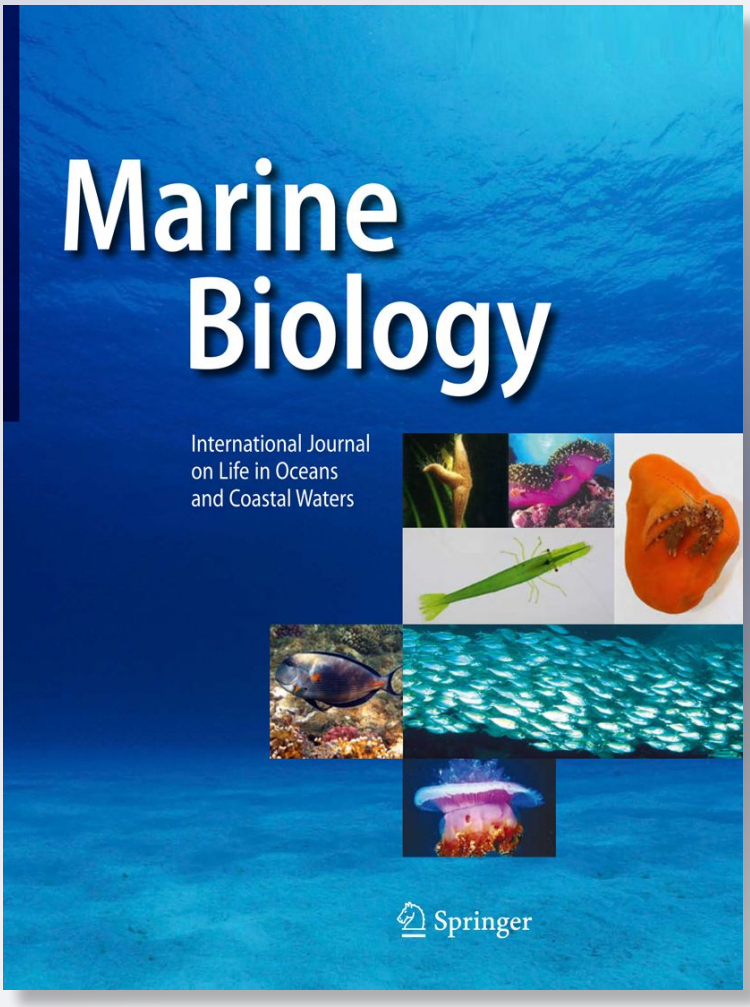
# *Strong site fidelity and longer internesting interval for solitary nesting olive ridley sea turtles in Brazil*

**Lélia Matos, Augusto C. C. D. Silva, Jaqueline C. Castilhos, Marilda I. Weber, Luciano S. Soares & Luís Vicente**

**Marine Biology**
International Journal on Life in Oceans and Coastal Waters

ISSN 0025-3162

Mar Biol
DOI 10.1007/s00227-012-1881-1




Springer

Mar Biol
DOI 10.1007/s00227-012-1881-1

ORIGINAL PAPER

# Strong site fidelity and longer internesting interval for solitary nesting olive ridley sea turtles in Brazil

**Lélia Matos · Augusto C. C. D. Silva · Jaqueline C. Castilhos · Marilda I. Weber · Luciano S. Soares · Luís Vicente**

Received: 25 July 2011 / Accepted: 9 January 2012


**Abstract** Olive ridley sea turtles display two different types of nesting behavior: in *arribada* (synchronous mass nesting) or solitarily. Contrarily to *arribadas*, little has been published about solitary nesters. This study aimed to expand the knowledge on internesting interval and site fidelity of solitary nesting olive ridleys and to test a possible development of *arribada* nesting behavior. Data were collected in Sergipe (Brazil) over 125 km of beach from 10°30′S/36°23′W to 11°26′S/37°19′W, between nesting seasons 2004/2005 and 2006/2007. From 962 tagged females, 173 were seen renesting. The average internesting interval found was longer (22.35 ± 7.01 days) than previously described, which might relate to lower water temperatures during the internesting period. Olive ridleys at Sergipe showed high nesting site fidelity, with consecutive nesting events occurring in close proximity, non-randomly and dependently of previous events. Most of the consecutive nests were separated by 4.06–5.59 km. Development of *arribada* nesting behavior was not confirmed.

Communicated by R. Lewison.

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Projeto TAMAR-ICMBio, Centro Nacional de Conservação, Pesquisa e Manejo das Tartarugas Marinhas, ReBio Santa Isabel s/n, Pirambu, SE 49190-000, Brazil

J. C. Castilhos · M. I. Weber
Fundação Pró-TAMAR, Fundação Centro Brasileiro de Proteção e Pesquisa das Tartarugas Marinhas, Av Santos Dumont s/n, 2ª etapa da Orla de Atalaia, Aracaju, SE 49035-485, Brazil

L. S. Soares
Fundação Pró-TAMAR, Fundação Centro Brasileiro de Proteção e Pesquisa das Tartarugas Marinhas, Cx. Postal 2219, Rio Vermelho, Salvador, BA 41950-970, Brazil

## Introduction

Sea turtles are widely known for their ability to return to their birth region to nest. This ability (philopatry) differs from a finer and consecutive homing to beach, named site fidelity. Nesting site fidelity is detectable between nesting seasons when turtles migrate from foraging to reproduction areas, as well as within nesting seasons (Miller 1997). Female turtles lay several clutches each nesting season and tend to renest in close proximity (Miller 1997). Nesting site fidelity creates spatial and temporal patterns on sea turtles' reproduction ecology that is usually distinct on either specific or populational levels. Reproduction periodicity within a season, called internesting interval, is the number of days between consecutive nesting events (Alvarado and Murphy 1999).

In populations of olive ridley sea turtles, *Lepidochelys olivacea*, two distinct types of reproductive behavior may occur. Females can either emerge to the beach in large synchronized *arribadas* (the Spanish expression for mass nesting event), or they will emerge solitarily, meaning alone or in a small group but without synchrony (Kalb 1999). Major *arribada* nesting occurs at very few remaining rookeries such as Rushikulya (India), Playa Escobilla (Mexico), and Ostional (Costa Rica), while solitary nesting

Published online: 29 January 2012

happens throughout the species' range (Bernardo and Plotkin 2007).

Whereas *arribadas* have been relatively well documented, information on the dynamics of solitary nesting is limited. A general comparison indicates that *arribada* nesters have a four-week internesting interval and high-level site fidelity, while solitary nesters show a much shorter two-week internesting interval and low-level site fidelity (Kalb 1999; Bernardo and Plotkin 2007). The few studies on solitary nesters have been mainly conducted in the eastern Pacific. Described internesting interval varies from 15 to 17 days (sample size: $N = 22$) in Punta Ratón, Honduras (Minarik 1985); from 16 to 20 days ($N = 31$) in Punta Banco, Costa Rica (Naranjo and Arauz 2004); and averages 20.7 days ($N = 10$) for exclusive solitary nesters within the *arribada* rookery of Nancite, Costa Rica (Kalb 1999). More recently, non-*arribada* olive ridley's internesting interval was reported as 16.7 days ($N = 3$) for the North Australian population by Whiting et al. (2007) and as 17.5 days ($N = 13$) for the Central African Atlantic population by Maxwell et al. (2011).

In Pirambu (Sergipe, Brazil), regular night patrols have been conducted since the beginning of Projeto TAMAR—ICMBio, the Brazilian Program for Sea Turtle Conservation. Nonetheless, it was only during the 2004/2005 nesting season that a systematic internesting registry was initiated in this area. Preliminary data on internesting interval (Castilhos and Tiwari 2006; Matos et al. 2008) indicated longer intervals than those expected based on the literature; thus, encouraging further research. Sergipe is the key choice for an intensive study. Firstly because of its strictly solitary population, where no *arribada* effects may interfere. Secondly, olive ridleys' solitary behavior has never been documented for any Western Atlantic population; though small *arribadas* have been studied during the late 60s at Eilanti, Suriname (Pritchard 1969a, b; Schultz 1975) and recently at Cayenne, French Guiana (Plot et al. 2011). Moreover, the Brazilian nesting population may presently be the largest within the West Atlantic region and with a rapid population growth (Marcovaldi 2001; Godfrey and Chevalier 2004; Silva et al. 2007). This upward trend was suggested to result from increased recruitment since both average curved carapace length (CCL) and average clutch size seem to be decreasing. Both aspects are believed to be typical of younger, smaller nesting females (Silva et al. 2007).

While comparing solitary and *arribada* nesting behavior, Kalb (1999) suggested solitary nesters to be neophytes nesting in cycles determined physiologically. Their still undeveloped capacity of retaining eggs and wait for an *arribada* explained the shorter internesting intervals observed (Kalb 1999). Shorter reproductive seasons with a lower energy loss should enable these females for greater displacements during the internesting period (Kalb 1999). Therefore, a gradient should be seen toward longer internesting intervals and stronger fidelity as females grow older. If a solitary rookery such as Sergipe's would mature until develops *arribada* nesting, then these patterns should be detectable.

The current study evaluates the internesting interval and site fidelity of olive ridleys in the solitary rookeries of Sergipe. Additionally, the suggested relationship (Kalb 1999) between female maturation level and duration of internesting interval was tested, as well as between this and the degree of nesting site fidelity.

## Methods

### Study site

This study was conducted on the State of Sergipe (Brazil), on Projeto TAMAR research unit, where nesting activity is monitored at three field stations: Ponta dos Mangues (36 km), Pirambu (53 km) and Abaís (36 km), covering 125 km of beach between latitudes 10°30′S and 11°25′S. We excluded the central area of Sergipe's coast around the state capital Aracaju from monitoring due to very low nesting densities likely caused by anthropogenic pressure. This area separates geographically Abaís on the south from Pirambu and Ponta do Mangues up north. The three sampled areas were divided into marked sections; each section was identified by a specific beach name (Fig. 1). With the exception of Barra dos Coqueiros beach, all other beaches in Pirambu field station were marked with stakes at 1-km intervals. Sergipe's coastline contains high-energy beaches with an open, rock-free offshore approach. Four major rivers discharge along the coastline causing some turbidity (Silva et al. 2007).

### Data collection

We collected and recorded the data applying the general methodology of Projeto TAMAR (Marcovaldi and Laurent 1996; Marcovaldi and Marcovaldi 1999; Silva et al. 2007). We patrolled the beaches every night during the nesting season, for the female tagging program. Depending on the tides, one or two patrols were performed each night, with two or more observers. Surveillance was favored where higher nesting records were historically observed. We measured (according to Bolten 1999) and tagged (according to Balazs 1999) every nesting turtle encountered using Inconel flipper tags (size: 2.5 cm; Style 681, National Band and Tag Company of Newport, Kentucky, USA), placed with a standard applicator, next to the first large proximal scale of each front flipper. Tagging allowed further recognition of the females. For each nesting event, we recorded

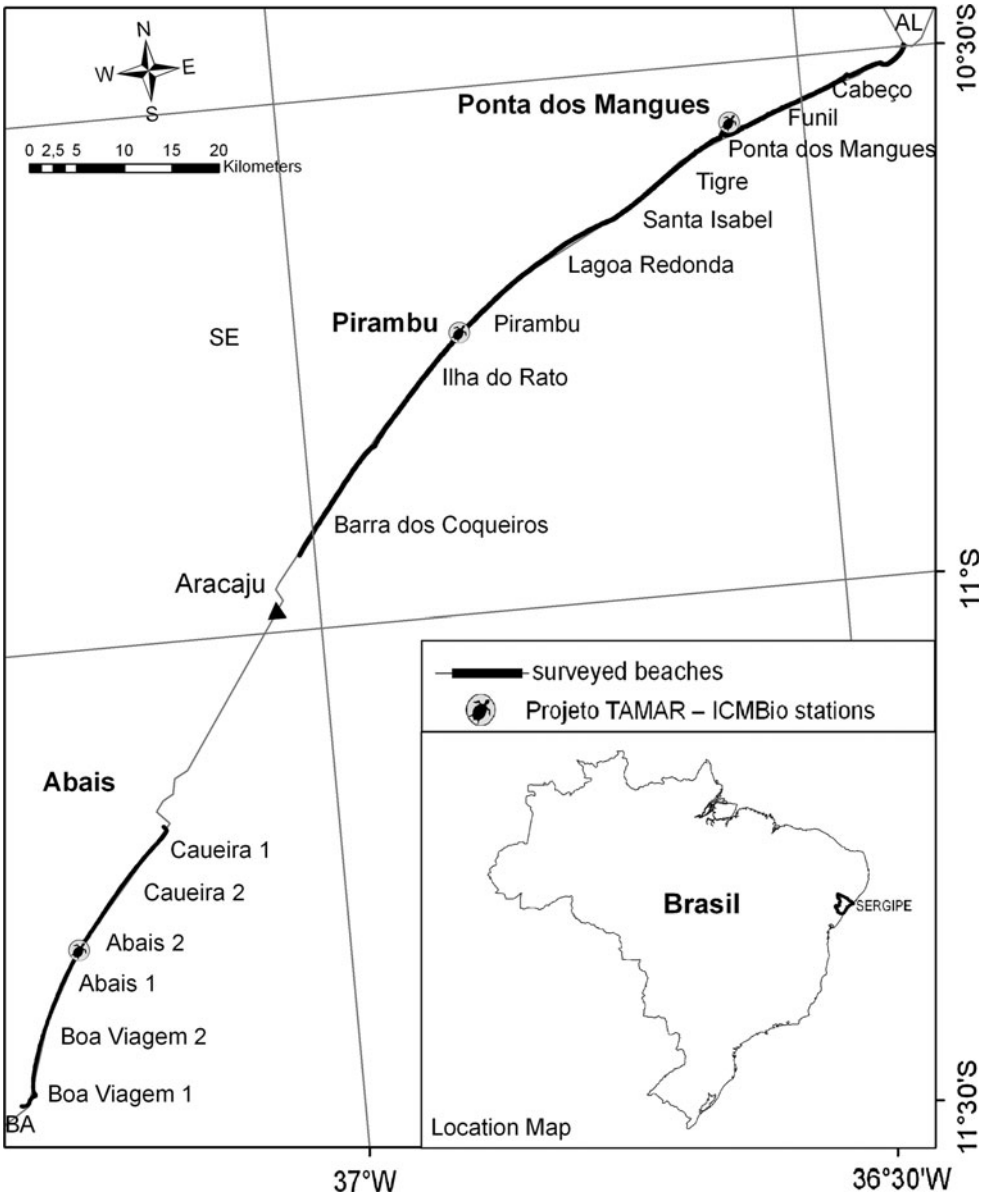


**Fig. 1** Map of Sergipe (SE), including names of surveyed beaches of the three Tamar field stations: Abais, Pirambu and Ponta dos Mangues. The state is limited by Alagoas (AL) in the North and Bahia (BA) in the South

date, hour and location, as well as successful status of the event.

The nesting season for olive ridleys in Brazil extends from September to March. We performed regular fieldwork each year, from September, 15th to March, 15th. Outside the regular monitoring period, information on nesting occurrences was obtained only opportunistically, representing no more than 1–2% of the total annual (Silva et al. 2007). We collected the data between July, 1st 2004 and April, 10th 2007, thus considering three consecutive nesting seasons: 2004/2005, 2005/2006 and 2006/2007.

## Data analysis

We calculated a new renesting event whenever we recaptured a female within the same nesting season. When females were seen renesting more than once, all renesting events were considered. We classified renesting events into two categories: renesting attempts (aborted nesting followed by successful nesting) and internesting intervals. The internesting interval was calculated using two distinct criteria: (a) intervals between consecutive successful nests; and (b) intervals between a successful nest and the next attempt, successful or not. Aiming to validate comparisons with previous published literature on internesting intervals, we statistically compared results from the two criteria employing the Mann–Whitney $U$ Test (Zar 1999). We found no significant difference neither between the internesting intervals ($U = 9287.5$, $N_1 = 132$, $N_2 = 143$, $P = 0.818$) nor between the distances calculated for each criterion ($U = 7312.5$, $N_1 = 117$, $N_2 = 126$, $P = 0.914$), thus allowing the referred comparisons. All results

presented here correspond to the second criterion described above. We discarded intervals below 6 days from the analysis because sea turtles are physiologically unable of laying two different clutches in less than 6 days (Miller 1997). Likewise, we considered intervals longer than 66 days to be multiple laying intervals, since that is the largest internesting interval ever observed (Plotkin 1994). These were also removed from the analysis. Intervals between 6 and 66 days were not split into multiple intervals (as usually done for other sea turtles) because olive ridleys are known to be capable of prolonged egg retention (Plotkin 1994). Therefore, despite being within the range of other published results, the internesting interval may be overestimated, once some renesting events might have been lost.

To evaluate nesting site fidelity, we compared distances performed between renesting attempts with those performed in internesting intervals. Statistical comparison was done using Mann–Whitney $U$ Test (Zar 1999). We only took into account occurrences within the 34 km of Pirambu's coastline marked with kilometer stakes (Rato, Pirambu, Lagoa Redonda and Santa Isabel beaches). Location of events was considered to be the same as the kilometer marked on the beach. This way, we reduced associated errors of events' location to less than 1 km.

We further investigated fidelity through randomness of consecutive nesting events. Using the same data set, we assumed that in a completely random situation, the various distances performed between events would have approximately the same frequency in the population. Therefore, if we plotted all distances and then split that distribution in the middle, we would expect to have the same accumulated frequency on the two groups of equal halves (e.g. if 20 km is the maximum distance observed, then there should be as many occurrences from 0 to 10 km as from 10 to 20 km). We applied $\chi^2$ tests to evaluate the departure of observed data from expected values (Zar 1999), considering two, three and four groups of equal distances.

We tested independence between consecutive events of each female by creating contingency tables with location of first and second events and using a $G^2$ test of independence on the log-likelihood ratio (Nordmoe et al. 2004). Due to test requirements, we regrouped nesting occurrences in beaches thus avoiding low or null frequencies. Only Pirambu, Lagoa Redonda, Santa Isabel, Tigre and Ponta dos Mangues beaches were considered for this analysis.

Additionally, we performed linear regressions to test Kalb's (1999) suggestions for relationships between maturation of females, duration of internesting interval and displacement during that period. We used female size (CCL) to approximate female age (Snover et al. 2007) and distance between consecutive nests to determine internesting displacement.

In all statistical approaches, we set the cut-off for significance at 0.05.

## Results

### Internesting interval

During the 3-season survey, we recorded 1,343 encounters with nesting females on the three field stations, mainly occurring at Pirambu field station. We tagged 962 females and observed 173 renests within the same nesting season, enabling a total computation of 202 renesting events.

We found an average internesting interval (mean ± standard deviation) of 22.35 ± 7.01 days ($N = 143$). Following a successful nesting, the majority (mean ± confidence intervals) of females renested within a period of 21.2–23.5 days (Fig. 2). However, after an aborted nesting, many turtles attempted to renest within the first 6 days. The average interval for these renesting attempts was 9.25 ± 10.12 days ($N = 57$).

### Site fidelity

We investigated nest site fidelity at Pirambu, Lagoa Redonda and Santa Isabel beaches analyzing internesting intervals and renesting attempts separately. Renesting attempts showed no particular distribution pattern (Fig. 3). In contrast, we found a pattern within internesting intervals' events: females renesting closer to a previous nest location. Distances registered for internesting intervals were significantly smaller than those found for renesting attempts ($U = 2{,}345.5$, $N_1 = 47$, $N_2 = 126$, $P = 0.035$). The average distance between internesting events was 4.83 ± 4.37 km ($N = 126$). The majority (mean ± confidence intervals) of internesting distances varied between 4.06 and 5.59 km.

Additionally, there was no significant relationship neither between the size of the female (CCL) (Fig. 4) and the internesting interval ($r^2 = -0.008$, $N = 132$, $P = 0.909$) nor between the internesting interval and the distance between consecutive nests ($r^2 = -0.008$, $N = 116$, $P = 0.816$).

When split into two groups, location of nesting events proved to be not random ($\chi^2_1 = 67.175$, $P < 0.0001$) as the second event tended to be located close to the first. Observed internesting events at close proximity have higher frequencies than expected. On the other hand, observed internesting events further apart have lower frequencies than expected (Fig. 5). Refinement of the analysis with three or four groups reinforces the result obtained with the analysis of two groups. The independency test for consecutive nesting events showed the existence of nesting site fidelity, as the location of the second nesting event is dependent on the location of the first ($G^2_{16} = 34.093$, $P < 0.01$).

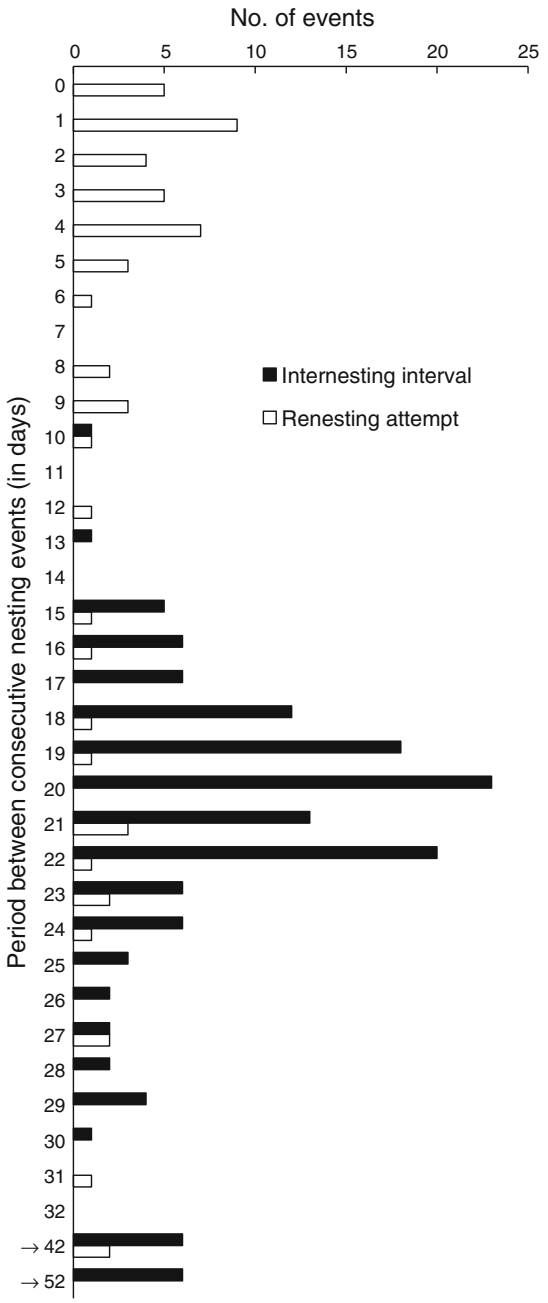


**Fig. 2** Period (in days) between consecutive nesting events of olive ridleys found at Sergipe: internesting intervals, that is, the interval between a successful nest and the next attempt, successful or not (in *black*); and renesting attempts, that is, an aborted nesting followed by successful nesting (in *white*)

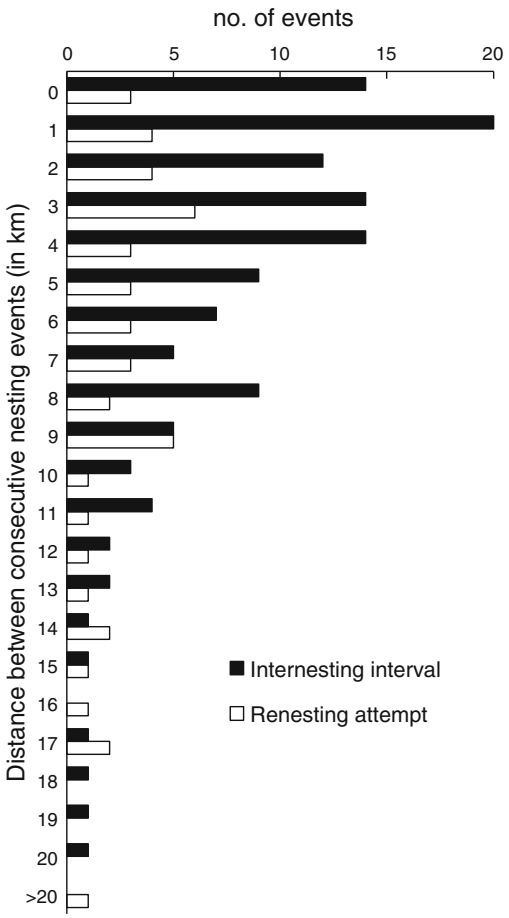


**Fig. 3** Distance (in km) between consecutive nesting events of olive ridleys found at Pirambu: internesting intervals, that is, the interval between a successful nest and the next attempt, successful or not (in *black*); and renesting attempts, that is, an aborted nesting followed by successful nesting (in *white*)

## Discussion

### Internesting interval

We found ridleys' population in Sergipe to have longer internesting intervals than all solitary nesting populations described in the East Pacific (Minarik 1985; Kalb 1999; Naranjo and Arauz 2004), Australia (Whiting et al. 2007) and Central African Atlantic (Maxwell et al. 2011). However, since renesting events could have been lost and longer intervals were not split into possibly multiple intervals, some overestimation might be present (see "Methods" section).

Longer internesting intervals might be related to the existence of a cooler sea water temperature decelerating the rate of pre-ovipositional development of eggs during internesting, as it has been described for loggerheads and green turtles (Sato et al. 1998; Webster and Cook 2001). Since sea turtles are essentially ectothermic animals, their metabolic rate generally increases with sea water temperature (Hays et al. 2002). Smaller loggerhead and green turtles, with lower body mass, tend to have their body temperature closer to the environment, possibly because of lower accumulation of metabolically produced heat (Sato et al. 1995). Thus, water temperature influences general metabolic rate and consequently nesting activities (Sato et al. 1998; Hays et al. 2002; Mazaris et al. 2004). This

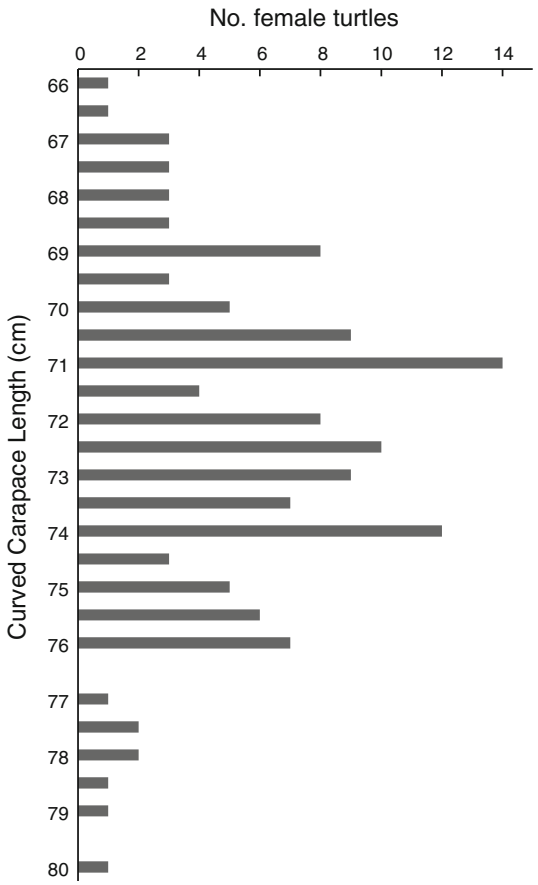


**Fig. 4** Size (in cm) of female olive ridley turtles found at Sergipe, measured as curved carapace length (CCL)

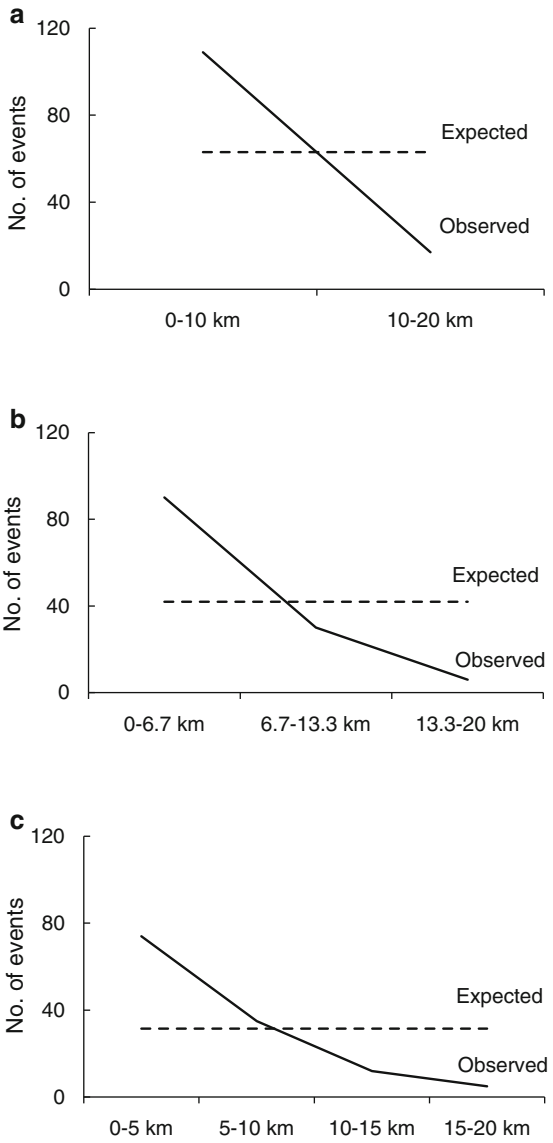


**Fig. 5** Graphical display of the randomness analysis of consecutive nesting events using (**a**) two, (**b**) three and (**c**) four groups of equal distances, respectively

tendency also seems to occur among sea turtle species. With the exception of the flatback turtle (*Natator depressus*), smaller species tend to have longer internesting periods (Davenport 1997; Miller 1997). As one of the smaller species, olive ridleys' body temperature and metabolism should be quite influenced by water temperature. Cooler areas are, therefore, expected to decrease their metabolism and, consequently, extend internesting intervals (Sato et al. 1998). Unexpectedly, Hamel et al. (2008) found no apparent relationship between internesting interval and water temperature on Australian olive ridleys; nonetheless, sample size was small ($N = 2$). Further studies should be conducted in order to test this hypothesis.

The observed longer internesting intervals at Sergipe could also be related to phylogenetic differences of this population. Previous studies suggested that after the evolutionary divergence of the two *Lepidochelys* species (after Panama's isthmus closed), olive ridleys expanded their geographic distribution from the Indio-West Pacific region to the East Pacific and, more recently, to the Atlantic Ocean (Pritchard 1969a, b; Hughes 1972; Bowen et al. 1998). If the Atlantic coast was the last to be colonized, then genetic divergence could have occurred during the geographic expansion, justifying differences in reproductive patterns between different populations. Distinct genetic compositions have been found in Atlantic olive ridley populations (Bowen et al. 1998). They exhibit exclusive mitochondrial DNA alleles F and E; however, relationships between genotype and phenotype have not yet been made.

With longer internesting intervals, longer residence times are expected for female olive ridleys at Sergipe (Miller 1997; Hays et al. 2002), increasing the females' susceptibility to human activities at sea. The existence of a wandering behavior during the internesting period will amplify this susceptibility (Whiting et al. 2007). Recent satellite-tracking studies from Sergipe point out to wide

internesting areas (most of Sergipe's coastline) that overlap with fishing areas (Silva et al. 2011). Sergipe is an important area for shrimp trawling and negative interactions with turtles occur in the region (Marcovaldi et al. 2006; Silva et al. 2007). Conservation measures are needed, including: law enforcement of fishing exclusion zones (Thomé et al. 2003); extension of the summer fishing closure and development of a suitable management plan for the trawling fleet (Silva et al. 2010).

### Site fidelity

Carr and Carr (1972) have proposed that a probable advantage of the nesting site fidelity was the possibility of retaining favorable nesting places. Hence, a female would produce more offspring, increasing its fitness (Kamel and Mrosovsky 2005).

Olive ridleys' nesting in Brazil is concentrated around Sergipe (and mainly in Pirambu) although an extensive shore with hundreds of kilometers of open-sandy, rock-free coastline also seems suitable. Consecutive nesting events occurred in close proximity, non-randomly and depended on previous events. Additionally, the smaller distance performed between internesting intervals (when compared to renesting attempts) might indicate the females' capacity of nesting choice based on the conjecture that females aborting a nesting are deciding to search for a more suitable nesting place.

Previous publications have characterized olive ridleys nesting site fidelity based on its ability to return to a specific beach (Kalb 1999; Whiting et al. 2007) or expressed in broad space intervals (Maxwell et al. 2011). Here, we determine an average distance between consecutive nests perform by the females. Our findings are within those reported for example for loggerhead turtles of Florida (USA) and Natal (South Africa) that presented average internesting distances mostly between 3 and 6.9 km (Schroeder et al. 2003). Generally, sea turtles are said to renest in close proximity (up to 5 km) of previous nesting (Miller 1997). Overall, with an average distance between internesting events of 4.83 km, the Brazilian olive ridleys can be considered to present strong site fidelity.

Testing Kalb's suggestion (1999), we found no relationship between maturation level of females and internesting intervals (CCL use as an estimation of age). It is possible that no relationship exists between age and duration of internesting period. However, if no ecological triggers to set an *arribada* are present at Sergipe, then older turtles would not need to retain their eggs. This way, they would present similar internesting intervals as neophytes, masking that relationship. We also found no statistical relationship between internesting intervals and distances between consecutive nesting events in Sergipe. Nevertheless, recent studies with satellite tagged ridleys from Sergipe seem to show internesting displacement to be greater than the distance between consecutive nesting events (Silva et al. 2011). In Australia, two female olive ridleys travelled 125 and 200 km during internesting, returning to nest within 3 and 10 km away from original nesting site, respectively (Hamel et al. 2008). Both internesting displacement and age need further evaluation, if their relationship with internesting intervals is to be precisely verified.

## Conclusions

This study is the first to evaluate internesting intervals and site fidelity of solitary nesting olive ridleys on the West Atlantic. Sergipe holds a growing nesting population under active conservation measures for 30 years (Silva et al. 2007) with generally low human presence that should promote relatively natural conditions for the rookery.

*Arribada* nesting areas gather large female populations, but their existence depends on small areas, very sensitive to human disturbance and stochastic events (Plotkin and Bernardo 2008). The more cosmopolitan solitary nesters may outnumber *arribada* nesters worldwide (Bernardo and Plotkin 2007) and show less sensitivity (Godfrey and Chevalier 2004). Although conservation measures taken at *arribada* areas are important, other efforts should be taken in consideration at solitary nesting grounds. The development of further studies and conservation actions on olive ridley solitary nesting grounds might be crucial for the species preservation.

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**Ethical Standards** Metal tagging of flippers used in this study is a widespread and frequent approach used in mark–recapture programs designed for long-term monitoring of individual sea turtles (Chaloupka and Musick 1997). So far, we have never noticed any adverse effect on the turtle's behavior and well-being throughout our long-term monitoring program. All procedures were approved by ICMBio—Instituto Chico Mendes de Conservação da Biodiversidade (national institute for biodiversity conservation).

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**Annexure A-6**

**1958 SCC OnLine SC 4 : 1958 SCR 1156 : 1958 SCJ 637 : AIR 1958 SC 353 : (1958) 1 LLJ 500**

**In the Supreme Court of India**

(BEFORE S.R. DAS, C.J. AND S.K. DAS AND A.K. SARKAR, JJ.)

WORKMEN OF DIMAKUCHI TEA ESTATE ...
Appellants;

*Versus*

MANAGEMENT OF DIMAKUCHI TEA ESTATE ...
Respondent.

Civil Appeal No. 297 of 1956[*], decided on February 4, 1958

Advocates who appeared in this case:

C.B. Aggarwala, Senior Advocate, (K.P. Gupta, Advocate, with him), for the Appellants;

Purshottam Tricumdas, Senior Advocate, for N.C. Chatterjee, Senior Advocate, P.K. Goswami, Senior Advocate, S.N. Mukherjee and B.N. Ghosh, Advocates, with them, for the Respondent.

The Judgment of the Court was delivered by

**S.K. DAS, J.**— This appeal by special leave raises a question of some nicety and of considerable importance in the matter of industrial relations in this country. The question is the true scope and effect of the definition clause in Section 2(*k*) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The question has arisen in the following circumstances.

**2.** The appellants before us are the workmen of the Dimakuchi Tea Estate represented by the Assam Chah Karmachari Sangha, Dibrugarh. The respondent is the management of the Dimakuchi tea estate, District Darrang in Assam. One Dr K.P. Banerjee was appointed Assistant Medical Officer of the Dimakuchi tea estate with effect from November 1, 1950. He was appointed subject to a satisfactory medical report and on probation for three months. It was stated in his letter of appointment:"While you are on probation or trial, your suitability for permanent employment will be considered. If during the period of probation you are considered unsuitable for employment, you will receive seven days' notice in writing terminating your appointment. If you are guilty of misconduct, you are liable to instant dismissal. At the end of the period of probation, if you are considered suitable, you will be confirmed in the garden's service". In February 1951 Dr Banerjee was given an increment of Rs 5 per mensem, but on April 21, Dr Banerjee received a letter from one Mr Booth, Manager of the tea

estate, in which it was stated:"It has been found necessary to terminate your services with effect from the 22nd instant. You will of course receive one month's salary in lieu of notice". As no reasons were given in the notice of termination, Dr Banerjee wrote to the Manager to find out why his services were being terminated. To this Dr Banerjee received a reply to this effect:"The reasons for your discharge are on the medical side, which are outside my jurisdiction, best known to Dr Cox but a main reason is because of the deceitful manner in which you added figures to the requirements of the last medical indent after it had been signed by Dr Cox, evidence of which is in my hands."

**3.** The cause of Dr Banerjee was then espoused by the Mangaldai Circle of the Assam Chah Karmachari Sangha and the Secretary of that Sangha wrote to the Manager of the Dimakuchi tea estate, enquiring about the reasons for Dr Banerjee's discharge. The Manager wrote back to say that Dr K.P. Banerjee was discharged on the ground of incompetence in his medical duties and the chief medical officer (Dr Cox) had found that Dr Banerjee was incompetent and did not have sufficient "knowledge of simple everyday microscopical and laboratory work which befalls the lot of every Assistant Medical Officer in tea garden practice". It was further stated that Dr Banerjee gave a faulty, inexpert and clumsy quinine injection to one Mr Peacock, an assistant in the Dimakuchi tea estate, which produced an extremely acute and severe illness very nearly causing a paralysis of the patient's leg. The reasons given by the Manager for the termination of the services of Dr K.P. Banerjee did not satisfy the appellants herein and certain conciliation proceedings, details whereof are not necessary for our purpose, were unsuccessfully held over the question of the termination of the service of Dr Banerjee. The matter was then referred to a Board known as the Tripartite Appellate Board consisting of the Labour Commissioner, Assam, and two representatives of the Assam branch of the Indian Tea Association and the Assam Chah Karmachari Sangha respectively. This Board recommended that Dr Banerjee should be reinstated with effect from the date of his discharge. After the recommendation of the Board, the respondent herein appears to have offered a sum equal to 28 month's salary and allowances in lieu of reinstatement; to this, however, the appellants did not agree. In the meantime, Dr K.P. Banerjee received a sum of Rs 306-1-0 on May 22, 1951 and left the tea garden in question. Then, on December 23, 1953, the Government of Assam published a notification in which it was stated that whereas an industrial dispute had arisen between the appellants and the respondent herein and whereas it was expedient that the dispute should be referred for adjudication to a tribunal constituted under Section 7 of the Act, the Governor of Assam was pleased to refer the dispute to Shri U.K. Gohain, Additional District and

Sessions Judge, under clause (*c*) of sub-Section (1) of Section 10 of the Act. The dispute which was thus referred to the Tribunal was described in these terms:

> "(*i*) Whether the management of Dimakuchi Tea Estate was justified in dismissing Dr K.P. Banerjee, A.M.O?
>
> (*ii*) If not, is he entitled to reinstatement or any other relief in lieu thereof?"

**4.** Both parties filed written statements before Mr Gohain and the respondent took the plea that Dr K.P. Banerjee was not a "workman" within the meaning of the Act; therefore, there was no industrial dispute in the sense in which that expression was defined in the Act and the Tribunal had no jurisdiction to make an adjudication on merits. Mr Gohain took up as a preliminary point the question if Dr Banerjee was a "workman" within the meaning of the Act and came to a conclusion which may be best expressed in his own words:

> "Dr Banerjee being not a 'workman', his case is not one of an "industrial dispute" under the Industrial Disputes Act and his case is, therefore, beyond the jurisdiction of this Tribunal and the Tribunal has, therefore, no jurisdiction to give any relief to him."

**5.** There was then an appeal to the Labour Appellate Tribunal of India, Calcutta. That Tribunal affirmed the finding of Mr Gohain to the effect that Dr Banerjee was not a workman within the meaning of the Act. The Appellate Tribunal then said:

> "A dispute between the employers and employees to be an industrial dispute within the meaning of Section 2(*k*) of the Industrial Disputes Act, must be between the employers and the workmen. There cannot be any industrial dispute between the employers and the employees who are not workmen."

The appeal was accordingly dismissed by the Labour Appellate Tribunal. The appellants herein then moved this Court for special leave and by an order dated March, 14, 1956, special leave was granted, but was "limited to the question whether a dispute in relation to a person who is not a workman falls within the scope of the definition of industrial dispute contained in Section 2(*k*) of the Industrial Disputes Act, 1947".

**6.** It is clear from what has been stated above that the question whether Dr K.P. Banerjee is or is not a workman within the meaning of the Act is no longer open to the parties and we must proceed on the footing that Dr K.P. Banerjee was not a workman within the meaning of the Act and then decide the question if the dispute in relation to the termination of his service still fell within the scope of the definition of the expression "industrial dispute" in the Act.

**7.** We proceed now to read the definition clause the interpretation of which is the only question before us. That definition clause is in these

terms:

> "2. (*k*) 'Industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

It must be stated here that the expression "workman" is also defined in the Act, and the definition which is relevant for our purpose is the one previous to the amendments of 1956; therefore, in reading the various sections of the Act, we shall read them as they stood prior to the amendments of 1956 and refer to the amendments only when they have a bearing on the question before us. The definition of "workman" as it stood at the relevant time stated:

> "2. (s) 'Workman' means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Government."

**8.** Now, the question is whether a dispute in relation to a person who is not a workman within the meaning of the Act still falls within the scope of the definition clause in Section 2(*k*). If we analyse the definition clause it falls easily and naturally into three parts : first, there must be a dispute or difference; second, the dispute or difference must be between employers and employers, or between employers and workmen or between workmen and workmen; third, the dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour, *of any person*. The first part obviously refers to the factum of a real or substantial dispute; the second part to the parties to the dispute; and the third to the subject-matter of that dispute. That subject-matter may relate to any of two matters — (*i*) employment or non-employment, and (*ii*) terms of employment or conditions of labour, of any person. On behalf of the appellants it is contended that the conditions referred to in the first and second parts of the definition clause are clearly fulfilled in the present case, because there is a dispute or difference over the termination of service of Dr K.P. Banerjee and the dispute or difference is between the employer, namely, the management of the Dimakuchi tea estate on one side, and its workmen on the other, even taking the expression "workmen" in the restricted sense in which that expression is defined in the Act. The real difficulty arises when we come to the third part of the definition clause. Learned counsel for the appellants has submitted that the expression "of any

person" occurring in the third part of the definition clause is an expression of very wide import and there are no reasons why the words "any person" should be equated with "any workman", as the tribunals below have done. The argument is that inasmuch as the dispute or difference between the employer and the workmen is connected with the non-employment of a person called Dr K.P. Banerjee (even though he was not a workman), the dispute is an industrial dispute within the meaning of the definition clause. At first sight, it does appear that there is considerable force in the argument advanced on behalf of the appellants. It is rightly pointed out that the definition clause does not contain any words of qualification or restriction in respect of the expression "any person" occurring in the third part, and if any limitations as to its scope are to be imposed, they must be such as can be reasonably inferred from the definition clause itself or other provisions of the Act.

**9.** A little careful consideration will show, however, that the expression "any person" occurring in the third part of the definition clause cannot mean anybody and everybody in this wide world. First of all, the subject-matter of dispute must relate to (*i*) employment or non-employment or (*ii*) terms of employment or conditions of labour of any person; these necessarily import a limitation in the sense that a person in respect of whom the employer-employee relation *never existed* or *can never possibly exist* cannot be the subject-matter of a dispute between employers and workmen. Secondly, the definition clause must be read in the context of the subject-matter and scheme of the Act, and consistently with the objects and other provisions of the Act. It is well settled that "the words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occassion on which they are used, and the object to be attained". (Maxwell, *Interpretation of Statutes*, 9th Edn., p. 55).

**10.** It is necessary, therefore, to take the Act as a whole and examine its salient provisions. The long title shows that the object of the Act is "to make provision for the investigation and settlement of industrial disputes, and for certain other purposes". The preamble states the same object and Section 2 of the Act which contains definitions states that unless there is anything repugnant in the subject or context, certain expressions will have certain meanings. Chapter II refers to the authorities set up under the Act, such as, Works Committees, Conciliation Officers, Boards of Conciliation, Courts of Enquiry, and Industrial Tribunals. The primary duty of a Works

Annexure A-7



the legality or propriety of any such order, and may pass such order in relation thereto as it thinks fit. While exercising such revisional powers, the High Court cannot convert itself to an appellate court and reverse the findings of fact arrived at by the trial court on the basis of evidence or material on record, except where the High Court is not satisfied as to the legality or propriety of the order passed by the trial court.

**30.** The trial court, as we have discussed, has given good reasons for discarding the evidence adduced by Respondent 1 in support of his claim that he was a juvenile at the time of commission of the alleged offence and there was no scope to hold that the order of the trial court was either illegal or improper and the High Court should not have substituted its own finding for that of the trial court on the age of Respondent 1 at the time of commission of the alleged offence by reappreciating the evidence.

**31.** In the result, we allow this appeal and set aside the impugned order dated 18-8-2006 of the High Court in SB Criminal Revision Petition No. 166 of 2006 and remit the matter to the trial court for trial of Respondent 1 in accordance with law treating him not to be a juvenile at the time of the commission of the alleged offence.

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## (2010) 3 Supreme Court Cases 765

(BEFORE G.S. SINGHVI AND A.K. GANGULY, JJ.)

SECURITIES AND EXCHANGE BOARD OF INDIA .. Appellant;

*Versus*

AJAY AGARWAL .. Respondent.

Civil Appeal No. 1697 of 2005†, decided on February 25, 2010

A. **Constitution of India — Art. 20(1) — Ex post facto laws — Protection against — Necessary conditions — Conviction for an "offence" and subjection to a "penalty" — Order passed under SEBI Act, 1992, Ss. 11(4)(b) and 11-B(iii), restraining respondent for five years "from associating with any corporate body in accessing the securities market and also … prohibiting from buying, selling or dealing in securities …" — Held, such restraint order was passed for carrying out purpose of the 1992 Act, namely, protection of interests of investors, and not for any "offence" — Nor was the respondent subjected to any "penalty" as contemplated under Art. 20(1) — Bar against ex post facto applicability of laws not applicable in such case — General Clauses Act, 1897 — S. 3(38) — Criminal Procedure Code, 1973 — S. 2(n) — Words and Phrases — "Offence", "penalty" — Meaning of**

B. **Securities, Markets and Exchanges — Securities and Exchange Board of India Act, 1992 — S. 11-B (as inserted in 1995), S. 11(4)(b) (as amended in 2002) and S. 4(3) — Applicability and temporal scope of Ss. 11-B and 11(4)(b) — Retrospective effect — Applicability to pending**

† From the Judgment and Order dated 9-12-2004 as modified by order dated 3-2-2005 by the Securities Appellate Tribunal, Mumbai in Review Application No. 122 of 2004 in Appeal No. 85 of 2004

**cases — Held, S. 11-B being a procedural provision can be applied to a case which arose in 1993 — Restraint order passed against respondent on 31-3-2004 for certain allegations relating to 1993 i.e. before introduction of S. 11-B in 1995 and amendment of S. 11(4)(b) in 2002 — Power to issue restraint order, held, was available on 31-3-2004 even though allegations related to 1993 — General Clauses Act, 1897 — S. 6 — Statute Law — Amendment**

The respondent was the Joint Managing Director of a company. A complaint was lodged with SEBI that the company made misstatements in the prospectus at the time of public issue in 1993. Show-cause notice was issued on 22-12-1999. The respondent gave his reply on 1-3-2000 and 10-7-2002. Thereafter, an opportunity of personal hearing was given to the respondent and ultimately an order dated 31-3-2004 was passed restraining the respondent from associating with any corporate body in accessing securities market and also prohibiting him from buying, selling or dealing in securities for a period of five years.

The respondent challenged this order before the Appellate Tribunal which accepted his plea that Section 11-B which came into existence in 1995 could not the applied to allegations relating to the year 1993. This plea found favour with the Tribunal.

Allowing the appeal, the Supreme Court

*Held* :

Article 20(1) applies where an accused has committed an "offence" and has been subjected to a "penalty". The respondent has not been held guilty of any offence, nor has been subjected to any penalty. He has merely been restrained from associating with any corporate body in accessing the securities market and has also been prohibited from buying, selling or dealing in securities for a specified period. "Offence" is an act of omission or commission which is punishable by any law for the time being in force. Protection under Article 20(1) of the Constitution is not available to the respondent. (Paras 24, 25, 29 and 32)

*Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh*, AIR 1953 SC 394 : 1953 Cri LJ 1480; *State of W.B.* v. *S.K. Ghosh*, AIR 1963 SC 255 : (1963) 1 Cri LJ 252; *Director of Enforcement* v. *MCTM Corpn. (P) Ltd.*, (1996) 2 SCC 471 : 1996 SCC (Cri) 344, *relied on*

*Govind Das* v. *ITO*, (1976) 1 SCC 906 : 1976 SCC (Tax) 133, *distinguished on facts*

No one has a vested right in any course of procedure. A person's right of either prosecution or defence is conditioned by the manner prescribed for the time being by the law and if by the Act of Parliament, the mode of proceeding is altered, then no one has any other right than to proceed under the alternate mode. (Para 41)

*Maxwell on Interpretation of Statutes*, 11th Edn., p. 216, *relied on*

Provisions of Section 11-B being procedural in nature can be applied retrospectively. The Appellate Tribunal made a manifest error by not appreciating that Section 11-B is procedural in nature. It is a time-honoured principle if the law affects matters of procedure, then prima facie it applies to all actions, pending as well as future. (Para 40)

Moreover, there is no challenge to those provisions which came by way of amendment. In the absence of any challenge to those provisions, even if the law applies prospectively, it cannot be said that even though the Board is statutorily empowered to exercise functions in accordance with the amended law, its power to act under the law, as amended, will stand frozen in respect of any violation which might have taken place prior to the enactment of those provisions. (Paras 22 and 38)

The restraint order passed on the respondent strictly speaking was not under Section 11-B of the said Act. However, the provisions of Section 11(4)(*b*) of the said Act also came by way of amendment in 2002. It should, however, be noted that by the time the Board passed the order on 31-3-2004 all the amendments were on the statute. Therefore, the question here is not of retrospective operation of the amendments. Even if the amendments to the said Act are allowed to operate prospectively by the time the order was passed by the Board, it was empowered by the aforesaid amendments to do so. Therefore, without giving any retrospective operation to those provisions, the impugned order can be passed by the Board inasmuch as the amendments in question empowered the Board to pass such an order when it passed the order. (Paras 17 and 18)

Also, in the present case Section 11-B of the Act was invoked even at the show-cause stage. Therefore, it cannot be said that any provision has been invoked in the midst of any pending proceeding initiated by the Board. The respondent was, thus, put on notice that the Board is invoking its power under Section 11-B which was available to it under the law on the date of issuance of show-cause notice. In the premises, it cannot be said that any new provision has been invoked in connection with any pending proceeding. Nor can it be contended by the respondent that there was any unfairness in the proceeding. The respondent was given adequate notice of the charges in the show-cause notice. He was given an opportunity to reply to the show-cause notice and, thereafter, a fair opportunity of hearing was given before the order was passed by the Board. The entire gamut of a fair procedure was thus observed.

(Paras 20, 21, 38 and 39)

*K. Kapen Chako* v. *Provident Investment Co. (P) Ltd.*, (1977) 1 SCC 593; *Union of India* v. *Sukumar Pyne*, AIR 1966 SC 1206 : 1966 Cri LJ 946, *relied on*

*Maxwell on Interpretation of Statutes*, 11th Edn., p. 216, *quoted*

C. **Securities and Exchange Board of India Act, 1992 — Long Title — Purpose of the Act stated (Paras 33 and 34)**

D. **Securities and Exchange Board of India Act, 1992 — S. 3(2) — Character of SEBI — Held, is a body corporate (Para 34)**

E. **Taxation — Applicable law — Substantive laws applicable for determination of tax liability — Reiterated, are the laws in force in the relevant assessment year unless there is an amendment made applicable retrospectively either expressly or by necessary implication (Para 12)**

*Reliance Jute and Industries Ltd.* v. *CIT*, (1980) 1 SCC 139 : 1980 SCC (Tax) 67; *CED* v. *M.A. Merchant*, 1989 Supp (1) SCC 499 : 1989 SCC (Tax) 404, *relied on*

F. **Interpretation of Statutes — Particular statutes — Social welfare legislation — Kind of interpretation it should receive — Purposive construction — Held, Court's duty is to accord an interpretation which promotes purpose of law and if possible, to eschew the one which frustrates it — Such an approach adopted while interpreting SEBI Act, 1992, Ss. 11(4)(b) and 11-B(iii) (Para 34)**

G. **Interpretation of Statutes — External aids — Statement of Objects and Reasons — Taken into consideration while interpreting SEBI Act, 1992 as amended in 1995 and 2002 (Paras 35 to 37)**

K-D/A/45613/CR

Advocates who appeared in this case :

Altaf Ahmad, Senior Advocate (Bhargava V. Desai, Rahul Gupta and Nikhil Sharma, Advocates) for the Appellant;

Indrajeet Das [for Kuldip Singh (NP)], Advocate, for the Respondents.

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

1. (1996) 2 SCC 471 : 1996 SCC (Cri) 344, *Director of Enforcement* v. *MCTM Corpn. (P) Ltd.* 773*g-h*
2. 1989 Supp (1) SCC 499 : 1989 SCC (Tax) 404, *CED* v. *M.A. Merchant* 770*g*
3. (1980) 1 SCC 139 : 1980 SCC (Tax) 67, *Reliance Jute and Industries Ltd.* v. *CIT* 770*g*
4. (1977) 1 SCC 593, *K. Kapen Chako* v. *Provident Investment Co. (P) Ltd.* 775*e*
5. (1976) 1 SCC 906 : 1976 SCC (Tax) 133, *Govind Das* v. *ITO* 770*e-f*, 770*g*, 771*c*, 771*c-d*
6. AIR 1966 SC 1206 : 1966 Cri LJ 946, *Union of India* v. *Sukumar Pyne* 775*f-g*
7. AIR 1963 SC 255 : (1963) 1 Cri LJ 252, *State of W.B.* v. *S.K. Ghosh* 773*e*
8. AIR 1953 SC 394 : 1953 Cri LJ 1480, *Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh* 773*c-d*

The Judgment of the Court was delivered by

**A.K. GANGULY, J.**— The question which arises for consideration in this appeal is whether Section 11-B of the Securities and Exchange Board of India Act, 1992 (for short "the Act") could be invoked by the Chairman of the Securities and Exchange Board of India (for short "SEBI") in conjunction with Sections 4(3) and 11 for restraining the respondent from associating with any corporate body in accessing the securities market and prohibiting him from buying, selling or dealing in securities.

**2.** The factual background in which the present appeal arises is noted as under. The respondent was appointed the Joint Managing Director of Trident Steel Ltd. (hereafter referred to as "the said Company") on or about 20-5-1993. The Board initiated certain preliminary investigations about the affairs relating to public issues by the said Company on the basis of a complaint received from a member of Bombay Stock Exchange (for short "BSE"). The public issue of the said Company was of 52 lakh shares of Rs 10 each at a premium of Rs 3.50 per share aggregating to Rs 7 crore 2 lakhs. The lead managers to the issue were Bank of Baroda and Apple Industries Ltd. Such issue opened on 26-11-1993 and closed on December 1993 and one of the Directors of the Company appeared to be the chief promoter of the same.

**3*.** The complaint was to the effect that there was misstatement in the prospectus filed by the Company at the time of the public issue with regard to alleged non-disclosure of pledge of 7 lakh 50 thousand shares held in the Company by the Directors of the Company to avail of working capital from Bank of Baroda. The second aspect of the complaint was that the Directors of the Company had also given a non-disposal undertaking to Bank of Baroda in respect of the same shares and that the prospectus does not mention the same. The further complaint is that 2000 investors complained regarding non-receipt of dividend and that such complaint was filed before the Investor Service Cell, BSE.

* **Ed.**: Para 3 corrected vide Official Corrigendum No. F.3/Ed.B.J./50/2010 dated 8-4-2010.

**4.** The Company while replying to the investors stated that it had not declared any dividend during the preceding year in respect of which the complaint has been made. Therefore, prima facie, a case of misstating the facts in the prospectus and misguiding the investors was made out. It appears that the Company had deliberately not dispatched share certificates to investors based in Jalgaon and failed to produce the share transfer records and proof of records of the applicants in Jalgaon.

**5.** In the course of investigation it appeared that the Directors of the Company had pledged their personal holding of 7 lakh 50 thousand shares with Bank of Baroda and its Director, namely, Mr A.A. Kazi and Dowell Leasing and Financing Ltd. had given a non-disposal undertaking to Bank of Baroda. This was not disclosed in the prospectus of the Company. This appears to be, prima facie, a case of violation of SEBI Guidelines for disclosure for investor protection. Thus an important aspect of the capital structure of the Company had not been disclosed in the prospectus as a result of which the investors were misguided. In view of such complaint having been received investigation was undertaken.

**6.** Ultimately, a show-cause notice dated 22-12-1999 was issued to the respondent asking it to show cause why directions under Section 11-B of the Act restraining the Company and its Directors from accessing the capital market for a suitable period will not be issued. A reply was demanded within 15 days from the receipt of the show-cause notice.

**7.** Pursuant to such show-cause notice the respondent gave his reply on 1-3-2000 and 10-7-2002. Thereafter, an opportunity of personal hearing was granted to the respondent on 14-5-2002 and the same was adjourned to 5-7-2002 and on that date the Board made its submissions. Ultimately, on 31-3-2004 the Chairman of the Board passed an order, the concluding portion whereof is as under:

> "Therefore, in exercise of the powers conferred upon me by virtue of Section 4(3) read with Section 11 and Section 11-B of the SEBI Act, I hereby direct that Shri Ajay Agarwal be restrained from associating with any corporate body in accessing the securities market and also be prohibited from buying, selling or dealing in securities for a period of five years.
>
> This direction shall come into force with immediate effect."

**8.** Against the said order an appeal being Appeal No. 85 of 2004 was filed before the Tribunal. Before the appellate forum the only point argued is that Section 11-B of the Act came by way of amendment to the said Act with effect from 25-1-1995 whereas the public issue in respect of which the impugned order was passed was of November 1993 and the prospectus was of October 1993. Both the public issue and the prospectus were prior to 1995. The shares were listed with effect from 15-2-1994. Therefore, it was urged on behalf of the appellant that the alleged misconduct if any was for a period of time when Section 11-B was not on the statute book.

**9.** Thus, the question arose whether any direction can be issued under Section 11-B for the alleged misconduct said to have been committed prior to introduction of Section 11-B. The Appellate Tribunal was of the view that the provision of Section 11-B cannot be invoked in respect of the alleged misconduct which took place at a point of time when Section 11-B was not on the statute book. While passing the said order the appellate forum recorded that the respondent before the said forum, the appellant herein, wants to withdraw the impugned order.

**10.** In fact, against the said recording a review was filed for reviewing the contents of paras 13 and 14 of the order passed by the Appellate Tribunal. Paras 13 and 14 of the order passed by the Appellate Tribunal are set out below:

> "*13.* We have heard the learned counsel for the respondent. The learned counsel fairly conceded that such wide powers as in Section 11-B cannot be retrospectively applied.
>
> *14.* The learned counsel for the respondent seeks leave of this court to withdraw the impugned order."

After reviewing the said order the Appellate Tribunal ultimately deleted para 14 by the order dated 9-12-2004. Again, in the order dated 9-12-2004 it was unfortunately mentioned that the order was passed with the consent of the parties. Subsequently the said recital in the order, as noted above, was deleted.

**11.** Assailing the order of the Appellate Tribunal, the learned counsel for the appellant Board mainly urged that the finding given by the Tribunal that the powers under Section 11-B can only be used prospectively and not retrospectively had been given on an erroneous appreciation of the legal provision under the said Act. It appears that the Appellate Tribunal passed its order by relying on the decision of this Court in *Govind Das* v. *ITO*[1]. The decision of this Court in *Govind Das*[1] was on totally different facts and legal questions.

**12.** It is well known that the substantive laws to be applied for determination of tax liability must be the law which is in force in the relevant assessment year. It is well settled that law to be applied for assessment is the one which is extant in the assessment year unless there is an amendment which is made retrospective either expressly or by necessary implication. (See *Reliance Jute and Industries Ltd.* v. *CIT*[2] at p. 141, para 6.) Same principles have been followed in *CED* v. *M.A. Merchant*[3] (SCC p. 503, para 8 : AIR p. 1713, para 8).

**13.** In *Govind Das*[1], this Court held that sub-sections (1) to (5) of Section 171 of the 1961 Act provide for the machinery of assessment of Hindu Undivided Family after partition. Sub-section (6) of Section 171 of the 1961 Act is the substantive provision imposing tax liability on the members which

1 (1976) 1 SCC 906 : 1976 SCC (Tax) 133 : (1976) 103 ITR 123
2 (1980) 1 SCC 139 : 1980 SCC (Tax) 67
3 1989 Supp (1) SCC 499 : 1989 SCC (Tax) 404 : AIR 1989 SC 1710

is payable by the joint family. But these provisions are rightly held to be not applicable for recovery of tax assessed on the Hindu Undivided Family for a period prior to the enactment of those provisions. Therefore, this Court held that the income tax officer was not correct in taking recourse to sub-sections (6) to (7) of Section 171 of the Income Tax Act, 1961 for the purpose of recovery of tax assessed on the Hindu Undivided Family for assessment in respect of the years 1950-1951 and 1956-1957 since the relevant provisions of the 1961 Act were not given any retrospective operation. It is not in dispute that the assessment of tax in respect of the assessment year for the Hindu Undivided Family was completed under the corresponding provisions of the 1922 Act. Therefore, the Supreme Court held that such a case would be governed by Section 25-A of the old Act which does not impose any liability on members of the Hindu Undivided Family in case of partial partition since no such liability existed under Section 25-A of the old Act.

**14.** It is clear from the aforesaid discussion that the ratio in *Govind Das case*[1] does not apply to this case inasmuch as no tax liability has been created under the order of the Board. The Appellate Tribunal without at all discussing the facts and law involved in *Govind Das*[1] erroneously applied its ratio in the impugned order.

**15.** It may be noted in this connection that the impugned order was passed by the Board in exercise of its power under Section 4(3) read with Section 11 and Section 11-B of the said Act. Under Section 11 of the said Act the Board has the power of restraining a person from accessing the securities market or prohibiting any person associated with securities market to buy, sell or deal in securities. Such power is given to the Board under Section 11(4)(*b*) of the said Act.

**16.** Section 11(4)(*b*) of the said Act is as follows:

> "11. (4)(*b*) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;"

**17.** Therefore, restraint order passed on the respondent strictly speaking was not under Section 11-B of the said Act. However, the provisions of Section 11(4)(*b*) of the said Act also came by way of amendment in 2002. It should, however, be noted that by the time the Board passed the order on 31-3-2004 all the amendments were on the statute.

**18.** Therefore, the question here is not of retrospective operation of the amendments. Even if the amendments to the said Act are allowed to operate prospectively by the time the order was passed by the Board, it was empowered by the aforesaid amendments to do so. Therefore, without giving any retrospective operation to those provisions, the impugned order can be passed by the Board inasmuch as the amendments in question empowered the Board to pass such an order when it passed the order. So, the question that survives is whether the Board could pass the order in respect of allegations which surfaced prior to the coming into effect of those amendments in 1995 and 2002.

**19.** It is here that the question of protection against ex post facto laws falls for consideration.

**20.** In this connection it may be noticed that Section 11-B of the Act was invoked even at the show-cause stage. Therefore, it cannot be said that any provision has been invoked in the midst of any pending proceeding initiated by the Board. The respondent was, thus, put on notice that the Board is invoking its power under Section 11-B which was available to it under the law on the date of issuance of show-cause notice.

**21.** In the premises, it cannot be said that any new provision has been invoked in connection with any pending proceeding. Nor can it be contended by the respondent that there was any unfairness in the proceeding. The respondent was given adequate notice of the charges in the show-cause notice. He was given an opportunity to reply to the show-cause notice and, thereafter, a fair opportunity of hearing was given before the order was passed by the Board. The entire gamut of a fair procedure was thus observed.

**22.** This Court also finds that there is no challenge to the amended provision of the law. Even if the law applies prospectively, the Board cannot be prevented from acting in terms of the law which exists on the day the Board passed its order.

**23.** It was urged on behalf of the respondent that on the date when the violations were alleged against him, the Board did not have the power either under Section 11-B or under Section 11(4)(*b*) as those provisions came subsequently by way of amendment. This contention weighed with the appellate forum and the respondent was given the protection against ex post facto law even though it was not clearly mentioned in the order of the appellate forum.

**24.** The right of a person of not being convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence and not to be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence, is a fundamental right guaranteed under our Constitution only in a case where a person is charged of having committed an "offence" and is subjected to a "penalty".

**25.** In the instant case, the respondent has not been held guilty of committing any offence nor has he been subjected to any penalty. He has merely been restrained by an order for a period of five years from associating with any corporate body in accessing the securities market and also has been prohibited from buying, selling or dealing in securities for a period of five years.

**26.** The word "offence" under Article 20, sub-clause (1) of the Constitution has not been defined under the Constitution. But Article 367 of the Constitution states that unless the context otherwise requires, the General Clauses Act, 1897 shall apply for the interpretation of the Constitution as it does for the interpretation of an Act.

**27.** If we look at the definition of "offence" under the General Clauses Act, 1897 it shall mean any act or an omission made punishable by any law for the time being in force. Therefore, the order of restrain for a specified period cannot be equated with punishment for an offence as has been defined under the General Clauses Act.

**28.** Under the Criminal Procedure Code, "offence" has been defined under Section 2(*n*) as follows:

> "2. (*n*) 'offence' means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-Trespass Act, 1871 (1 of 1871);"

**29.** On a comparison of the aforesaid two definitions we find that there are common links between the two. An offence would always mean an act of omission or commission which would be punishable by any law for the time being in force.

**30.** Article 20(1) was interpreted by the Court in *Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh*[4]. Jagannadha Das, J. speaking for the Constitution Bench, on a comparison of similar provisions in English law and the American Constitution, opined that the language used in Article 20 is in much wider terms. This Court held that: (AIR p. 398, para 8)

> "*8.* … what is prohibited is the conviction of a person or his subjection to a penalty under 'ex post facto' laws. The prohibition under the article is not confined to the passing or the validity of the law, but extends to the conviction or the sentence and is based on its character as an 'ex post facto' law."

The ratio of this judgment has again been affirmed in *State of W.B.* v. *S.K. Ghosh*[5], wherein another Constitution Bench of this Court speaking through Wanchoo, J., as His Lordship then was, held that a forfeiture by a District Judge under Section 13(3) of the Criminal Laws Amendment Ordinance of 1944 cannot be equated to a forfeiture under Section 53 IPC inasmuch as forfeiture under Section 13(3) of the Ordinance involved embezzlement of government money or property and the same is not a punishment or penalty within the meaning of Article 20(1) of the Constitution (see paras 14 and 15 of the judgment).

**31.** Even if penalty is imposed after an adjudicatory proceeding, persons on whom such penalty is imposed cannot be called an accused. It has been held that proceedings under Section 23(1-A) of the Foreign Exchange Regulation Act, 1947 are adjudicatory in character and not criminal proceedings [see *Director of Enforcement* v. *MCTM Corpn. (P) Ltd.*[6]]. Persons who are subjected to such penalties are also not entitled to the protection under Article 20(1) of the Constitution.

4 AIR 1953 SC 394 : 1953 Cri LJ 1480
5 AIR 1963 SC 255 : (1963) 1 Cri LJ 252
6 (1996) 2 SCC 471 : 1996 SCC (Cri) 344

**32.** Following the aforesaid ratio, this Court cannot hold that protection under Article 20(1) of the Constitution in respect of ex post facto laws is available to the respondent in this case.

**33.** If we look at the legislative intent for enacting the said Act, it transpires that the same was enacted to achieve the twin purposes of promoting orderly and healthy growth of securities market and for protecting the interest of the investors. The requirement of such an enactment was felt in view of substantial growth in the capital market by increasing the participation of the investors. In fact such enactment was necessary in order to ensure the confidence of the investors in the capital market by giving them some protection.

**34.** The said Act is pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors. It is a well-known canon of construction that when the court is called upon to interpret provisions of a social welfare legislation the paramount duty of the court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it. Keeping this principle in mind if we analyse some of the provisions of the Act it appears that the Board has been established under Section 3 as a body corporate and the powers and functions of the Board have been clearly stated in Chapter IV and under Section 11 of the said Act.

**35.** A perusal of Section 11, sub-section 2(*a*) of the said Act makes it clear that the primary function of the Board is to regulate the business in stock exchanges and any other securities markets and in order to do so it has been entrusted with various powers. Section 11 had to be amended on several occasions to keep pace with the "felt necessities of time". One such amendment was made in sub-section (4) of Section 11 of the said Act, which gives the Board the power to restrain persons from accessing the securities market and to prohibit such persons from being associated with securities market to buy and sell or deal in securities. Such an amendment came in 2002.

**36.** From the Statement of Objects and Reasons of the Amendment Act of 2002, it appears that Parliament thought that in view of growing importance of stock market in national economy, SEBI will have to deal with new demands in terms of improving organisational structure and strengthening institutional capacity. Therefore, certain shortcomings which were in the existing structure of law were sought to be amended by strengthening the mechanisms available to SEBI for investigation and enforcement, so that it is better equipped to investigate and enforce against market malpractices. (See Para 3 of the Statement of Objects and Reasons.)

**37.** Section 11-B which empowers the Board to issue certain directions also came up by way of amendment in 1995 by Act 9 of 1995. The Statements of Objects and Reasons of such amendments show that one of the objects is to empower the Board to issue regulations without the approval of the Central Government. [See Para 3(*e*) of the Statements of Objects and

Reasons.] Section 11-B of the Act thus empowers the Board to give directions in the interest of the investors and for orderly development of securities market, which, as noted above, is one of the twin purposes to be achieved by the said Act. Therefore, by the 1995 Amendment by way of Section 11-B the Board has been empowered to carry out the purposes of the said Act.

**38.** As noted above, there is no challenge to those provisions which came by way of amendment. In the absence of any challenge to those provisions, it cannot be said that even though the Board is statutorily empowered to exercise functions in accordance with the amended law, its power to act under the law, as amended, will stand frozen in respect of any violation which might have taken place prior to the enactment of those provisions. It is nobody's case that the Board has exercised those powers in respect of a proceeding which was initiated prior to the enactment of those provisions. In fact the Board has issued the show-cause notice in terms of Section 11-B and considered the reply of the respondent. In such a situation, there has been no infraction in the procedure.

**39.** Therefore, the entire basis of the order of the Appellate Tribunal that provision of Section 11-B cannot be applied retrospectively has been passed on an erroneous basis, as discussed hereinabove.

**40.** Provisions of Section 11-B being procedural in nature can be applied retrospectively. The Appellate Tribunal made a manifest error by not appreciating that Section 11-B is procedural in nature. It is a time-honoured principle if the law affects matters of procedure, then prima facie it applies to all actions, pending as well as future. [See *K. Kapen Chako* v. *Provident Investment Co. (P) Ltd.*[7] wherein A.N. Ray, C.J. laid down those principles.]

**41.** Maxwell in his *Interpretation of Statutes* also indicated that no one has a vested right in any course of procedure. A person's right of either prosecution or defence is conditioned by the manner prescribed for the time being by the law and if by the Act of Parliament, the mode of proceeding is altered, then no one has any other right than to proceed under the alternate mode. (*Maxwell on Interpretation of Statutes*, 11th Edn., p. 216.) These principles, enunciated by Maxwell, have been quoted with approval by the Supreme Court in its Constitution Bench judgment in *Union of India* v. *Sukumar Pyne*[8]. (AIR at p. 1209, para 9.)

**42.** For the reasons discussed above, this Court is constrained to quash the order of the Appellate Tribunal and upholds the order of the Chairman of the Board.

**43.** The appeal is allowed. There will be, however, no orders as to costs.

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7 (1977) 1 SCC 593 : AIR 1976 SC 2610
8 AIR 1966 SC 1206 : 1966 Cri LJ 946

**Annexure A-8**

2015 SCC OnLine NGT 3

Before The National Green Tribunal Principal Bench New Delhi

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

In The Matter of:

Vikrant Kumar Tongad, A-93, Sector - 36, Greater Noida-201308 Distt. Gautam Budh Nagar, Uttar Pradesh ... Applicant;

*Versus*

1. Delhi Tourism and Transportation Corporation, Through its Chairman 18-A, DDA SCO Complex Defence Colony New Delhi-110024
2. National Capital Territory of Delhi, Through The Chief Secretary Delhi Secretariat IP Estate New Delhi-110002
3. Union of India, Through its Secretary Ministry of Environment and Forest Paryavaran Bhawan CGO Complex, Lodhi Road, New Delhi-110003
4. Delhi Pollution Control Committee, Through its Member Secretary 4th Floor, ISBT Building, Kashmere Gate New Delhi-110006 ... Respondents.

Original Application No. 137 of 2014

Decided on February 12, 2015, [Hearing on: 19th January, 2015]

Counsel for Applicant:

Mr. Rahul Choudhary, Advocate for the Applicant

Counsel for Respondents:

Mr. S.D. Upadhyay, Senior Advocate along with Mr. H. Peechara, Advocate for Respondent No. 1

Mr. Balendu Shekhar, Advocate for Respondents No. 2 & 4

Mr. Vivek Chib, Advocate for Respondent No. 3

Mr. Avijit Bhushan, Advocate for UPSIDC

JUDGMENT

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

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

Justice Swatanter Kumar, (Chairperson)

Following precise question of law falls for consideration of the

Tribunal in the present application:

> Whether, constructing a 'bridge' across Yamuna is a 'project' or 'activity' that shall require prior Environmental Clearance from the Regulatory Authority, particularly with reference to Entry 8(a) and/or 8(b) of the Schedule to the Environment Clearance Regulations, 2006 (for short 'Regulations of 2006')?

2. The necessary facts giving rise to the present application are that, the applicant, who claims to be a public spirited person, working in the field of environmental conservation, particularly devoted to conservation of wetlands and ground water, has filed the present application, challenging construction of a 'Signature Bridge' across River Yamuna at Wazirabad, Delhi. The challenge is primarily on the ground that the said construction has commenced and is being carried on without obtaining prior Environmental Clearance from the Regulatory Authority in terms of the provisions of the Regulations of 2006. Delhi Tourism and Transport Development Corporation (DTTDC) (Respondent No. 1) has commenced the project of construction of 'Signature Bridge' across River Yamuna at Wazirabad, Delhi, which is an un-symmetric cable-stayed bridge, with a main span of 251 meters and total length of 675 meters. The composite deck of the bridge carrying eight lanes (four on each side), is about 35 meters wide and is supported by lateral cables spaced at 13.5 meters intervals. The height of steel tower is approximately 150 meters. The total area of Signature Bridge Project is 1,55,260 sq. mtrs.

3. It is stated by the applicant that the Master Plan of NCT of Delhi, designates floodplains of River Yamuna in Zone 'O', expanding to an area of 9700 hectares or 97 sq. kms. The area bears special characteristics in terms of being an eco-sensitive area, consisting of natural features with large stretches of land between water course and existing bunds on the sides of River Yamuna. It is also averred that the whole expanse of these stretches are not to be used for development, therefore, need not be taken up under Section 8 (Zonal Development Plan) of Delhi Development Authority Act, 1957. As per the estimates, around 1600 hectares of land is under water (river extent) and 8100 hectares is dry land (flood plains). The reach from Wazirabad barrage to Okhla barrage is 4700 hectares. According to the applicant, the construction of the bridge is likely to impact River Yamuna and river hydrology adversely. The applicant relies upon a report prepared by Environics Trust, New Delhi and Peace Institute Charitable Trust, Delhi, on 'Impact Assessment of Bridges and Barrages on River Yamuna', which was published in the year 2009. The report intended to understand and assess the impacts due to rail/road bridges and barrages on the river's environment and hydrology on the whole. According to the applicant, considering this Report, it was necessary

and prudent to conduct Environmental Impact Assessment of the Signature Bridge Project and its impacts on River Yamuna and its hydrology. As per the applicant, the impacts of the activities of the proposed bridge construction can occur during Planning and Designing Stage to Pre-construction Stage, Construction Stage and Operation Stage. The applicant has also stated certain impacts of such constructions, like, diversion of waterways, contamination of soil and impact on aquatic life, including the chances of ground water contamination, which may occur at the Pre-Construction and Construction stage. For these reasons, the applicant claims that it was necessary for the Project Proponent to obtain prior Environmental Clearance before starting the project in terms of the Regulations of 2006.

4. It is the specific case of the applicant, that, such projects are covered under the Regulations of 2006 and particularly under Entry 8 (a) and 8(b) of the Schedule to the said Regulations.

5. In reply to these, Respondent No. 1 admits that it has commenced construction of the Signature Bridge over River Yamuna without obtaining any Environmental Clearance from the Regulatory Authority i.e. Ministry of Environment, Forest & Climate Change (for short 'MoEF')/State Level Environment Impact Assessment Authority (for short 'SEIAA'). According to the Respondent No. 1, since the existing two lanes Bridge at Wazirabad was unable to bear increased volume of road traffic, the Government of NCT of Delhi decided to construct a new eight lane bridge for high moving traffic. Thus, the construction work of the bridge was assigned to Respondent No. 1 by Government of NCT of Delhi in terms of MoU dated 27th August, 2004. A traffic study report was conducted by M/s Stup Consultants Pvt. Ltd. on behalf of Respondent No. 1, which recommended that considering the present traffic volume and the future traffic growth, a new link is badly required, as the existing infrastructure was insufficient in all respects. An Environmental Impact Assessment (for short, 'EIA') study was also conducted which summarized that there is likely to be no significant impact on the environment due to the proposed construction of the bridge. According to Respondent No. 1, Delhi Metro Rail Corporation gave 'No Objection' as per letter dated 1st December, 2004, similarly, the Ministry of Defense gave 'No Objection' on 23rd May, 2006, the Technical Committee of the Delhi Development Authority gave 'No Objection' on 14th June, 2006 and the Archeological Survey of India gave 'No Objection' on 7th August, 2006. The Yamuna Standing Committee considered the case in its 72nd meeting held on 7th January, 2007 and desired that the afflux of 18.20 cm should be further reduced

by providing an additional water way beneath the approach road on the left bank of the river. Additional studies were carried out to reduce the afflux level as desired, to a level so as not to inhibit drainage of the city by providing additional openings.

6. When Respondent No. 1 applied to the MoEF for seeking Environmental Clearance for execution of the project, the MoEF, vide its letter dated 14th March, 2007 informed Respondent No. 1 that 'Bridges' are not covered under the Regulations of 2006 and as such Environmental Clearance is not required. The letter dated 14th March, 2007 reads as under:

> "Subject: Regarding Environmental Clearance for Construction of bridge on River Yamuna at Wazirabad Delhi: Your application dated 6.11.2006 This has reference to your application dated 6.11.2006 for Environmental Clearance for construction of proposed bridge on River Yamuna at Wazirabad, Delhi under New EIA Notification 2006.
>
> I am directed to inform you that 'Bridges' are not covered under EIA Notification 2006 and as such Environmental Clearance is not required."

7. In furtherance to the above, Respondent No. 1 did not pursue the matter any further and commenced the construction work which is even being carried on presently. It is also averred by this Respondent that the Central Water and Power Research Station (for short 'CWPRS'), Pune carried out further Hydraulic Studies and recommended the construction with certain technical parameters, which were duly adopted by Respondent No. 1 in order to take all precautionary measures in the interest of environment.

8. The NCT of Delhi and Delhi Pollution Control Committee (for short 'DPCC'), i.e., Respondent Nos. 2 & 4 respectively, have taken a stand that they are unable to say as to what is the proposed use of construction of this project in future. However, they also stated that "Bridge" is not covered under the Regulations of 2006. In their reply, they referred to Entry No. 7(f) i.e., 'Highways' - (both National Highways or State Highways) but have not made any specific averment as to whether the present project is covered under Entry 7(f) or not. MoEF, though, did not file any separate reply, but, they have taken a stand during the course of the arguments that, "Bridges" is an 'activity' or 'project' which is not covered under any of the Entries of the Schedule to the Regulations of 2006, and hence, does not require Environmental Clearance.

9. As is evident from the above narrated factual matrix of the case, the entire controversy revolves around the meaning and interpretation of Entries 8(a) and (b) and/or 7(f) respectively of the Schedule to the Regulations of 2006. Thus, it would be necessary for us to notice the

Entries at this stage itself. The said Entries of the Schedule reads as under:

| Project or Activity | | Category with threshold limit | | Conditions if any |
|---|---|---|---|---|
| | | A | B | |
| (1) | (2) | (3) | (4) | (5) |
| 7 | | Physical Infrastructure including Environmental Services | | |
| 7 (f) | Highways | [(i) New National Highways; and ii) Expansion of National Highways greater than 30 km involving additional right of way greater than 20 in involving land acquisition.] | [(i) All new New State Highway Projects] (ii) State Highway expansion projects in hilly terrain (above 1000 m AMSL) and or ecologically sensitive areas]. | [General Condition shall apply. Note-Highways include expressways.] |
| 8 | | Building/Construction projects/Area Development projects and Townships | | |
| 8 (a) | Building and Construction projects | | ≥ 20000 sq.mtrs and < 1,50,000 sq.mtrs. of built-up area# | [The built-up area for the purpose of this notification is defined as “the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects] |
| 8 (b) | Townships and Area Development | | Covering an area ≥ 50 ha and or | ++All projects under Item 8(b) shall be appraised as |

| | | | | |
|---|---|---|---|---|
| | projects. | | built up area ≥ 1,50,000 sq. mtrs ++ | Category B1 |

10. The present project, as per the affidavit filed by Respondent No. 1 relates to construction of an eight-lane wide bridge across River Yamuna, connecting Eastern and Western parts of Delhi. This was necessitated for the purpose of easing out the traffic congestion. The old bridge over River Yamuna at Wazirabad was to be retained for movement of slow traffic. This was primarily to feed fast developing areas of Yamuna Vihar, Gokul Puri, Nand Nagri and Inter-State Traffic from Ghaziabad, Sahibabad, Loni on Eastern side and Timarpur, Azadpur, Burari, Mukherjee Nagar, Mall Road etc. on the Western side. Development of this 'Signature Bridge' was imperative and in the interest of general public, in order to ease the traffic and meet the needs of the residents across.

11. First and foremost, the meaning and scope of the word 'bridge' has to be understood.

A bridge' is a building erected across a river, ridge, valley, or other place for common benefit of travellers. It is a structure that spans and provides a passage over a road, railway, river or some other obstacle (Ref: *Wharton's Law Lexicon* 15th Edn., 2012, *Collins English Dictionary and Thesaurus* 1st Edn., 1999).

*Law Lexicon*, 3rd Edition 2012 describes the word 'bridge' as follows: —

> "A bridge is a structure of wood, iron, brick, or stone, ordinarily erected over a river, creek, pond or lake; or over a ravine, railroad, canal, or other obstruction in a highway, so as to make a continuous roadway, and afford to travelers a convenient passageway from one bank to the other. While a bridge is a part of the highway which passes over it, no definite rule can be laid down as to where one terminates and the other begins."

12. Besides the above specific meaning that has been given to the expression 'bridge', even in common parlance, it is understood to be a structure that connects any two ends, for various activities like travelling, crossing a river, joining National or State Highways or roads and is intended to provide for natural or artificial link for commutation. A bridge can hardly be termed as a stand-alone project as it would normally be part of a major or a smaller development or allied activity. A bridge therefore, cannot be taken as an abstract term. It would, without exception, always be a part of a project, i.e., construction of a highway or even an ordinary road and/or to cross a river, canal, drain or

even a rail road. To put it simply, the bridge would be a segment or part of a bigger project, activity or development. It can hardly be a final product in itself. Like even in the present case, it is meant to connect the Wazirabad Barrage and Okhla Barrage, to ease out traffic pressure and provide fast movement of traffic across River Yamuna, though the existing bridge would still be in existence. Thus, it would be a step in the final process and will not be equitable to a final product. A bridge cannot be made to stand on its own without connecting it with the roads on both ends. It is an integral part of an activity of development or area development that has to be seen wholly and from a holistic point of view.

13. Regulations of 2006 have been issued by the Central Government in exercise of its statutory powers conferred under sub-section (1) and clause (v) of sub Section (2) of Section 3 of the Environmental Protection Act, 1986 (for short 'Act of 1986') read with clause (d) of sub-rule 3 of Rule 5 of the Environmental (Protection) Rules, 1986 (for short 'Rules of 1986') in supersession of the previously issued notifications. This notification not only has the force of law, but is a paramount piece of legislation for controlling and preventing environmental pollution and degradation.

14. Clause 2 of Regulations of 2006 declares and prescribes that a 'project' or 'activity' shall require prior Environmental Clearance from the concerned Regulatory Authority under Category 'A' and 'B' as the case may be. This would equally apply to all new projects or activities, as well as expansion and modernization of existing projects or activities. Clause 2 also has an inbuilt restriction or limitation. It makes it obligatory upon the project proponent of any 'project' or 'activity' to take such Environmental Clearance before any construction work or preparation of land by the project management (except for securing the land), has started on the 'project' or 'activity'. In other words, obtaining of prior Environmental Clearance is a condition precedent before taking any steps in relation to the project or activity in terms of Clause 2. Schedule to the Regulations of 2006, then elaborates the projects and activities which would be covered under the said Clause 2. The heading of the Schedule also states 'List of Projects or Activities Requiring Prior Environmental Clearance'.

15. The significant expressions used by the framers in Clause 2 are 'projects and activities'. Obviously, when these two expressions have been used, they are neither interchangeable nor can be treated as synonymous. They have to have a distinct and different meaning with reference to the circumstances of a given project or activity. 'Project' even in common parlance is understood to mean, aim a planned undertaking; an individual or collaborative enterprise that is carefully planned to achieve a particular aim; a proposed or planned

undertaking; any work taken up under a scheme for the purpose of providing employment etc. (Ref: *The Law Lexicon* 3rd Edn., 2012, *Oxford Dictionary of English* 3rd Edn. 2010, *Wharton's Law Lexicon* 15th Edn., 2012). The word 'Activity' could mean the combination of operations undertaken by the corporate body, whether or not they amount to a business, trade or profession in the ordinary sense. It could also mean the collective acts of one person or two or more people engaged in a common enterprise. It could even mean a condition in which things are happening or being done; busy or vigorous action or movement; a thing that a person or group does or has done (Ref: *The Law Lexicon* 3rd Edn., 2012, *Black's Law Dictionary* 9th Edn., 2009, *Oxford Dictionary of English* 3rd Edn., 2010). 'Project' is a term of wider connotation than an 'activity'. Normally every 'activity' would be part of a 'project' but not always. Both these expressions cannot be defined or explained in rigid and inelastic terms. But, the fact of the matter is that these expressions have to be given a wider meaning and a liberal construction with reference to the facts of a given case, involving a 'project' or an 'activity'.

16. Entry 7(f) of the Schedule to the Regulations of 2006 deals with projects and activities of 'Highways'. It includes New National Highways, all new State Highway Projects and expansion thereof. Subject to the qualifications stated in that Entry, the Highways would include 'Expressways'.

17. Entry 8(a) relates to Building and Construction projects of ≥ 20,000 sq. mtrs. and < 1,50,000 sq. mtrs. of built up area. Entry 8(b) relates to projects of Township and Area Development, covering an area which is ≥ 50 hectares and/or built up area which is ≥ 1,50,000 sq. mtrs. Such projects or activities under Entries 8(a) and 8(b) would be required to take Environmental Clearance and all such projects of Township and Area Development under Entry 8(b) satisfying the threshold area would be treated and appraised as category 'B1' Projects. Entries 8(a) and 8(b) are under Entry 8 which carries a heading 'Building/Construction projects/Area Development projects and Townships'. The legislature has worded heading of Entry 8 in very wide and expressive terms. Use of expression with such wide magnitude clearly indicates the legislative intent that they should be construed liberally. These expressions in fact, and as above referred, are incapable of being construed strictly. Entry 8(b) talks both of Township and Area Development projects. These expressions relate to same or identical 'project' or 'activity'. Besides developing township, development of the areas is also contemplated as an activity for a bigger project. If these projects of Township and Area Development are covering an area ≥ 50 hectares and/or the built up area in excess of 1,50,000 sq. mtrs., the

project/activity would require prior Environmental Clearance.

18. Having deliberated upon the relevant provisions of the Regulations of 2006, now we would deal with the principles applicable to interpretations of such Entries. The Hon'ble Supreme Court in its various judgments has stressed upon the liberal interpretation of a statute, if it is a social welfare legislation. For instance, in the case of *The Authorised Officer, Thanjavur* v. *S. Naganatha Ayyar*, (1979) 3 SCC 466, the Court held that:

> "1. While dealing with welfare legislation of so fundamental a character as agrarian reform, the court must constantly remember that the statutory pilgrimage to 'destination social justice' should be helped, and not hampered, by judicial interpretation."

In the case of *Workmen of American Express International Banking Corporation* v. *Management of American Express International Banking Corporation*, (1985) 4 SCC 71, the Court held that:

> "4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and 'Human Rights' legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its mis-application must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes."

In the case of *Securities and Exchange Board of India* v. *Ajay Agarwal*, (2010) 3 SCC 765, the Court held that:

> "41. It is a well known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it."

19. The Courts have also evoked the principle of purposive construction in relation to social welfare legislations. The statute and its provisions have to be given an expanded meaning that would tilt in favour of the object of the Act, curing or suppressing the evil by enforcing the law. While interpreting an Entry in a Schedule to an Act, the ordinary rule of construction requires to be applied to understand the Entries. There is a functional difference between a body of the statute on the one hand and the Schedule which is attached thereto on the other hand. The Sections in these Acts are enacting provisions. In contrast, the Schedule in an Act sets down things and objects and contains their names and descriptions. The sections of and the Schedule to the Act, have to be co-jointly read and construed, keeping in view the purpose and object of the Act while keeping a clear distinction between a fiscal and a social welfare legislation in mind.

Social welfare programmes projected by the State and object of the statute are of paramount consideration while interpreting and construing such Entries. The law is always intended to serve the larger public purpose. In fact, welfare of the people is the supreme law and an enacted law should be administered lawfully, i.e., *salus populi est suprema lex*. It is not possible even for the legislature to comprehend and provide solution to all the evils or obstacles that are likely to arise in implementation of the enacted laws. Therefore, the Tribunal must adopt an approach for interpretation of these Entries which would further the cause of the Act and the intent of the legislation and be not unduly influenced by the rule of restricted interpretation.

20. In the case of *Regional Provident Fund Commissioner* v. *Shibu Metal Works*, AIR 1965 SC 1076, the Hon'ble Supreme Court was concerned with the question as to the true content of the entry "Electrical, Mechanical or general engineering products" included in Schedule 1 of the Employees' Provident Fund Act, 1952. The Hon'ble Supreme Court while dealing with this question and the principles that should be applied to find the true content of such entry held as under:

> "13. Reverting then to the question of construing the relevant entry in Sch. I, it is necessary to bear in mind that this entry occurs in the Act which is intended to serve a beneficent purpose. The object which the Act purports to achieve is to require that appropriate provision should be made for the employees employed in the establishments to which the Act applies; and that means that in construing the material provisions of such an Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of the object. If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction. This rule postulates that there is a competition between the two constructions, each one of which is reasonably possible. This rule does not justify the straining of the words or putting an unnatural or unreasonable meaning on them just for the purpose of introducing a broader construction."

21. The Hon'ble Supreme Court while giving a wider meaning to the Entry, held that the manufacture of brass utensils can easily be regarded as an activity, the object of which is the manufacture of general engineering products. This was the balanced and proper interpretation which was neither narrow nor broad, but was one that fitted into the scheme of the Schedule and the Object of the Employees' Provident Fund Act, 1952.

22. As we have already noticed that the Regulations of 2006 have been enacted in furtherance to the powers of delegated legislation

vested in the Central Government in terms of the provisions of the Act and Rules of 1986. The Act of 1986 was enacted while noticing the decline in environmental quality as 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. It also noticed the inadequate linkages in handling matters of industrial and environmental safety. The purpose was to provide for greater environmental safety. The Act of 1986 was intended to take appropriate steps for the protection and improvement of environment. Environment not only includes water, air and land, but, also the interrelationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property. Section 3 of the Act of 1986 *inter alia*, but, specifically empowers the Central Government to take all such measures as it deems necessary for the purpose of protecting and improving the quality of environment. Clause (ii) and (iii) of Sub-Section 2 of Section 3, requires the Central Government to *inter alia*, but, specifically take measures as contemplated under sub-section 1 of Section 3, in relation to planning and execution of a nation-wide programme for prevention, control and abatement of environmental pollution, as well as for laying down standards for the quality of environment in its various aspects. Rule 5 of the Rules of 1986 further empowers the Central Government to place prohibition and restriction on the location of industries and the carrying on of processes and operations in different areas with reference to the environmental pollution. The object and purpose of the Act is to ensure prevention and control of environmental pollution, its abatement and particularly, degradation thereof.

23. Rivers are a very significant aspect of environment and ecology. The authorities concerned are not only expected to take steps for preventing pollution of water *per se* but, are also required to ensure that its biodiversity, ecology and floodplain is not unduly intruded or exploited to the disadvantage of the environment. That is the precise reason that the Act of 1986 not only refers to the pollution of air, water and land but even admits to protect its interrelationship with human beings and even other living creatures including plants etc. The legislature has left nothing to the imagination and has worded the Entry 8(b) very widely so as to cover within its ambit every facet of environment as contemplated under Section 2(a) of the Act of 1986. The aim and object of the Act of 1986 is to protect the environment, which certainly includes rivers.

24. Rivers can be polluted directly or its ecology, biodiversity or flow can be adversely affected by developmental activities, thus, causing environmental hazards. Structures like bridges can cause a series of

impacts both in immediate time and extended over a long duration. Impact is not only limited to the specific physical development, but, it also gives rise to several other interlinked elements which can cumulatively impact the environment which replenishes the resources in long run. These environmental hazards may result from flooding, narrowing of embankments and endangering of aquatic life. Any development project or activity upon the floodplain, river bank or across the river is bound to have some impact upon the ecology and biodiversity of the river. It is an established fact that such projects, whether part of a comprehensive developmental activity or independently, would narrow the water course or environmental flow of the river. Such activity may have adverse impacts on aquatic flora and fauna. In some cases, it may adversely affect the floodplain and may amount to affecting the terrestrial ecology.

25. Thus, the assessment of such impact and degradation of environment resulting therefrom, is essential and is a matter which is of concern for the Expert Bodies appointed under the Act. Furthermore, Environmental Impact Assessment Guidance Manual for Building, Construction, Township and Area Development Project, 2010 provides that environmental facets which are to be considered in relation to township and area development are land, air, noise, water, biological, socio-economic and solid waste management. Thus, it is necessary to ascertain the baseline data of these environmental facets before a project or an activity may be permitted or carried out.

26. The Regulations of 2006 have been promulgated with the aim and object of assessing the impact that a project or an activity would have upon the environment and ecology. The expert body is expected to precisely visualise the extent of environmental degradation resulting from the project before granting approval. Normally, the projects having irretrievable and permanent impacts on nature are not permitted, and where permitted, very stringent, protective and precautionary conditions are imposed. Thus, it is relevant at this stage to understand the concept of EIA as contemplated under the Regulations of 2006 with reference to the provisions of the Act of 1986 for protection of ecology and biodiversity of the river and riverbed.

27. In order to understand the concept of EIA, one first needs to know what an ‘Environmental Impact’ is. An ‘Environmental Impact’ is any impact or effect (positive or negative) that an activity has on an environmental system, environmental quality or natural resources. It is also known as an environmental effect [*Oxford Dictionary of Environment and Conservation*, First Edn., 2007]. An ‘Environmental Effect’ is defined as a natural or artificial disturbance of the physical, chemical or biological components that make up environment [*Black's Law Dictionary*, 9th Edn., 2009]. Such activities may take the form of

mining, oil and gas exploration, thermal, nuclear and hydraulic power plants, metallurgical industries, chemical fertilizers, storing of hazardous chemicals, industrial estates/parks/complexes/areas, waste treatment plants, etc.

28. EIA was first introduced in the USA in 1969 and has since been widely accepted. It is being adopted in one form or the other in an increasing number of countries as a basis for making informed and rational judgments about what sort of developments are environmentally acceptable. It even includes the concept of 'Strategic Environmental Assessment'. An EIA is defined as a formal statement of the environmental impacts that are likely to arise from major activities such as new legislation or a new policy, programme or project. The results of the assessment are reported in the 'Environment Impact Statement' (EIS) [*Oxford Dictionary of Environment and Conservation*, First Edn., 2007]. Thus, an EIA in general parlance does not confine itself only to projects but also to legislations and policies.

29. With expansion and modernization of economic and trade activities in India, there was a need felt to understand as well as regulate the potential environmental impacts that such activities may have. Thus, in order to impose certain restrictions and prohibitions on new projects or activities, or on expansion or modernization of existing projects or activities, the Central Government enacted the Environment Clearance Regulations, 2006, on 14$^{th}$ September, 2006 under Section 3 (1) and 3(2)(v) of the Act of 1986 and Rule 5(2) of Rules of 1986. The objective of the Regulations of 2006 is to set procedures of environmental clearance before establishment of project of identified nature and size. It required the construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification to be undertaken in any part in India only after prior Environmental Clearance is granted by the particular authority. These Regulations do not define an EIA or an EIS. However, it requires the Expert Appraisal Committees in case of category 'A' projects and the State Level Expert Appraisal Committees in case of category '*B-1*' projects or activities, including applications for expansion and modernization and/or change in product mix of existing projects or activities, to determine detailed and comprehensive ToR addressing all relevant environmental concerns for the preparation of an EIA. Categorization of projects/activities into category 'A' or 'B' is done on the basis of the potential hazards that it poses to the environment, location, the extent of area involved etc.

30. Thus, clearly, the mandate of the Regulations of 2006 is to ensure protection of environment and ecology in face of rapid developmental activities, which are even the need of the hour. Since

the object of the Regulations of 2006 is to provide developmental activities while ensuring presence of a safer environment, it can be termed as welfare legislation. Thus, the rule of reasonable constructions in conjunction with the liberal construction would have to be applied.

Article 48A in Part-IV (Directive Principles) of the Indian Constitution enjoins that "State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". Article 47 further imposes a duty on the State to improve public health as its primary duty. Article 51A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" which includes forests, lakes, rivers and wild life, and to have compassion for living creatures. The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is, therefore, not only the duty of the State, but also the duty of every citizen to maintain hygienic environment. The State, in particular, has a duty in that behalf to shed its extravagant, unbridled sovereign power and to forge in its policy, to maintain ecological balance and hygienic environment. Article 21 protects 'Right to Life' as a fundamental right. Enjoyment of life and its attainment, including the right to live with human dignity, encompasses within its ambit, the protection and preservation of environment, ecological balance, free from pollution of air and water, sanitation, without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, there is a constitutional imperative on the State authorities and bodies like the Pollution Control Board not only to ensure and safeguard proper environment, but also to take adequate measures to promote, protect and improve the environment, both, man-made and natural. Sections 3 and 5 of the Act of 1986, apart from other provisions of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'Environment', which expression has been defined in very wide and expansive terms in Section 2(a) of the Act of 1986. [*Noyyal River Ayacutdars Protection Association rep. by its President, P.M. Govindaswamy Pappavalasu* v. *The Government of Tamil Nadu rep. by its Secretary, Public Works Department*, 2007-1-LW 275, *Indian Council for Enviro-Legal Action etc.* v. *Union of India*, (1996) 3 SCC 212].

The flood plains and river bed of Yamuna are under increasing pressure of alternative land use for various purposes, which are driven primarily by growth of economy at the cost of the river's integrity as an eco-system. [*Manoj Mishra* v. *Union of India*, Original Application No. 6 of 2012 and Original Application No. 300 of 2013, decided on 13th

January, 2015]. The powers conferred on the Central Government by virtue of provisions contained in Section 3, 5 and 25 of the Act of 1986 and on the National Green Tribunal by virtue of Sections 14, 15 and 16 read with Section 18 of the National Green Tribunal Act, 2010, are wide enough to provide for protection, preservation and restitution of the environment and ecology of the river bed of River Yamuna.

31. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment [*Vellore Citizens Welfare Forum* v. *Union of India*, (1996) 5 SCC 647].

32. The applicability of 'Principle of Liberal Construction' to socio-welfare legislation like the Act of 1986, thus, could be justified either with reference to the 'doctrine of reasonable construction' and/or even on 'constructive intuition'. In the case of *Haat Supreme Wastech Pvt Ltd.* v. *State of Haryana*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal, while dealing with interpretation of the Regulations of 2006 along with the Schedule and while deciding whether the bio-medical waste disposal plants required Environmental Clearance or not, answered the question in affirmative, that, such plants are covered under Entry 7(d) and while answering so, applied the doctrine of 'reasonable construction' as well as 'constructive intuition'. Doctrine of 'reasonable construction' is intended to provide a balance between development and the environment. The Tribunal held that there was no occasion for the Tribunal to take the scope of Entry 7(d) as unduly restrictive or limited and it gave the entry a wide meaning. It was also held that the Environmental Clearance would help in ensuring a critical analysis of the suitability of the location of the bio-medical waste disposal plant and its surroundings and a more stringent observation of parameters and standards by the project proponent on the one hand and limiting its impact on public health on the other.

33. 'Development' with all its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes re-development. It could also be an activity, action, or alteration that changes underdeveloped property into developed property (Ref: *Wharton's Law Lexicon*, 15th Edn., 2012, *Black's Law Dictionary* 9th Edn., 2009). Reading of Clause 2 of the Regulations of 2006 and the Schedule attached thereto, particularly in

light of the above principles, clearly demonstrates that an expression of very wide magnitude has been deliberately used by the framers. They are intended to cover all projects and activities, in so far as they squarely fall within the ambit and scope of the Clause. There does not appear to be any interest for the Tribunal to give it a narrower or a restricted meaning or interpretation. In the case of *Kehar Singh* v. *State of Haryana*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal had specifically held that there should exist a nexus between the act complained of and environment and that there could be departure from the rule of literal construction, so as to avoid the statute becoming meaningless or futile. In case of a social or beneficial legislation, the Tribunal should adopt a liberal or purposive construction as opposed to the rule of literal construction. The words used therein are required to be given a liberal and expanded meaning. The object and purpose of the Act of 1986 and the Schedule of Regulations of 2006 thereto was held to be of utmost relevance. In the case of present kind, if no checks and balances are provided and expert minds does not examine and assess the impacts of such projects or activities relating to development, consequences can be very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage.

34. There can hardly be any escape from the fact that Entries 8(a) and 8(b) are worded somewhat ambiguously. They lack certainty and definiteness. This was also noticed by the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary* v. *Union of India (UOI)*, (2011) 1 SCC 744, where the Court felt the need that the Entries could be described with greater precision and clarity and the definition of 'built-up area' with facilities open to the sky needs to be freed from its present ambiguity and vagueness. Despite the above judgment of the Hon'ble Supreme Court, Entry 8(a) and 8(b) were neither amended nor altered to provide clarity or certainty. However, the expression 'built up area' under the head 'conditions if any' in column (5) of the Schedule to the Regulations of 2006, was amended vide Notification dated 4th April, 2011. *Dehors* the ambiguities in these Entries, an interpretation that would frustrate the object and implementation of the relevant laws, would not be permissible. 'Township and Area Development project' is an expression which would take within its ambit the projects which may be specific in relation to an activity or may be, they are general Area Development projects, which would include construction and allied activities. 'Area

Development' project is distinct from 'Building and Construction' project, which by its very language, is specific and distinct. Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 have been a matter of adjudication and interpretation before the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary* v. *Union of India (UOI)*, (supra). In that case, Hon'ble Supreme Court was concerned with the construction of a park in Noida near the Okhla Bird Sanctuary. The Hon'ble Supreme Court provided a distinction between a 'Township project' and 'Building and Construction project' and held that a 'Township project' was different, both quantitatively and qualitatively from a mere 'Building and Construction project'. Further, that an Area Development project may be connected with the Township Development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other *civic infrastructure*, or an area development project may be completely independent of any township development project as in the case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park. The Hon'ble Supreme Court principally held that a zoological or botanical park or a recreational park etc. would fall within the category of Entry 8(b) but, if it does not specify the threshold marker of minimum area, then it may have to be excluded from operation of the mandatory condition of seeking prior Environmental Clearance. The Court held as under:

> "66. The illustration given by Mr. Bhushan may be correct to an extent. Constructions with built up area in excess of 1, 50,000 sq mtrs. would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. *To that limited extent* there may be a quantitative correlation between items 8(a) and 8(b). But it must be realized *that the converse of the illustration given by Mr. Bhushan may not be true*. For example, a project which is by its nature and character *an "Area Development project" would not become a "Building and Construction project"* simply because it falls short of the threshold mark under item 8(b) but comes within the area specified in item 8 (a). The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated there under.
>
> 67. In light of the above discussion it is difficult to see the project in question as a "Building and Construction project". Applying the test of 'Dominant Purpose or Dominant Nature' of the project or the *"Common Parlance" test, i.e. how a common person using it and enjoying its facilities would view it, the project can only be*

*categorized under item 8(b) of the schedule as a Township and Area Development project".* But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 hectares) is less than 50 hectares and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 square metres, i.e., much below the threshold marker of 1,50,000 square metres."

35. Besides dealing with the scope and dimensions of Entries 8(a) and 8(b) of the Schedule afore-stated, the Hon'ble Supreme Court, while referring to the findings given by the CEC in its report, that the Project was located at a distance of 50 mtrs. from the Okhla Bird Sanctuary and that in all probability, the project site would have fallen in the Eco-Sensitive Zone had a timely decision in this regard being taken by the State Government/MoEF, permitted continuation of the project, and held as under:

"74. The report of the CEC succinctly sums up the situation. Though everyone, excepting the project proponents, views the construction of the project practically adjoining the bird sanctuary as a potential hazard to the sensitive and fragile ecological balance of the Sanctuary there is no law to stop it. This unhappy and anomalous situation has arisen simply because despite directions by this Court the authorities in the Central and the State Governments have so far not been able to evolve a principle to notify the buffer zones around Sanctuaries and National Parks to protect the sensitive and delicate ecological balance required for the sanctuaries.

But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court Environment is not merely a statutory issue. Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution"

36. The above dictum of the Supreme Court clearly laid down a fine distinction between Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 on one hand, while on the other hand held that mere absence of law cannot be a ground for degrading the environment, as environment is one of the facets of 'Right to Life' as envisaged under Article 21 of the Constitution of India.

37. Thus, this Tribunal has to examine the ambit and scope of Entry 8(b) while keeping in mind the Scheme and Object of the Act of 1986, the Rules of 1986, the Regulations of 2006 along with its Schedule and most importantly right to clean environment as an integral concept of our Constitutional Scheme. The project in question is construction of a 'Signature Bridge' over River Yamuna, connecting eastern and western ends of the city of Delhi and to ensure fast and smooth flow of traffic in

that part of the city. This certainly is an Area Development project falling within Entry 8(b) of Schedule to the Regulations of 2006. There is also no dispute that the total constructed area of the 'Signature Project' is 1,55,260 sq. mtrs., which is higher than the threshold marker of 1,50,000 sq. mtrs. This project cannot fall within Entry 7(f) of the Schedule to the Regulations of 2006, as it is neither a national nor a city highway and not even any part thereof.

38. Having held that the project in question is covered under Entry 8 (b) of the Schedule to the Regulations of 2006, now we have to consider what relief can be granted to the applicant in the facts and circumstances of the case. Admittedly, particularly according to the Project Proponent, various other departments have granted them clearances and/or have already issued No Objection Certificates for construction of the said project. MoEF vide its letter dated 14th March, 2007 had informed the Project Proponent that 'bridges' are not covered under the Regulations of 2006 and as such, no prior Environment Clearance was required for commencement of the project. It is in the backdrop of these circumstances that the construction of the project commenced in the year 2007. As of today, more than 80 per cent of the bridge has already been completed. Huge public funds have been spent on this project. It is intended to serve public purpose and is in public interest, namely free and fast flow of traffic between east and west Delhi. Apparently, we cannot attribute any fault or breach of legal duty to the Project Proponent (Respondent No. 1). We do not think it is a case where we should either direct stoppage of project work or direct demolition thereof.

39. In light of the peculiar facts and circumstances of the case and the reasons afore-recorded, we dispose of this application with the following directions:

1. We hold that construction of a 'bridge' or similar activity covering a build up area ≥ 1,50,000 sq. mtrs. and/or covering an area of ≥ 50 hectares, would be covered under Entry 8(b) of the Schedule to the Regulations of 2006.
2. We direct Respondent No. 1 to obtain Environmental Clearance for the project in question. Such application would be submitted within a period of three weeks from the pronouncement of this Judgment.
3. The SEIAA shall consider the said application as Category 'B' project and would dispose it of by passing appropriate orders in accordance with law upon submission of Environmental Impact Assessment Report and in any case not later than six months from today.
4. Though the major part of the project has already been completed,

we do not direct demolition thereof in public interest. However, we direct SEIAA to put such terms and conditions as may be necessary to ensure that there are no adverse impacts on environment, ecology, biodiversity and environmental flow of River Yamuna and its floodplain.

5. We also direct that the SEIAA may impose conditions containing remedial measures to be taken by the Project Proponent to ensure that there is no environmental degradation.

6. We direct MoEF to comply with the directions issued by the Hon'ble Supreme Court in para 84 of the case of *In Re: Construction of Park at NOIDA Near Okhla Bird Sanctuary* v. *Union of India (UOI)*, (2011) 1 SCC 744.

40. There shall be no order as to costs.

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**Annexure A-9**

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

**APPLICATION NO. 96 OF 2012**

**In the matter of :**
M/s. DRG Grate Udhyog .....Appellant

Versus

1. State of M.P.
Through its Principal Secretary,
Department of Aawas and Prayavaran, Vallabh Bhavan,
Bhopal (M.P.)

2. Pollution Control Board,
Through its Chairman, Bhopal (M.P.)

3. The Regional Officer, M.P. Pollution Board,
Dindayal Nagar, Housing Board Colony,
Gwalior, (M.P.)

.....Respondents

**Counsel for Applicant** :
Mr. Anuj Puri, for the Advocate.

**Counsel for Respondents :**
Ms. Archi Agnihotri, for Ms. Vibha Datta Makhija Advocates, for Respondent No.1.

Mr. Rahul Shrivastav, Advocate, for Respondent No.2 & 3.

**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 Prof. A.R. Yousuf (Expert Member)**
**Hon'ble Dr. R.C.Trivedi (Expert Member)**

**Dated : May 09, 2013**

**JUSTICE SWATANTER KUMAR, (CHAIRPERSON)**

A simple question of some legal significance as to the meaning and interpretation of the expression 'residential area' arises for consideration of the Tribunal in the present case. The relevant facts giving rise to the present application, are that the

applicant firm is a partnership concern and Mr. Manish Kumar Mittal is one of the partners of this partnership firm, who has instituted the present application. This partnership concern carries on the business of stone crushing. It sought to establish a stone crushing unit at Bilaua, Tehsil Dabra, District Gwalior. The applicant made inquiries and was informed by the Panchayat about a suitable piece of land for the same so that he could obtain a 'no objection certificate' from the Department concerned. Based upon the inquiries made, the applicant vide a registered sale deed dated, 13th October, 2010, purchased the land for establishing a stone crushing unit. He obtained a certificate from the Gram Panchayat for the availability of the land in question situated merely 600 metres away from the residential area. After purchasing the land, diversion of the land was done under the provisions of M.P. Land Revenue Code, 1959. The applicant claims to have obtained permission from the District Trade and Industry Centre, Gwalior on 28th October, 2010. The applicant then got a project report prepared and invested a huge amount in purchasing the machines for the stone crushing unit. On 1st June, 2011, the petitioner applied for 'no objection certificate' from the Madhya Pradesh Pollution Control Board, (for short the Board). The Regional Officer of the Board vide their letter dated 11th August, 2011, denied the petitioner the grant of no objection certificate on the ground that a school was existing at a distance of 450 metres from the site of the stone crusher and as per the guidelines issued by the Board, the same could not be permitted.

Under these guidelines, the minimum distance between a residential area and a stone crushing unit is to be 500 metres.

2. The only reason given for rejection of the grant of consent of the Board was in view of the guidelines issued by the Board in furtherance to its meeting dated, 5th January, 2004. Aggrieved by the order of the Board dated, 11th August, 2011 and that of the appellate authority dated, 13th December, 2011, the applicant has challenged the correctness and legality of these orders, *inter alia,* but primarily on the following grounds:

(a) The guidelines do not have the force of law and are, therefore, incapable of being made the basis for declining the consent by the Board, which exercises its powers in terms of Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (for short "the Air Act"). The Board discharges statutory functions and is bound by the provisions of the law alone.

(b) The expression 'residential area' used in the guidelines does not include running of a school. Thus, the limitation of 500 metres, as imposed by the guidelines is not applicable to the case of the applicant in the face of the admitted facts.

(c) The guidelines issued by various other State Pollution Control Boards specifically provide for inclusion of schools or educational institutions, which are conspicuous by their absence in the guidelines issued by the Board. What is not specifically provided for cannot be read into the provisions by implication, particularly when this amounts to a restriction or prohibition upon the right of the applicant to carry on business.

3. Reply has been filed on behalf of the respondent. The facts are not disputed by the respondent. However, on the question of law, the respondent seriously disputed the correctness of the contentions of the applicant. According to the respondent, these guidelines have been framed in furtherance to the judgment of the Supreme Court in the case of *Kennedy Valley Welfare Association v. Ceylon Repatriates Labourers Welfare and Service Society & Others 2000(2) SCALE 143*. They are binding on all concerned and the applicant cannot get away from the limitations and restrictions provided under the guidelines formulated by the Board. It is further averred in the reply that there are two schools situated in the area which are located within a distance of 500m from the said stone crushing unit – (i) Government Primary School, Chirpura, which was established in the year 1974 and operates in an area of nearly 2,000 sq.m., having 125 students, and (ii) Government Middle School, which was established in the year 2003 and has 65 students on its roll from 6th to 8th standard. The schools thus, were operating much prior to the date on which the applicant had even proposed to establish his stone crushing unit at the premises in question. Admittedly, the applicant applied for the consent on 1st June, 2011 and cannot take advantage of his own wrong.

4. In view of the contentions raised with reference to the facts noticed supra, we must first refer to the relevant extracts of the guidelines, dated 5th January, 2004 that have been framed by the Board. They read as under:

**"GUIDELINE OF M.P. POLLUTION CONTROL BOARD FOR CONTROLLING POLLUTION FROM STONE CRUSHERS.**

During the meeting of Regional Officers held on 05/01/2004, the 100 days action plan was discussed. The matter of siting and pollution control in stone crushers was also one of the issues. The Regional Officer, Sagar & Gwalior had been instructed to formulate the necessary guidelines keeping in view the various prevailing guidelines in different State Pollution Control Boards [SPCBs). Both the officers collected some of the guidelines from various SPCBs viz. Tamil Nadu State Pollution Control Board, A.P. Pollution Control Board and Karnataka Pollution Control Board. Also the recommendation by NPC, New Delhi has been also collected.

Keeping in view the various above guidelines and the scenario of the Stone Crushers of M.P. State, following guidelines are prepared for necessary action.

A Siting of Stone Crushers:

1. The distance between the crusher boundaries and the boundary of the National/State Highways shall be as specified below in case of new installations.

| S.No. | Cluster/Crusher | Distance Between Crusher/Cluster, National/State Highways | Green Belt area at the Periphery |
|---|---|---|---|
| 01 | Single Crusher | 100 mts. | 05 mts. |
| 02 | 100 Crusher | 150 mts. | 10 mts. |
| 03 | 25 Crusher | 250 mts. | 30 mts. |
| 04 | 50 Crusher | 300 mts. | 50 mts. |

Note: The crusher boundary implies the line joining all emission sources such as jaw crusher, conveyer belt head rotary screen etc. in the crushing unit.

2. If the distance between two crushers is more than 100 mts., it will be considered as a single crusher. If, the distance between the crusher boundaries is less than 100 mts., it will be considered as a cluster.

3. In respect of Residential area, No Stone crushing industries are to be allowed to operate within 500 mts from Residential area as per the orders of Hon'ble Supreme Court

of India in the Civil Appeal No. 10732/1995 dated 25/04/06.

4. The stone crusher shall obtain NOC from local body/Gramsabha in prescribed form [Enclosure -1].

5. Existing crushers which are near the National or State Highway and not meeting the above criteria should provide a 15 to 20 feet wall on all the three sides [parallel to National/State Highway and both the sides] and up to the length to be stipulated on the alignment of road and boundary of the crusher.

B Air Pollution Control Measures:

1. Screening of Crushed Material**:**

i. The screen should be enclosed with M.S. Sheets and a fan connected with motor to extract the dust generated during screening operation should be installed. Dust should be vented into a chamber wherein water sprinklers shall be provided for dust suppression.

ii. Dust conveyor and dropping of dust and zero *gitti* on to the ground from the conveyors:

A telescopic chute should be provided at the end of dropping zero *gitti* and dust/fines. Suitable water sprinkling system shall be provided to reduce the dust emission.

iii. Raw Material unloading and Conveying:

[a] Temporary water sprinklers shall be provided at the time of unloading from the truck/tipper.

[b] The unit should provide water sprinklers on the conveyor carrying raw material from bunker/bin to the crusher. The water should be sprayed in the form of mist with the help of a motor.

2. Existing stone crushers should develop green belt of 5 mtrs. width all around the premises for improvement of environment in general.

3. Periodical cleaning of the water spray nozzles should be carried out to avoid chocking.

4. Fine dust accumulated in the crushing area should be periodically cleaned and the dumps should be covered with tarpaulin to arrest erosion by wind.

5. The approach road should be properly developed and should be sprayed with water. Similarly the approach road to individual crushers should be made in good conditions and watered.

6. The drop height of the processed material should be kept at a minimum during loading and unloading.

7. Conveyer chute should be provided at the discharge points.

8. As an occupational safety, all the workers should be provided with nose masks.

9. The green belt will restrict the spread of particulate matter and trees should be evergreen high foliage type like neem, tamarind, mango and any other local varieties are recommended.

10. Ornamental trees like Ashoka along the roads on both sides leading to the crushers area should be encouraged to improve the aesthetics of the working environment.

11. The stone crushers should be located within quarry or near the quarry areas."

**Discussion on merits**

5. After having noticed the factual matrix of the case and the guidelines formulated by the Board, the legality of which is in question in the present application, we shall now proceed to deal with the respective contentions raised on behalf of the applicant.

6. It is the contention of the applicant that the said guidelines do not have the force of law and thus, cannot be a relevant

consideration for declining the consent by the Board. No doubt, the Board is a creation of the statute and is bound by the provisions of the statute itself. However, it cannot perform any act, which the law by which it is created, does not so permit. In this regard, we must refer to certain provisions of the Air Act. The Air Act was enacted with the object to provide for prevention, control and abatement of pollution caused by air. For prevention and control of the same, the Pollution Control Boards were constituted by assigning them such powers and functions as are necessary for achievement of the above objectives. To put it precisely, the primary and the sole object of the legislature in constituting such Boards under the provisions of the Air Act was, firstly, to put a check on air pollution and secondly, to ensure the preservation of the quality of air and providing the same to the citizens of the country. The provisions of Section 17 of the Air Act state the functions, which the State Boards are expected to perform, subject to the provisions of the Air Act and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974. The legislature, in its wisdom envisaged various specific functions to be performed by the Boards under clauses (a) to (i) of sub-section (1) of Section 17 of the Air Act. Clause (j) of sub-section (1) of Section 17 of the Air Act is the residuary power of the Board, which is of wide amplitude and empowers the Board to do such other things and to perform such other acts, as it may deem necessary for the proper discharge of its functions, and generally for the purpose of carrying into effect the purposes of this Act.

This residuary function of the Board thus has a dual purpose – (i) to discharge its functions more appropriately as a whole, and (ii) to carry out the purposes of the Air Act. Whatever is incumbent in the interest of achievement of these two objects, the Board would be deemed to have been vested with such powers. There shall be a direct nexus between the things or acts under the statute that the Board in exercise of its residuary powers intends to do or perform for its own purposes. This nexus is essential, but once such nexus is established and the action of the Board is found to be in public interest and in consonance with the object of the Act, the courts would be reluctant to take a view that such an action or thing was beyond the scope of the power vested in the Board under Section 17(1)(j) of the Air Act.

7. In the present case, the guidelines have been issued by the Board in discharge of its functions to ensure prevention and control of air pollution, that may be caused due to operation of stone crushers. These guidelines have been framed by the Board for its own purposes as well as for the general public, the members of which may be interested in establishing and carrying on the business of stone crushing. It cannot be disputed that the operation of stone crushers results invariably in discharge of various air pollutants into the air. Thus, regulating and controlling operation of the same is essential to ensure maintenance of the prescribed standards in relation to air quality. These guidelines are binding on the Board as well as on the interested individuals and they are uniformly applicable to all concerned.

8. At this stage, we may now make a reference to the judgment of the Supreme Court in the case of *Kennedy Valley Welfare Association* (supra) where the Supreme Court, not only upheld the judgment of the Ld. Single Judge of the High Court of Madras, that had accepted the recommendations of an Expert Committee thereby, banning operation of stone crushers and quarries within a radius of 500 metres of residential area and in 'paragraph 5' of the judgment, the Supreme Court itself imposed that restriction. Paragraph 5 of the judgment reads as under:

> "...No quarrying of blue metal shall be permitted within 500 meters of the residential area and permitted only if they are beyond the limit of 500 meters of the residential area and strictly follow the procedures required by the Mines and Safety regulations. Such quarrying, however, can be allowed by the respondent-State only at such- places and in such area which do not in any manner endanger human life and if there is any likelihood of danger to any grass or plant. In such cases the state Government after satisfying about the requirement of the community at large may surrender the need of the environment to a limited extent.
> ***
> We have examined the recommendations of the Committee, we are of the view that the learned Single Judge rightly accepted the report of the Committee and issued the directions banning operation of Stone-Crushers and quarries within the radius of 500 meters of the residential area. The Division Bench was not justified in reducing the area restriction from 500 meters to 50 meters in respect of the quarries. The Division Bench also issued further directions in modification of the directions issued by the learned Single Judge which were not warranted in the facts of the case."

9. The above direction, issued by the Supreme Court of India, is the law of the land and is binding on all concerned, in terms of Articles 141 and 142 of the Constitution of India.

10. After declaration of law by the Supreme Court in *Kennedy Valley Welfare Association* (supra) in the year 2000, the Madhya Pradesh Pollution Control Board met on 5th January, 2004. While preparing a 100-day Action Plan, it took into consideration the guidelines prepared by other Pollution Control Boards of the country, and issued the questioned guidelines, specifically taking note of the scenario of the stone crushers in the State of Madhya Pradesh, the extent of pollution being caused by them and the necessity for issuing such guidelines. The guidelines issued by the State Board specifically refers to the Civil Appeal No. 10732 of 1995, as decided by the Supreme Court i.e. in *Kennedy Valley Welfare Association* (supra). In fact, it was with an intention to comply with the directions of the Supreme Court that the Board formulated the guidelines in question.

11. The stone crushers are required to take consent of the Pollution Control Board for carrying on their activities. It will even otherwise be just, fair and in the interest of the administration and transparency that such guidelines are framed and are made public, so that all concerned are aware of the same. This itself would help in eliminating the element of arbitrariness in exercise of the powers by the Board. Thus, for these reasons, we have no hesitation in holding that the above guidelines dated, 5th January, 2004 issued by the Board are valid, have the force of law and are binding on all concerned.

12. Having rejected the first contention put up on behalf of the applicant, it will, in our view, be convenient to discuss the contentions (b) and (c) raised on behalf of the applicant together.

13. The applicability of 'paragraph 3' of the guidelines issued by the MP Pollution Control Board dated, 5th January, 2004 will depend upon the interpretation of the expression 'residential area' in that paragraph. In fact, the meaning and interpretation of the same is the core controversy in the present case. In order to illustratively understand the connotation of the expression 'residential area' it is necessary to explain the word 'residence' first. The Black's Dictionary, 8th ed. says 'residence' means bodily presence of inhabitants in a given place.

14. The Supreme Court in *Jeewanti Pandey v. Kishan Chandra (1981)4 SCC 517* held that the word 'resides' is a flexible one and has many shades of meaning, but it must take its colour and content from the context in which it appears and cannot be read in isolation. The dictionary meaning of the word 'resides' denotes the place where a person or where his family eats, drinks or sleeps.

15. The Wharton Law Lexicon explains the expression 'residence' as a concept that may be transitory. It reads as under:

> "Even when qualified by the word 'ordinarily', the word 'resident' would not result in construction having the effect of a particular place for dwelling always or on permanent uninterrupted basis. Thus understood, even the requirement of a person being 'ordinarily resident' at a particular place is incapable of ensuring nexus between him and the place in question. *Kuldip Nayar v. Union of India* AIR 2006 SC 3127.
>
> Residence, is flexible and must be construed according to the object and intent of the particular legislation where it may be found. It must be something more that occupation during occasional usual visits within the local limits of the court, more specially when there is residence outside those limits marked with a considerable

measure of continuance, *Paster J. S. Singh v. Jyotsana Singh,* AIR 1982 MP 122 [See Divorce Act, 1989, Section 3 (3)].

Residence, is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of 'residence'. There are two classifications of the meaning of the word 'residence'. First is the in the form of permanent and temporary residence and the second classification is based on *de facto* and *de jure* residence. *De facto* residence is also to be understood as a place where one regularly resides as different to the places where he is connected to by mere ancestral connections or political connections or connection by marriage, *Bhagwan Dass v. Kamal Abrol,* AIR 2005 SC 2583.

Residence, may be defined as one who resides in place or one who dwells in place for considerable period of time. One who merely works in certain locality or place of casual visit are different from place of 'residence' *Bhagwan Dass v. Kamal Abrol,* AIR 2005 SC 2583.

Abode; also the continuance of a person or vicar on his benefice. It is upon the supposition of residence that the law styles every parochial minister an incumbent.

By the (English) Pluralities Act 1838 (1 & 2 Vict.c.106), repealing former Acts, every spiritual person (with exception for heads of houses in the universities and others) holding a benefice, which comprises all parochial churches, perpetual curacies, chapels, and church or chapel districts, if with cure of souls, shall reside on his benefice, in the house of residence; and if he absent himself (without licence from the bishop, grantable by s.43 for incapacity of mind or body, or illness of wife or child for six months) for more than three months in any year, he shall forfeit, unless resident at some other of his benefices, a certain portion of the value of his benefice. It is further provided that annual returns of residents and non-residents must be made to the Sovereign in Council; and that in case of non-residents, the

> bishop, instead of enforcing the penalties, may issue a monition, to be followed up by an order to reside; and in case of non-compliance, may sequester the profits of the benefice and apply them to the purposes in the Act specified."

16. From the above detailed explanation and meaning given to these expressions, it is clear that in common usage and in different decisions, many definitions have been attributed to the word 'residence'. It is difficult to give an exact definition and explanation for the term 'residence' as it is flexible and elastic in nature and it must be read in conjunction with the relevant provision where it appears and the object that it seeks to achieve. Having explained these expressions, the significant corollary thereto, is as to how such expressions shall, when appearing in a social legislation, be construed. The Air Act is a welfare legislation and is intended to protect the citizenry against pollution of air. Right to clean environment is now recognised as a fundamental right within the ambit of Article 21 of the Constitution of India. In that sense, it is even a beneficial legislation as it is intended to provide benefits to the society by ensuring prevention and control of air pollution. In the case of social welfare and even beneficial legislation, it is always advisable to adopt the principle of purposive construction. This doctrine helps in providing an interpretation to such a provision that the legislature actually intended including attainment of the object of the statute. At this stage, we may usefully refer to "Principles of Statutory Interpretation" by Justice G.P. Singh, 13th ed. 2012 where it has been stated as follows:

> "A mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficent legislation to futility. As stated in IYER. J "to be literal in meaning is to see the skin and miss the soul."The judicial key to construction is the composite perception of the *deha* and *dehi* of the provision. Even in construing enactments such as those prescribing a period of limitation for initiation of proceedings where the purpose is only to intimate the people that after lapse of a certain time from a certain event a proceeding will not be entertained and where a strict grammatical construction is normally the only safe guide., a literal and mechanical construction may have to be disregarded if it conflicts with some essential requirement of fair play and natural justice which the Legislature never intended to throw overboard. Similarly in a taxing statute provisions enacted to prevent tax evasion are given a liberal construction to effectuate the purpose of suppressing tax evasion although provisions imposing a charge are construed strictly where being no *apriori* liability to pay a tax and the purpose of charging section being only to levy a charge on persons and activities brought within its clear terms."

17. The principles were further stated in this very book as under:

> "Liberal construction was recently adopted in interpreting Section 123 (c) of the Railways Act 1989 which defines 'untoward accident' to include 'accidental falling of a passenger from a train carrying passengers'. The question is the case was whether the expression 'untoward accident' as defined will also cover the case of a passenger who fell down and died while trying to board the train and his dependants will be entitled to compensation under Section 124A of the Act. In answering this question in the affirmative the Court said: No doubt, it is possible that two interpretations can be given to the expression 'accidental felling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do. Since

> the provision for compensation in Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and a technical one. Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred. It has also been held by the Court that in the case of a social benefit oriented legislation like the Consumer Protection Act, the provisions of the Act have to be considered as broadly as possible in favour of the consumer in order to achieve the purpose of the enactment but without doing violence to the language.
>
> The normal rule of interpretation of statute is that normally courts would not add or subtract words in the process of interpretation. However, this principle is subject to a rare exception. The exception is that courts can correct obvious drafting errors and so in suitable cases, the courts will add or omit or substitute words but before interpreting a statute in this way, the courts must always ensure three matters – (i) intended purpose of the statute in question (ii) intention and presumption of the Parliament to give effect to that purpose in the provisions in question, and (iii) the substance of the provisions the Parliament would have made although errors had been noticed (Refer *Inco Europe Limited v. First Choice Distribution 2000(2) All England Reports 109-115*)."

18. The Indian courts have also permitted departure from the rule of literal construction so as to avoid the statute becoming meaningless. Normally, it is not allowable to read words in a statute which are not there but where the alternative allows either by supplying words which appear to have been accidentally omitted or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words – *Surjit Singh v. Union of India 1991(2) SCC 87 and Surajul Sunni Board v. Union of India AIR 1959 SC 198.*

19. Useful reference can also be made to the dictum of the Supreme Court in relation to interpretation of Social Welfare Association in the case of *Hindustan Lever Limited v. Ashok Vishnu Kate and Ors. (1996)ILLJ899SC* where the court held as under:

> "41. In this connection, we may usefully turn to the decision of this Court in Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation, (1985)IILLJ539SC wherein Chinnappa Reddy, J., in para 4 of the Report has made the following observations:
>
> The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the context of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations."

20. From the analysis of the above principle, it is crystal clear that in the case of a social or beneficial legislation, the Court or Tribunals are to adopt a liberal and purposive construction as the above rule of literal construction. Social or beneficial legislation is intended to achieve a much greater purpose and the very purpose of enacting such law could be frustrated by application

of stringent rules of construction. The purpose, in the present case, is to ensure clear and pollution-free air quality to the citizens of the country, and therefore, it is necessary to regulate carrying on of such businesses which cause or which are likely to cause pollution of air. Carrying on a business, trade or profession is a fundamental right guaranteed to an individual in terms of Article 19(1)(g) of the Constitution of India but such a right is subject to reasonable restrictions and limitations. The concept of limitations and reasonable restrictions is not only inbuilt in the Constitutional scheme of India but is specifically incorporated in different Articles of the Constitution with emphasis on sub-clause 6 of Article 19(1). Thus, the applicant cannot contend that he has the right to carry on the business of stone crushing, free of restrictions and limitations. Restrictions may be imposed by law that is in force or which may be enacted by the State in the interest of general public. The restrictions, *inter alia,* and in particular relate to technical qualifications of carrying on any profession, business or trade. The restriction imposed in relation to adherence to prescribed parameters of emissions under the Air Act thus is a restriction made by law, as the Supreme Court held in the case of *N.D. Jayal v. Union of India* (2004) 9 SCC 362. The concept of welfare, in a Constitutional democracy, does not mean that we only have to strive for fulfilment of political theory – greatest good of greatest number. Our motto from Vedic times has been *Sarva Jan Hitay Sarva Jan Sukhay i.e.* benefit of all and happiness of all.

21. Thus, while interpreting the expressions used by the Board in its guidelines for discharging its statutory functions, these have to be construed liberally, and if necessary, the Tribunal may even supply the requisite and necessary words or read the words with such expanded meaning that would help in furthering the cause of the statute for the larger public good. Now let us revert to examination of the expression 'residential area'. 'Residential area' obviously means an area which is being used for residence. In other words, it is an area where people reside. Residence is not an expression that can be interpreted or explained in isolation. It must essentially relate to 'human activity'. Human activity is of essence for understanding or even explaining the expression 'residential area'. The ethos of this expression are activities performed by human beings where they spend time, breath or sit for a reasonable time. Residential area can hardly be imagined *de hors* the human activity. Human activity is the essence and all regular and frequent activities in the case of living beings performed by individuals would ultimately connote the premises as a residential area. The expression 'residential area', read in the context of the guidelines dated, 5th January, 2004, cannot be given a meaning which would result in frustrating their very object and purpose, and also of the relevant provisions of law. The purpose of providing a distance of 500 metres from the residential area is to protect the human beings living in that area and not the buildings *per se*. The Supreme Court of India upheld such restriction of banning operations of stone crushers and quarries within the radius of 500 metres of the residential area.

Even in its judgment, the Supreme Court used the expression 'residential area' in its generic sense.

22. Schools, where large number of young children spend larger part of their day in the normal and regular course of their lives to receive education would be an area that would essentially fall in the expression 'residential area'. The guidelines have to be read collectively and in conjunction with the provisions of the Air Act. On a conjunctive reading, it becomes obvious that the purpose is to protect human beings from their health being adversely affected as a result of contamination of air by running of stone crushers at a distance shorter than 500 metres. Education is a normal feature of human living. The children spend a considerable amount of time in the classrooms and also in the open area around their schools. It is a matter of common knowledge that even in small villages, classes are held in the open area. In other words, the students spend 5 to 6 hours daily in their schools.

23. At this stage, we notice some of the adverse impacts of such activity, which have been scientifically analysed, in relation to air and noise pollution with specific reference to children. Children are prone to higher effects of air pollution than adults as they consume much larger quantity of air per unit body weight that exposes them to higher degree of air pollution. Max Kilber, as early as in 1932, invented the theory of *"Inverse Size Matter Metabolic Rate Law"*. This theory supports what we have stated above. Thus, adverse environmental impacts of running of stone crushing units in the vicinity of a school cannot be ignored or

ousted on the plea of it not being covered under as residential area.

24. Similarly, the noise generated by the stone crushers will adversely affect the concentration level of children. Such activity is likely to hamper their ultimate performance. Noise has a 'masking' effect. Although a subdued noise is understandable in a quiet room, it is difficult to understand even a raised voice in noisy environment, like working of a stone crusher. This drowning or 'masking' occurs as a result of excitation of auditory nerve cells. In other words, it affects the understanding, concentration and capacity of the children to attentively listen to the lectures of their teachers. Persistent noise has long-term as well as short-term effects on health of children.

25. The activities of the teachers, students and rest of the staff in such institutions satisfy the basic ingredients of a 'residential area'. Such activities get adversely affected by the air and noise pollution resulting from carrying on of activities like stone crushing within a short distance. The purpose of including 'residential area' within the ambit of the prohibition is to safeguard human existence from the ill effects of environmental pollution in those areas. All of them have the fundamental right in terms of Article 21 of the Constitution to breathe fresh air that is free of pollution. The right of the applicant to carry on the business of stone crushing is subject to limitations of law. He cannot find an escape from complying with the law on such flimsy grounds. His private interest must give in to the public interest of the students, teachers and staff at large. The conflict

between public interest and private interest has to be resolved on the touch stone of the maxim *Salus populi est suprema lex.*

26. The framers of the guidelines have not used the words educational, religious or other institutions in 'paragraph 3' of the guidelines dated 5th January, 2004. This necessarily does not follow that they intended to specifically exclude all these expressions from the ambit of residential area. In our considered view, the expression 'residential area' read in context with the other paragraphs of the guidelines, its object and the statutory provision of the Air Act does not justify exclusion, specific or even implied. This expression has to be construed as inclusive of what ought to have been spelt out by the framers of the guidelines. The Tribunal shall have to supply the gaps which are necessary for attaining the object and purpose not only of the guidelines but the Air Act itself. Hence, reading into such institutions where effective human activity is carried on in its normal course and persons spend considerable time in such institutions, would by necessary implication be the part of the extended connotation of residential area. Thus, we will give liberal construction to the expression 'residential area' used in paragraph 3 of the guidelines dated 5th January, 2004 and read into the said expression being inclusive of school activity or educational activity.

27. While referring to the prescribed classification of industries, a feeble attempt was made by the learned counsel appearing for the applicant to claim that the stone crushing unit was a non-polluting one. According to him, the Board classifies the industries into red, the orange and green categories. The

contention is that the applicant does not fall in red category i.e. seriously polluting industry but falls in orange category under item No.22 and thus is a moderate polluter. After taking the requisite measures for preventing pollution, the industry should be permitted to carry on its business despite the condition of 500 metres, as elucidated in the guidelines afore referred. This contention, however, does not impress us once there is a prohibition which is not only in the form of restriction under the guidelines dated, 5th January, 2004 but is even completely prohibitive under the judgment of the Supreme Court in the case of the *Kennedy Valley Welfare Association* (supra). Thus, we have no hesitation to reject this contention of the applicant as well.

28. Lastly, it was contended that different State Boards in the country had used different and specific expressions wherever the Boards wanted to include educational institutions to which the prohibitions/restrictions provided in the guidelines were applicable. Unlike other Boards, the Board of Madhya Pradesh has not specifically included educational institutions in 'para 3' of the guidelines dated, 5th January, 2004. The said restriction cannot be applied in the case of the applicant. The Tamil Nadu Pollution Control Board has also not specifically used the expression 'educational activity'. However, it has used the word places of public importance. The Karnataka State Pollution Control Board, while placing such restrictions, has used the word 'school/educational institution' along with other places. The Punjab Pollution Control Board has specifically used the words 'educational institutions' along with other places and has also

reduced the distance to 300 metres. While relying upon such clauses contained in different guidelines of various Boards, the contention of the applicant is that the specific exclusion of the expression 'educational institution' renders the restriction under the guidelines non-applicable against the applicant. The restriction is incapable of being applied against the applicant. This contention is again equally without merit. After the judgment of the Supreme Court in the case of *Kennedy Valley Welfare Association* (supra) this controversy is rendered completely irrelevant. Uniformity in the language of the guidelines issued by different Boards would help the cause but that would not *ipso facto* be of any advantage to the applicant. The applicant is bound by the law as declared by the Supreme Court as well as by 'clause 3' of the guidelines dated, 5th January, 2004, issued by the Madhya Pradesh Pollution Control Board. We have held that the residential area would deem to include an educational activity. It cannot be excluded on any of the premises advanced by the applicant. The applicant must not, therefore, be permitted to carry on the stone crushing activity within 500 metres of the school area. It is an admitted position before us that the distance between two schools and the stone crushing unit of the applicant is less than 500 metres. Emission of dust and other particles from the stone crushing is inevitable. Its adverse impact on the health of the young children, teachers and staff is indisputable. Thus, we see no reason to interfere with the order of the Board dated 11th August, 2011 and that of the appellate authority dated 13th December, 2011. For the reasons afore recorded, we find no

merits in the present application (appeal). The same is dismissed while, however, leaving the parties to bear their own costs.

**Justice Swatanter Kumar**
**Chairperson**

**Justice U.D. Salvi**
**Judicial Member**

**Dr. D.K. Agrawal**
**Expert Member**

**Prof. A.R. Yousuf**
**Expert Member**

**Dr. R.C. Trivedi**
**Expert Member**

New Delhi
May 09, 2013

412

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# Copy of Additional Affidavit on behalf of Appellant in Appeal No. 144 of 2025 Vijaykumar Karsanbhai Gadhavi Versus.Union of India & ors.

1 message

**Litigation .** <litigation@dclawchambers.com> Thu, Jul 31, 2025 at 3:42 PM
To: secy-moef@nic.in, chiefsecretary@gujarat.gov.in, ps2secfed@gujart.gov.in, pccf-forest@gujarat.gov.in, projectsodaash@gmail.com
Cc: Kol Office <kol_office@dclawchambers.com>

Dear Sir/madam,

Please find attached- Copy of Additional Affidavit on behalf of Appellant in Appeal No. 144 of 2025 Vijaykumar Karsanbhai Gadhavi Versus.Union of India & ors.

Thanks & Regards
Counsel for the Appellant

**Additional affidavit on behalf of Appellant.pdf**
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