

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH PUNE
ORIGINAL APPLICATION NO. 33/2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ...APPLICANT

VERSUS

UNION OF INDIA-MOEFCC & ORS. ... RESPONDENTS

FILE-A
[VOLUME-_____]

ADDITIONAL DOCUMENTS AND JUDGMENTS/CASE
LAWS ON BEHALF OF ORIGINAL APPLICANTS

(FOR PAPERBOOK INDEX KINDLY SEE INSIDE)

[ANNEXURES: A-1 To A-15]

[PAGE No.: 2480 To 2682]

[JUDGMENTS/CASE LAWS]

[PAGE No. 2683 To 3207]

(TANAJI B. GAMBHIRE)
APPLICANT IN PERSON

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FILE-A (VOLUME-____)

INDEX

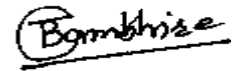
(ADDITIONAL DOCUMENTS & CASE LAW)

Sr.	Description	Page No.
	Additional Documents on behalf of Applicant	
1.	ANNEXURE-A-1 A true copy of the Legal notice sent to the Respondent Authorities & PP vide dated 01.03.2019	2480 - 2533
2.	ANNEXURE-A-2 A true copy of the Police Complaint dated 28.02.2019 filed by Applicant vide dated 05.03.2019	2534 - 2552
3.	ANNEXURE-A-3 A true copy of the Notice to Police Officer having nexus with PP vide dated 18.03.2019	2553 - 2560
4.	ANNEXURE-A-4 A true copy of the Show cause notice issued by PS-DoE & MS-SEIAA vide dated 12.06.2019	2561 - 2564
5.	ANNEXURE-A-5 A true copy of the Letter dated 19.06.2019 filed by the PP before MPCB withdrawing allegation against this Applicant vide dated 20.06.2019	2565
6.	ANNEXURE-A-6 A true copy of the Notice to the Police Officer vide dated 19.06.2019	2566 - 2567
7.	ANNEXURE-A-7 A true copy of the Applicant filed by PP for Terms of Reference (ToR) vide dated 16.02.2022	2568 - 2618
8.	ANNEXURE-A-8 A true copy of the Minutes of 137 th Minutes of SEAC-III held on 29.03.2022	2618 - 2624
9.	ANNEXURE-A-9 A true copy of the Minutes of 242 nd Minutes of SEIAA held on 21.04.2022	2625 - 2629
10.	ANNEXURE-A-10	2630 - 2638

	A true copy of the Letter of PP to the SEIAA for listing of proposal for further consideration vide dated 14.03.2023 (Seems to be typographical error 14.03.2022)	
11.	ANNEXURE-A-11 A true copy of the Minutes of 258 th Minutes of SEIAA held on 21.04.2022	2639 – 2643
12.	ANNEXURE-A-12 A true copy of the Minutes of 174 th Minutes of SEAC-III held on 12.06.2023	2644 – 2657
13.	ANNEXURE-A-13 A true copy of the Minutes of 264 th Minutes of SEIAA held on 08.08.2023	2658 – 2669
14.	ANNEXURE-A-14 A true copy of the Terms of Reference (ToR) granted by SEIAA vide dated 25.09.2023	2670 – 2681
15.	ANNEXURE-A-15 A true copy of the stay order passed by Hon'ble Supreme Court in WP (Civil) No. 1394/2023, staying MoEFCC, Office Memorandum issued on 07.07.2021 & 28.01.2022 vide dated 02.01.2024	2682
	Judgments on behalf of Applicant	
16.	M.C. Mehta Vs. UoI, (1987) 1 SCC 395 , ¶31-32	2683 – 2710
17.	Indian Council for Enviro-Legal Action Vs. Union of India, (1996) 5 SCC 281 , ¶47	2711 – 2734
18.	Vellore Citizens Welfare Forum Vs. UoI & Ors, (1996) 5 SCC 647 , ¶11 (III)	2735 – 2758
19.	Sterlite Industries (I) Ltd. Vs. UoI & Ors., 2013 (4) SCC 575 , ¶46-47	2759 – 2790
20.	The Forward Foundation Vs. State of Karnataka, 2015 SCC OnLine NGT 5 , ¶24-33	2791 – 2836
21.	Tanaji B Gambhire Vs Union of India & Ors. 2016 SCC OnLine NGT 4213 , ¶46-47,	2837 – 2849
22.	Goel Ganga Developers India Pvt. Ltd. Vs UoI-MoEFCC (2018) 18 SCC 257 , ¶17, 58-64	2850 – 2881
23.	Mantri Techzone Pvt. Ltd. Vs. Forward Foundation (2019) 18 SCC 494 , ¶33-50	2882 – 2911
24.	Goel Ganga Developers India Pvt. Ltd. Vs UoI-MoEFCC & Ors. (2019) 9 SCC 288 , ¶2-8	2912 – 2915

25.	Hanumant Laxman Aroskar Vs. UoI, (2019) 15 SCC 401 , ¶164	2916 – 2984
26.	Keystone Realtor Pvt. Ltd. Vs. Anil V. Tharthare (2020) 2 SCC 66 , ¶13, 19-20	2985 – 2996
27.	MCGM Vs Ankita Sinha & Ors. 2021 SCC Online SC 897 , ¶41, 76, 84	2997 – 3020
28.	Keystone Realtors Pvt. Ltd. vs. Anil V. Tharthare & Anr. (2020) 2 SCC 66, ¶13, 19, 20	3021 – 3032
29.	Union Territory of Ladakh & Ors. vs. Jammu and Kashmir National Conference & Anr. Civil Appeal No. 5707 of 2023 (@Special Leave Petition (Civil) No. 18727 of 2023, dated 06.09.2023, ¶35	3033 – 3083
30.	Tanaji B Gambhire Vs Union of India & Ors. Original Application No. 28/2019 (WZ) Judgment dated 22.02.2023, ¶58-67	3084 – 3149
31.	Tanaji B Gambhire Vs Union of India & Ors. Original Application No. 48/2020 (WZ) Judgment dated 10.08.2023, ¶44 & 45	3150 – 3207

Date: 12.01.2024



(TANAJI B. GAMBHIRE)
ORIGINAL APPLICANT



o/c

NOTICE/ COMPLAINT
(R.P.A.D/SPEED POST)

Dated: - 01/03/2019

To,

- 1. UNION OF INDIA, THROUGH SECRETARY,**
Ministry of Environment & Forest and Climate Change,
Paryavaran Bhavan, CGO Complex, Lodhi Road,
New Delhi-11003
- 2. STATE OF MAHARASHTRA**
Through Chief Secretary- Government of Maharashtra,
6th Floor, Annex Building, Mantralaya, Mumbai-400 032
- 3. THE PRINCIPAL SECRETARY, ENVIRONMENT
DEPARTMENT**
Government of Maharashtra,
Room No. 217, 2nd Floor, Annex Building,
Mantralaya, Mumbai-400 032
- 4. STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY- MAHARASHTRA (SEIAA)**
Through Member Secretary
15th Floor, New Administrative Building,
Mantralaya, Mumbai-400 032
- 5. STATE EXPERT APPRAISAL COMMITTEE - MAHARASHTRA
(SEAC)**
Through Member Secretary
15th Floor, New Administrative Building,
Mantralaya, Mumbai-400 032
- 6. STATE EXPERT APPRAISAL COMMITTEE-III
MAHARASHTRA (SEAC-III)**
Through Member Secretary
15th Floor, New Administrative Building,
Mantralaya, Mumbai-400 032
- 7. MAHARASHTRA POLLUTION CONTROL BOARD**
Through Member Secretary,



Kalptaru Point, 3rd Floor, Near Sion Circle,
Opp. Cine Planet Cinema, Sion (E), Mumbai-400 022

8. MAHARASHTRA POLLUTION CONTROL BOARD

Through Regional Officer
Jog Centre, 3rd Floor, Mumbai-Pune Old Highway,
Wakadewadi, Pune-411 003

**9. THE PRINCIPAL SECRETARY- URBAN DEVELOPMENT
DEPARTMENT**

Government of Maharashtra,
Annex Building, Mantralaya,
Mumbai-400 032

10. TOWN PLANNING DEPARTMENT

Through Director of Town Planning
24/2, Sarang Society, Sahakar Nagar,
Above Bank of Maharashtra, Pune-411009

11. TOWN PLANNING DEPARTMENT

Through Assistant Director of Town Planning
First Floor, New Administrative Building,
Pune-411 001

12. COLLECTOR OF PUNE

As Collector as sanctioning Authority and President of District
Environment protection Committee Pune
Collector office, Bund garden, Pune-411001

**13. PUNE METROPOLITAN REGIONAL DEVELOPMENT
AUTHORITY-PMRDA**

Through Metropolitan Commissioner & CEO,
Maharaj Sayajirao Gaikwad Udyog Bhavan,
Survey No 152-153, Village-Aundh, Pune-411 067

**14. THE PRINCIPAL SECRETARY- WATER RESOURCE
DEPARTMENT (IRRIGATION DEPT.)**

Government of Maharashtra,
Annex Building, Mantralaya,
Mumbai-400 032



15. THE SECRETARY- REVENUE AND FOREST DEPARTMENT

Government of Maharashtra,
Annex Building, Mantralaya,
Mumbai-400 032

16. M/s. XRBIA DEVELOPERS LIMITED

Formerly Known as "EIFFEL DEVELOPERS & REALTORS LIMITED" and it was formerly known as "EIFFEL DEVELOPERS & REALTORS PRIVATE LIMITED" and it was formerly known as "EIFFEL INFOCITY PRIVATE LIMITED"

A company originally incorporated on 22.09.2004 under the Company Act-1956 with UID No. - U45209PN2004PLC019772

Having registered office at -

Office No. 125/126,
Patil Plaza Mitramandal Chowk,
Parvati, Pune-411009.

Having corporate office at -

929, Mantri House, First Floor,
Near Dnyaneshwar Paduka Chowk,
F.C. Road, Pune- 411 004

Through its Directors

16A. Mr. Rahul Rashiklal Nahar,
16B. Mr. Manojkumar Murlidhar Kamble,
16C. Mr. Shekhar Dattatray Savlekar

17. M/S. XRBIA HINJEWADI DEVELOPERS PRIVATE LIMITED

A company incorporated under the Company Act-1956 with UID No. -U45200DL2010PTC204015

Having registered office at - Chembur Central,
Eastern Express Highway, Opp. Chheda Nagar,
Ghatkoper (East), Mumbai-400077

Also Having Business office at- 929, Mantri House,
First Floor, Near Dnyaneshwar Paduka Chowk,
F. C. Road, Pune-411004

Through its Directors

17A. Mr. Manojkumar Murlidhar Kamble,
17B. Mr. Gajanan Sadashiv Dongare.



SUBJECT: - Intentional Infringement of Environment (Protection) Act-1986 r/w EIA Notification-2006, Water (Prevention and Pollution Control) Act-1971, Air (Prevention and Pollution Control) Act-1984, Indian Forest Act-1927, Indian Wildlife (Protection) Act-1972, Forest (Conservation) Act-1980, Bio-logical Diversity Act-2002 for carrying out of illegal building construction in project "Xrbia Hinjewadi Township" without any Environmental Clearance, without any Consent to Establish and further enjoyment of premises without any Consent to operate by M/s. Xrbia Developers Limited and M/s. Xrbia Hinjewadi Developers Private Limited in their residential and commercial project situated at Survey No. 36, 38/2, 38/3, 39, 40/1d, 42, 56, 57 of Village-Dattawadi (Nere) and 52, 53, 54 of Village-Kasarsai, Taluka-Mulshi and District-Pune.

Sir/ Madam,

1. Under the instruction of my client Mr. Tanaji Balasaheb Gambhire presently R/o- 296, Shukrawar Peth, Laxmi Apartment, Flat No-16, White House Lane, Near Shivaji Maratha High School, Pune-411002, I have to address you by this notice as under;
2. That my client is RTI Activist and Environment Protection Activist residing in Pune. It is important to bring your notice that very serious violations of Environment Protection Act, Air & Water Pollution Control Act, Forest Conservation Act, Wildlife Protection Act, Biodiversity Act, damage to Eco-logical Sensitive Area etc causing damage to natural resources, Air Pollution, Water Pollution, preparation of false & misleading documents, and letters for obtaining various permissions from government authority with help government offices are committed by the project proponent. These acts have caused and still causing



irreparable damage and degradation to environment and ecology by various ways. My client would like to bring the entire scam to your notice for investigation and further strongest action against builder/ developer/ project proponent with earnest intention to prevent such illegal activities in view to stop further damage to the environment and ecology.

3. PARTICULARS OF PROJECT UNDER VIOLATION AND PROJECT PROPONENTS : -

- a. That, the Noticee No. 16 & 17 - M/s. Xrbia Developers Limited and M/s. Xrbia Hinjewadi Developers Private Limited - Project Proponents (PP) are developing land bearing Survey No. 36, 38/2, 38/3, 39, 40/1d, 42, 56, 57 of Village-Dattawadi (Nere) and 52, 53, 54 of Village- Kasarsai, Taluka-Mulshi and District-Pune for construction of residential and commercial buildings project under the name & style as **"Xrbia Hinjewadi Township or Megacity Hinjewadi or Silicon City"**.
- b. That the total project land claimed by Project Proponents is admeasuring 203 acres (821512 Sq. Mtrs.) from the above parts of the survey numbers, out of which 64065 Sq. Mtrs area not Proposed for Development, hill area is 83456.58 Sq. Mtrs. and 738353 Sq. Mtrs. is the area under development, but it seems that, PP have no legal right towards this huge land for development and PP have misleded various authorities.
- c. There are more than 30 residential buildings, Two Commercial Building, One Amenity Hall, One Water Storage & Supply Building, One Site Office are constructed at site.
- d. That, the PP have proposed/ undertaken construction activity for more than 50 additional buildings comprising 4500 additional units and 250 Bungalows.



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- e. That, the formerly project was situated in the jurisdiction of the District Collector Pune and Assistant director of Town Planning Department as the technical sanctioning authority assisting to the Collector of Pune.
 - f. That, the Government of Maharashtra established Pune Metropolitan Regional Development Authority (in short "PMRDA") under provisions of MR & TP Act-1966 in the month of 31.03.2015 for sanctioning building construction out site the PMC & PCMC limit.
 - g. That, the Noticee No. 16 & 17-PP's are responsible for entire illegal activity committed during the construction phase as well as operation phase causing substantial damage to the environment and ecology in irreparable manner.
 - h. That, the PP's are unapologetic and have adopted careless & reckless practices in environment protection.
- 4. CONSTRUCTION BEING CARRIED OUT WITHOUT ANY ENVIRONMENTAL CLEARANCE AND CONSENT TO ESTABLISH IN BLATANT VIOLATION OF THE ENVIRONMENTAL LAWS, POLLUTION CONTROL ACT AND EIA NOTIFICATION-2006.**
- a. That, as per the EIA notification 2006 dated 14.09.2006, it is mandatory to obtain the prior environment clearance from SEIAA and consent to establish from MPCB before commencement of any construction work. But the PP had started construction activities at project site without such permissions and completed part of the construction.
 - b. That, the PP was obtained EC dated 27.12.2006 under EIA Notification-1994 as amended in 2004 for development of 1000
-



plots for construction of bungalows and consent to establish dated 10.04.2006.

- c. That, the PP has made substantial change in the scope of the project without obtaining prior EC and Consents.
- d. Details of the project are classified for ready reference in brief;

Table No.1: - Actual Construction carried out at site without Environmental Clearance and Consent to Establish.

Sr.	Des.	EC 27.12.2006	C to E 10.04.2006	Completed Without EC	Proposed	Total
1.	Residential Buildings	0	0	29	12	41
2.	Commercial Building	0	0	1	1	2
3.	Flats	0	0	3120	2400	5520
4.	Shops	0	0	5	7	12
5.	School	0	0	1	0	1
6.	Dispensary	0	0		1	0
7.	Club House	0	0	1	0	1
8.	Shopping & Vegetable Market	0	0	0	1	1
9.	Bungalow	1000	0	0	282	282
10.	FSI	0	0	143242.3	225934.7	369177
11.	Non-FSI	0	0	46851.97	63901.03	110753
12.	BUA	0	0	190094.2	289835.8	479930
13.	Project Land	821512	97.28 Ha			686415
14.	Land for construction	738353	0			584335
15.	Total Built Up Area	0	0	More than 1,90,094.20 Sq. Mtrs. completed		
	Description		Details			
16.	Total Project Land Alleged by PP		821512 Sq. Mtrs. Area Not Proposed for Development: 64065 Sq. Mtrs. Hill Area: 83456.58 Sq. Mtrs.			



		Area for Development: 738353 Sq. Mtrs.
17.	Permissible FSI (Including TDR)	Applicable FSI: 0.5 FSI Area: 369177 Sq. Mtrs.
18.	Proposed BUA (FSI & Non-FSI)	FSI Area: 369177 Sq. Mtrs. Non-FSI Area: 110753 Sq. Mtrs. Total BUA: 4799330 Sq. Mtrs.
19.	Total Built Up Area Completed	BUA Completed: 190094.20 Sq. Mtrs. As per Sanctioned Plan For R-29: PMH/TS/SR/29/2013 dated 08.11.2013 As per Sanction by PMRDA for R-22 to R-28: BMU/CR-811/16-17 dated 30.09.2016
20.	Total No. of Flats and Shops	Residential Proposed: 5520 Residential Completed: 3120 Shops Proposed: 12 Shops Completed: 05
21.	No. of Flats occupied	2200 (Admitted by PP)
22.	Present Population of project	=2200 x 5= 11000 persons
23.	Total Population of project at completion of entire project	33000
24.	Total Fresh water requirement per day	7206 KLD
25.	Total waste water generated per day	3568 CMD
26.	Total Solid waste generated per day	24.86 MT/D
27.	Energy Consumption	44.49 MW
28.	Green House Area Proposed	50,000 Sq. Mtrs.
29.	RG Area Proposed	3,59,386 Sq. Mtrs.
30.	Proposed Trees plantation	Trees to be planted 17969 on RG Area of 3,59,386 Sq. Mtrs.
31.	Traffic Management	Total Parking Area :1,63,272 Sq. Mtrs.
32.	Rain Water Harvesting promised	No. of Rain water harvesting tanks: 3 with 630 kl capacity Size, No. of recharge pits and Quantity : 307 Nos.



		of recharge bore wells
33.	Distance from protected areas/critically polluted areas/ Eco sensitive areas/interstate boundaries	Mulshi lake : 22.96 Kms Mula river: 11kms
34.	BUILDING PERMISSIONS AND CONDITIONS THERE UNDER: Original Sanction (Bungalows): PRA/NA/SR/123/06 dated 20.01.2006 Revised Sanction (Bungalows): PMH/TS/SR/355/08 dated 07.09.2010 Revised Sanction (Sector wise Layout): PMH/TS/SR/21/2012 dated 31.03.2012 Revised Sanction (Sector wise Layout R-22 to R-29): PMH/TS/SR/30/2012 dated 10.09.2012 Sanction (Amenity Building-Primary School): PMH/TS/SR/14/2013 dated 03.08.2013 Revised Sanction (Sector R-29): PMH/TS/SR/29/2013 dated 08.11.2013 Sanction (Dispensary Building): PMH/TS/SR/10/2014 dated 04.06.2014 Revised Sanction (Sector wise Layout R-22 to R-28): PMH/TS/SR/11/2014 dated 05.06.2014 Sanction (Essential Shopping and Vegetable Market Building): PRH/TS/SR/25/2015 dated 29.12.2015 Revised Sanction (Sector wise Layout R-1 to R-29): PRH/TS/SR/26/2015 dated 29.12.2015 Revised Sanction By PMRDA (Sector wise Layout R-22 to R-28): BMU/CR-811/16-17 dated 30.09.2016	
35.	PLINTH CHECK CERTIFICATES: Part: PCC/SSP/4118 dated 04.07.2014 for A-1 to A-13 on Sector R-29 Part: PCC/SSP/5110 dated 01.09.2014 for A-14, A-15, B-1, B-2, B-3, B-6, B-7, B-8, C-2, C-3, C-4, C-5, C-6 & C-7 on Sector R-22 to R-28	
36.	PART COMPLETION CERTIFICATE: Part: Completion Certificate for Buildings A-1 TO A-7, A-9, A-10 & A-13 on Sector R-29 : PRH/KV/960/2016 dated 29.01.2016 Part: Completion Certificate for Buildings A-8, A-11 & A-12 on Sector R-29 : C.R. No. 1609/16-17 dated 27.01.2017	
37.	PROJECT UNDER CONSTRUCTION AND INCOMPLETE DEVELOPMENT That the project proponent have completed 29 residential buildings out of 41 residential buildings proposed, none bungalows are completed out of	



	282 bungalows proposed, Commercial, Educational, Hospital, Public Utilities etc. total units completed 3120 out of 5520 units and 2200 are occupied, PP has completed one commercial building with 5 shops without any sanction and another commercial building having 7 shops is under construction. Therefore this project is not yet completed and damaging environment & ecology by carrying out illegal construction in substantial manner. Entire development carried out by PP is non-sustainable having irreparable adverse impact on mother nature. This is admitted position as per the EC application dated 04.09.2012, actual construction at site, MPCB site visit dated 30.08.2018, MPCB Proposed direction dated 03.09.2018 and MPCB hearing dated 10.09.2018.
38.	UNDERTAKING AND AFFIDAVITS BY PROJECT PROPONENTS: That the PP had given undertaking cum affidavits to the project sanctioning authority dated 28.01.2012 for compliance of terms and conditions of EC dated 27.12.2006, but PP did not complied with it. That the PP had given undertaking cum affidavits to the project sanctioning authority dated 16.05.2015 for obtaining consent to operate from MPCB prior to start use of flats at site. But PP has given occupancy to the individuals without obtaining such mandatory Consent to operate. That the PP has given Bank Guarantee dated 19.05.2010, 06.03.2012, for compliance environment norms and installation of environment infrastructure at site. But there is no compliance of conditions as undertaken in these affidavits, therefore these bank guarantees must be forfeited.
39.	MOEF REPLY DATED 28.08.2018: That the MoEF vide its reply dated 28.08.2018 have informed that <i>"no environment clearance to M/s. Xrbia Hinjewadi Developers Private Limited for building construction project at Dattawadi, Gat No. 38, 39, 56 & 57, Near Nere-Marunji, Taluka Mulshi, District Pune has been granted by this Ministry."</i>
40.	MPCB SITE VISIT REPORT DATED 30.08.2018: That the MPCB FO made project site visit on 30.08.2018 to provide the information sought by the applicant vide its RTI Application dated 03.08.2018 and further representations of violations by PP and MPCB-FO have noticed the following serious violations; (1) Project proponent has constructed two no. of phases i.e. phase-I & II



	(2) Project proponent constructed 13 nos. of buildings in phase-I namely A-1 to A-13 which comprises of G+7 floors. During the visit it is observed that occupancy is given to flat owners & same were in used. (3) Project proponent also constructed 16 no. of building in phase-II namely A-14 & A-15 (G+8) & B-1 to B-3, B-6 to B-8, C-2 to C-7, D-1 to D-6. All are comprises (G+7) except A-14 & A-15. During visit it is observed that occupancy given to flat owners & they were in used. (4) Representative informed that possession is given to flat owners since-2016 (5) During the visit it was informed that total 3200 flats are constructed out of these 2200 are presently occupied. (6) Project proponent has provided STP & same is in operation having capacity 600 KLD consisting bar screen, collection tank, aeration tank, tube settle, sludge tank, filter tank & treated tank. Not provided dying beds & treated tank & Treated water used for flushing & gardening. (7) Near STP one pit was found in erected condition which was found with partial sewage & in septic condition. (8) Project proponent has not provided any treatment to biodegradable waste & same is outsource along with dry waste as informed. Details of outsource party is not produced. (9) During visit the representative of PP has not produced the document of consent to establish & consent to operate, Environmental clearance, sanctioned project layout, occupancy certificate from competent authority, water consumption details with necessary permissions, land ownership document, total plot area & building wise built up area. Project proponent shall submit the above details immediately to Board. (10) Project proponent has informed that water source is well water & 04 Nos. of bore wells. (11) Project proponent shall submit design with drawing & dimension of STP. The erection work is observed near STP & needs to submit details. (12) Project proponent has constructed one club house (G+1) & same is in operation & also 05 commercial shops are found in operation & another shopping complex is found in under construction.
41.	MPCB PROPOSED DIRECTIONS DATED 03.09.2018: That the MPCB noticed serious intentional violations committed by PP in his project in carrying illegal construction activity and from the RTI Applications, Representations and site visit, issued PD dated 03.09.2018 u/s 33A of Water (Prevention & Control of Pollution) Act, 1974 and u/s



	31A of Air (Prevention & Control of Pollution) Act, 1981 and hazardous and other waste (M & TM) Rules, 2016 as below: 1. You have constructed 13 nos of buildings in Phase-I (G+7) and given possession of flats without obtaining consent to operate from the Board. 2. You have constructed 16 nos of buildings in Phase-II (G+7 except two buildings) and given possession of flats without obtaining consent to operate from the Board. 3. It is reported that you have constructed total 3200 flats out of which you have given possession of 2200 flats since 2016. 4. You have also constructed one club house and 5 commercial shops within the premises of project. Further, one shopping complex is found under construction. 5. You have not provided sludge drying bed in STP. 6. You have not provided Organic Waste Convertor for treatment of Biodegradable Waste. 7. Record of MPCB Consent, if any, environmental clearance and sanctioned plan copy are not available at site for verification of compliance. AND WHEREAS, from the record of this office and observations made during the visit, I came to the conclusion that you are not complying with the provision of Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 thereby causing grave injury to the environment.
42.	MINUTES OF HEARING AT MPCB DATED 10.09.2018: That the MPCB conducted hearing on 10.09.2018, wherein PP has argued the following points and also admitted the violation; <i>"During discussion PP representative informed that, they have obtained E.C. on 27/12/2006 for development of township on total plot area 97.28 hector (Ha), the township will have 1000 plots, which will be sold to individuals for construction of bungalows. Total area for construction will be 48.64 Ha.</i> <i>The total plot has been sub-divided into sub-plots and sold to individual owners in the period 2006 to 2012. M/s. Eiffel Infocity Pvt. Ltd. has sold part of area with development agreement to M/s. Xrbia Hinjewadi Developers Pvt. Ltd. in the year 2012.</i> <i>During hearing P.P. do not produce the development agreement, however assured to submit the same at the earliest. PP representative informed that at Xrbia Hinjewadi site (S. No. 38/2, 38/3, 39, 56, 57, Vill. Nere Dattawadi, Tal- Mulshi, Dist- Pune)</i> <i>Total construction is 29 building, 01 club House & 05 Shops.</i>



	Total tenements in 29 buildings are 3120 Nos. Possession of about 2200 Nos. tenements is handed over. P.P. informed that, they have obtained consent to establish from MPCB on 10/04/2006 for development of land / plot as new construction activities on 97.28 ha with sewage generation 70 CMD, Non-Hazardous solid waste generation 360 Kg/day. P.P has not obtained consent to operate from MPCB and the possession is handed over in the year 2016 and 2017 without consent to operate. PP has not provided O.W.C. for treatment of organic waste and MSW generated from project is handed over to local contractor. PP has not produced the details of local contractor details to whom MSW is handed over. But assured to submit the same within one week period (07 days). P.P. representative informed that the existing S.T.P. capacity is 630 CMD and up gradation work of same for additional 700 CMD to make total capacity 1330 CMD is in progress. P.P. do not submit the S.T.P. drawing & design along with site photographs during hearing but assure to submit the same within one week period (07 days). P.P. representative assured to submit the site plan, layout plan, building plan, commencement certificate and occupation certificate within 07 days period. P.P. representative informed that they are going to apply for consent to operate shortly as the same not obtained. PP representative informed that they have done construction over a area of about 17 Ha out off the total area. This project is developed for economically weaker section (EWS) families and is a affordable housing project."
43.	ENVIRONMENT DEPARTMENT AND SEIAA REPLY DATED 08.10.2018: That the DoE & SEIAA have replied the Online RTI Application dated 03.08.2018 on 08.10.2018 and clearly stated that, "As per the records available with the department no EC is granted to the above referred project. The said proposal was considered in 60th and 65th and 68th SEAC meeting. Soft copy of the information sought by you is provided to you in soft copy format."
44.	ADMITTED FACTS BY PROJECT PROPONENTS: 1. Total construction is 29 building, 01 club House & 05 Shops. 2. PP have constructed 29 residential buildings having 3120 flats. 3. PP have put 2200 flats in use without consent to operate 4. PP have not obtained organic waste converter 5. PP is extracting ground water through one water well and four bore wells



	6. PP have obtained E.C. on 27/12/2006 for development of township on total plot area 97.28 hector (Ha), the township will have 1000 plots, which will be sold to individuals for construction of bungalows 7. PP have obtained consent to establish from MPCB on 10/04/2006 for development of land / plot as new construction activities on 97.28 ha with sewage generation 70 CMD, Non-Hazardous solid waste generation 360 Kg/day.
45.	MAJOR VIOLATIONS AND GROUNDS IN BRIEF FOR SENT OF THIS NOTICE: a. PP obtained EC dated 27.12.2006 from MoEF for area development of an area admeasuring 97.28 Ha with land for development was 48.64 Ha. EC was granted for development of 1000 plots on which bungalow was to be constructed. And MoEF imposed condition no. 6, "In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this ministry." b. Project Proponent obtained Consent to establish dated 10.04.2006 for new project for development of an area 97.28 Ha. c. PP made recasting of project by obtaining various permissions from Ministry Urban Development, Mumbai, collector of Pune from 2006 to 2014 and in between PP applied for revised EC on 04.09.2012 before SEIAA for 41 residential buildings, 282 bungalows, amenity buildings, school buildings with an FSI Area: 369177 Sq. Mtrs., Non-FSI Area: 110753 Sq. Mtrs. and for Total BUA: 4799330 Sq. Mtrs. a. But PP without obtaining any prior Environment clearance from SEIAA, without obtaining any prior Consent to establish and without obtaining any prior Consent to operate from MPCB and made substantial change in the scope of project completed 29 residential buildings out of proposed 41 buildings, 1 commercial building completed without obtaining any sanction from local authority and another one more commercial building is under construction, completed one club house. PP completed total



BUA of 190094.20 Sq. Mtrs., Therefore without accommodating this substantial change in the original scope of EC dated 27.12.2006 PP carried out the construction and this is one of major serious intentional violation.

- b.** That the project was apprised by former SEAC in its 60th, 65th and 68th meeting by imposing important condition and sought additional data/information, but there is no compliance to the said conditions and PP has not provided any information to the SEAC.
- c.** No application for prior Consent to Establish, No application for prior Consent to Operate from MPCB and construction carried out by the present PP without these mandatory permission.
- d.** PP has carried out the illegal excavation and hill cutting of an area admeasuring 133107.58 Sq. Mtrs. and quantity of Illegal excavation & hill cutting is 520739.75 Cu. Mtrs.
- e.** PP has made felling of tick wood trees and other indigenous species more than 50000.
- f.** PP has made encroachment on forest land at survey no. 62 of village Kasarsai, Taluka-Mulshi District-Pune and there was discharge of sewage water and waste water on same land by excavating pit on the same land which is now covered with construction waste and STP construction is in progress.
- g.** No permission from Ground Water Authority is obtained and PP is extracting ground water in illegal manner from four (4) bore well and one (1) water well at project site. Also there is no ground water test for its quality.
- h.** PP has not preserved top layer of the fertile soil excavated during the construction of four basements and there is no soil test.
- i.** PP has recently installed STP at project site after complaint to MPCB and which is not in scientific operation. Sewage waste & waste water is



directly discharged to pit excavated in forest land causing huge water pollution causing ground water pollution of forest land.

- j.** PP has not obtained any permission for installation of the DG Sets and there is illegal operation of DG Sets causing huge air pollution.
- k.** PP has undertaken to plant 17969 trees at project site & periphery, but PP has not made any plantation of trees and this is contrary to his undertaking and there is no development of Green Belt as per the CPCB norms and PP has not provided 10 % Open space for recreational purpose as per norms.
- l.** PP has not installed Solid waste treatment unit and composting pits. There is no segregation of biodegradable and non-biodegradable waste. Solid waste is directly thrown/ dumped to the opposite side area of project site and then it is burnt openly causing air pollution.
- m.** PP has not installed of Rain water harvesting system for ground water recharge and there is substantial depletion in ground water level
- n.** PP has not installed any energy saving devices of solar system.
- o.** Burden on natural resources (Building Material) due to illegal construction without any appraisal and assessment and it has caused illegal consumption of building material than none permitted legally.
- p.** There is complete non-application of mind by the local authority while issuing building sanction and the building sanction granted by local authority without EC is totally illegal and has no legal sanctity.
- q.** Intentional Non-action by all authorities, more specifically SEIAA, SEAC/III, PMRDA and concern officers have neglected to perform their duties for protection of environment and acted against the law.
- r.** All authorities are allowing PP for further illegal construction without Environment Clearance.
- s.** PMRDA, SEAC/III, SEIAA, DoE and MPCB is failed to stop illegal construction at site deliberately and neglected to perform their duties for



protection of environment and acted against the law and also government authorities failed to take legal action for violation of the provisions of EIA Notification-2006 r/w Environment (Protection) Act, 1986 a/w Water (Prevention and Pollution Control) Act-1971 and Air (Prevention and Pollution Control) Act-1984, solid waste rules etc.

- t. The act of intentional non-action clearly indicates that, there is unholy bureaucratic nexus misusing their positions for protection of PP.
- u. Serious intentional violations and illegal acts of noticees are damaging the environment and giving counter blast to the precautionary principle sustainable development and PP is causing huge irreparable damage to the Environment.
- v. Thus it is mandatory to stop the project construction permanently and this illegal construction either be demolished or government to take over this structure for public purposes without providing any benefits to PP.
- w. PP is careless, reckless and unapologetic towards the environment protection and to perform his fundamental duties.
- x. There is Carbon footprint impact to the tune of Rs. 1500 Crore Rupees till filing of this notice due to these illegal construction activities of PP and PP may kindly be charged with environment compensation more than Rs. 1500 Crores for exemplary and deterrent effect by sending clear message in the community of violators, that compliance to the environmental norms is supreme.

**BRIEF FACTS LEADING TO THE PROJECT UNDER
CHALLENGE AND FACTS LEADING TO THIS NOTICE:**

**5. DAMAGE TO THE FOREST LAND BY ILLEGAL DUMPING
OF CONSTRUCTION WASTE, DISCHARGING OF SEWAGE
WATER IN PIT AND THEREBY ENCROACHMENT:**



- a. That, the present project is situated in revenue boundaries of Village Dattawadi & Kasarsai of Taluka Mulshi and District Pune.
- b. Further That, the present project site touching the boundaries of village Marunji, Man, Nere.
- c. It is important to note here that, there is reserved forest land on survey no. 4, 5, 8, 55, 60, 61, 62, 66, 67, 88, 99 and 101A in village Kasarsai and there is also reserve forest land on survey no. 67, 71 & 72 in village Marunji.
- d. That, the project is situated on the Survey No. 36, 38/2, 38/3, 39, 40/1d, 42, 56, 57 of Village-Dattawadi (Nere) and 52, 53, 54 of Village- Kasarsai.
- e. That, the project proponent had excavated the pit on survey no. 62 of Kasarsai and discharged sewage water into it and dumped construction waste on the same and it is clear cut encroachment on the forest land and thereby PP has caused serious damage to the forest land and wild life.

6. MOEF ISSUED EIA NOTIFICATION-1994 AND AMENDED NOTIFICATION-2004 MANDATING PRIOR EC TO THE NEW CONSTRUCTION PROJECT:

- a. That, the MoEF issued the notification vide S.O. 60 (E) EIA Notification-1994 dated 27.01.1994 as amended on 04.05.1994 mandating prior environment clearance for the industries having investment more than 50 Crores and not mentioned in schedule-I of the notification.
- b. That, the notification vide S.O. 60 (E) EIA Notification-1994 dated 27.01.1994 were amended vide S.O. 801 (E) as EIA Notification-2004 dated 07.07.2004 by insertion of entry at item no. 31, mandating prior environment clearance for New Construction Project.



**7. INCORPORATION OF PP WITH MINISTRY OF
CORPORATE AFFAIRS:**

- a. Project Proponent was originally incorporated with MCA as M/s. Eiffel Infocity Private Limited on 22.09.2004 with corporate identity number as "U45209PN2004PTC019772".
 - b. That the Project Proponent M/s. Eiffel Infocity Private Limited has changed his name to M/s. Eiffel Developers and Realtors Private Limited with approval of the Central Government signified in writing having been accorded thereto under Section 21 of the Companies Act, 1956, read with Government of India, Department of Company Affairs, New Delhi, Notification No. G.S.R 507 (E) dated 24/06/1985 vide SRN A13879408 dated 14/05/2007 and certificate of incorporation for consequent upon change in name was issued on 14.05.2007.
 - c. That the Project Proponent M/s. Eiffel Developers and Realtors Private Limited has changed his name to M/s. Eiffel Developers and Realtors Limited and certificate of incorporation for consequent upon change in name was issued on 08.12.2007.
 - d. That the Project Proponent M/s. Eiffel Developers and Realtors Limited has changed his name to M/s. Xrbia Developers Limited with the approval of the Central Government signified in writing having been accorded thereto under Section 21 of the Companies Act, 1956, read with Government of India, Department of Company Affairs, New Delhi, Notification No. G.S.R 507 (E) dated 24/06/1985 vide SRN B41621418 dated 21/06/2012 and certificate of incorporation for consequent upon change in name was issued on 01.06.2012.
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- e. Therefore the **M/s. Xrbia Developers Limited** is one of the Project Proponent held responsible for violations leveled in this notice.

**8. INTENTIONAL VIOLATION OF CONSENT TO ESTABLISH
NO. BO/RO (P&P)/CC-364 DATED 10.04.2006**

- a. That, the Project Proponents have procured Consent to Establish from MPCB vide no. vide No. BO/RO(P&P)/CC-364 on 10.04.2006 for development of land / plot as new construction activities named as M/s. Nahar's Silicon City, on 97.28 Ha.
- b. That, the Consent to establish was issued on the following condition:

Sr.	Consent Parameter	Condition imposed
1.	PP name	M/s. Nahar's Silicon City
2.	Project Land Area	97.28 Ha
3.	Sewage effluent and Waste water Generation	40 Cubic Meters
4.	Sewage effluent Treatment	Installation of comprehensive STP
5.	Sewage Effluent Disposal	Gardening, Irrigation, lawn, tree-plantation within on premises
6.	Solid Waste Quantity	360 Kg per day
7.	Purpose of C to E Condition No. -3(2)	Only developing Construction Project
8.	Quarrying of activities Condition No. -3(3)	No quarrying activities without permission, No quarrying on forest land, no export of quarry material out side
9.	Felling of trees Condition No. -3(4)	There shall not be felling of trees whether on forest, government, revenue or private land except as per prevailing rule
10.	Ground Water extraction, Condition No. -3(5)	Extraction of ground water shall require prior permission from SGWA or other relevant authority,



		as applicable
11.	Condition No. -3(7)	Water from this residential complex to not enter into outside environment, the Nallas crossing the township/ complex premises.
12.	Condition No. -3(8)	Management plan for water harvesting, roof water reclamation, water/ storm water conservation and its implementation before handing over of complex for occupation
13.	Condition No. -3(9)	Plan for segregation of solid wastes into biodegradable and non-biodegradable. Biodegradable waste shall be recycled through scientific in-house composting. Inorganic material shall be disposed off at approved Municipal Solid Waste landfill site of local body environmentally acceptable location and method.
14.	Condition No. -3 (12) (c)	Cutting of tree is not permitted, however in unavoidable conditions necessary permission from the local body shall be obtained
15.	Condition No. -3 (12) (d)	Green belt of 33% of the open space shall be developed excluding lawns.
16.	Condition No. -4 & 4(I)	Shall comply with all the provisions of, the water (Prevention and Control of Pollution) Cess Act, 1977 and shall regularly submit to the board, the returns of water consumption in the prescribed form and pay the Cess as specified under section 3 of the said Act.
17.	Condition No. -5	The applicant shall install ____ number of diesel generating sets.
18.	Condition No. -8	Proposed activity comes under Entry 31 (New Construction Project) listed in schedule I of the EIA Notification dated January 27, 1994 (as amended till date) issued by Ministry of Environment & Forest, Govt. of India, New Delhi



		and therefore, Environment Clearance from Govt. of India (MoEF) shall be required as per conditions in the amended EIA Notification dated July 7, 2004
19.	Condition No. -10	This "Consent to Establish" is issued subject to the planning permission and permission for Non-agricultural (N.A.) use from competent authority.
20.	Condition No. -11	The applicant shall obtain environment clearance from MoEF, GoI before taking any steps to develop/ start construction the site
21.	Condition No. -12	The applicant shall not-handover the residential complex unless obtain consent to operate / NOC from Maharashtra Pollution Control Board and Compliance of environment clearance granted by MoEF Government of India.
22.	Condition No. -13	Applicant shall take the proper remediation measures to ensure that the ground water and soil contamination is prevented and follow due diligence at the construction stage.

- c. That, the said consent to establish was issued for the area development project, PP made substantial change in the project and did not obtain the necessary Consent to establish to accommodate the enlarged construction activity.
- d. That, there is no compliance to the above stipulated conditions of Consent to establish and PP carried out the construction and also put the premises under occupancy without such prior permissions. And it is nothing but clear cut violations of the Water Act, Air Act, HW&M Rules.



9. INTENTIONAL VIOLATIONS OF ENVIRONMENT

CLEARANCE NO. 21-153/2006-IA-III DATED 27.12.2006

- a.** That the Project Proponents have alleged that, he has received the environment clearance for area development of special township scheme from MoEF under EIA Notification 1994 and amendment-2004 vide No. **21-153/2006-IA-III** on 27.12.2006.

"The project proponent is proposing to for development of township "Silicon City" at Vill.- Dattawadi, Tal.- Mulshi, Distt. - Pune, Maharashtra. The project involves development of township on a total plot area of 97.23 Ha. The township will have 1000 plots which will be sold to individuals for construction of bungalows. Total area for construction as per approved plan is 48.64 Ha. Total water requirement will be 50 cu. m./ day and total waste water generated will be appx. 38 cu. m. / day. A common sewage treatment plant will be provided to treat sewage. The solid waste generated will be 1.0 mt/d. The solid waste will be entrusted to the private operator. However, composting of biodegradable component will be encouraged."

- b.** That the EC is procured in the mane of "M/s. Eiffel Infocity Pvt. Ltd. through Mr. Rahul R. Nahar", but the entire project is developed and units are sold by M/s. Xrbia Developers Ltd. and M/s. Xrbia Hinjewadi Township Pvt. Ltd.
- c.** There is no specific mention of revenue details of land on which Survey number or gat numbers, the said project is going to develop.
- d.** That the EC is granted under EIA Notification-1994 as amended on 07.07.2004, but there is substantial change in the scope of the project and PP have not obtained amended Environment



clearance under the amended EIA Notification-2006 dated 14.09.2006 intentionally.

- e. There is no compliance of any terms and conditions of this EC dated 27.12.2006 by Project Proponents and violated these terms and conditions intentionally causing substantial damage to environment & ecology.

f. Summary of EC and its violation

Sr.	Description of Parameter	EC Parameters	Modified or Actual Parameters
1.	PP Name	M/s. Eiffel Infocity Pvt. Ltd. through Mr. Rahul R. Nahar	M/s. Xrbia Developers Ltd. M/s. Xrbia Hinjewadi Developers Pvt. Ltd.
2.	Project Name	Silicon City	Xrbia Hinjewadi Township or Megacity
3.	Project Land	Not Disclosed	Survey No. 38/2 & 38/3, 38/1, 36, 56, 39, 57, 42, 40/1d, 53, 54, 52 of village Dattawadi, & Kasarsai, Tehsil-Mulshi District-Pune
4.	Project Land Area	97.23 Ha.	203 Acres (821512 Sq. M.) Area not proposed for development: 64065 Sq. m. Hill Area: 83456.58 Sq. m.
5.	Area of Development/ Construction	48.64 Ha	738353 Sq. m.
6.	Proposed Structure	1000 plots which will be sold to individuals for construction of bungalows	Proposed Structure: Total no. of buildings: 41 Nos. Bungalows: 282 Nos. Proposed Units: No. of residential flats: 1 BHK: 1440 Nos., 2 BHK: 3680 Nos. 3 BHK: 400 Nos., Bungalows: 282 Nos. Completed Structure: Residential Buildings: 29, One Commercial Bldg.



			One Amenity Completed Units: Residential: 3120 Shops: 5
7.	Total Water requirement	50 cu. m./ day	Not disclosed
8.	Total Waste Water Generated	38 cu. m. / day.	Not disclosed
9.	STP	A common sewage treatment plant will be provided to treat sewage.	No common STP, Two STP Provided, But not in proper and scientific operation, Sewage water is discharged in excavated pit.
10.	Solid Waste Generated	1.0 mt/d.	Not disclosed
11.	Solid Waste Treatment	Solid waste will be entrusted to the private operator and composting of biodegradable component will be encouraged	No solid waste treatment, solid waste is burned on the open land just out site the project site
12.	Tree plantation		Not carried out
13.	Tree felling		More than 50000 trees cut without permission
14.	Excavation and hill cutting		Done in illegal manner
15.	Green belt development		Not carried out
16.	Ground water recharge		Not done
17.	Soil preservation		Not done
18.	Soil test		Not done
19.	Ground water extraction		Ground water extraction without GWA permission
20.	Ground water test		Note done
21.	Energy conservation		No installation of energy conservation devices
22.	Concrete cover		Project land covered with concrete
23.	MPCB permission for occupancy		Not obtained



**10. LAND USE CHANGE WITHOUT TITLE UNDER TOWNSHIP
POLICY OF STATE GOVERNMENT, COLLECTOR PUNE
AND VARIOUS PERMISSIONS:**

- a. That, the state government issued Gazette Notification No. TPS-1804/Pune R.P. DCR/UD-13 for regulations of development of Township in area under Pune Regional Plan dated 16.11.2005 released on 21.11.2005 with amendment in Gazette Notification No. TPS-1804/Pune R.P. DCR/UD-13 for addition of rule 1.2 as sub-proviso dated 06.01.2006 released on 07.01.2006 for promotion of township projects. Also Special Township Regulations sanctioned by Govt. of Maharashtra vide Notification No. TPS-1807/99/CR-713/07/UD-13 dated 08.07.2008 published in MGG at Page No. 2553 to 2557 dated 31.07.2008.
- b. That, the urban development department issued the location clearance for special township project under challenge dated 08.06.2009.
- c. That, there was two Corrigendum of Notification No. TPS-1807/99/CR-713/07/UD-13 under section 18 (3) of MR & TP Act-1966 dated 27.04.2009 and Corrigendum of Gazette notification TPS-1807/99/CR-713/07/UD-13 for correction dated 28.05.2009
- d. That, Letter of intent (LOI) issued by Collector of Pune vide No. PMH/N.A./S.R./355/08 Pune-1 dated 05.01.2009 with two Corrigendum of Letter of intent issued by Collector of Pune vide No. PMH/Ka.Vi./1491/09 Pune-1 dated 24.09.2009 and Corrigendum of Letter of intent issued by Collector of Pune vide No. PMH/Ka.Vi./2701/09 Pune-1 dated 19.12.2009.



- e. That, the said location clearance and letter of intent was issued without verifying title of the land and ownership details. It is important to issue the permission for land use change only to the party having legal rights, but the superior authority have neglected to perform their duties and issued these permission with ulterior motive.
- f. PP procured these location clearance for an area 81.20 Ha while letter of intent says that, the PP has submitted the documents of ownership & development rights for an area of 70 Ha 75.8 R.

**11. OBJECTIONS RAISED BY AUTHORITIES ON ACCOUNT
OF TITLE OF LAND AND UNDERTAKINGS OF PP:**

- a. That, the Collector of Pune issued notice dated 06.02.2012 cum objection and sought the clarification on account of land considered in MOEF permission.
- b. That, the Collector of Pune issued notice dated 17.01.2013 cum objection for leasing of plots from the land of township and entire ownership of the township, but PP did not filed any satisfactory reply of the notice and it clearer that, PP have no ownership of the land he claimed for development.
- c. That, the PP has filed application dated 27.06.2016 for revised sanction before PMRDA and filed the list of permission required for this revised sanction. In this application PP has stated that, at serial no. 25 of application "Environment Clearance (EC) - NOT REQUIRED", at serial no. 26 of application "M.P.C.B. N.O.C- NOT REQUIRED", at serial no. 36 of application "NOC FROM FOREST DEPARTMENT- NOT REQUIRED" and this is false and misleading information.



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- d.** That, affidavit cum undertaking title of land submitted by PP to PMRDA for obtaining revised sanction dated 21.07.2016 and it is stated that, the area of sector R-22 to 28 is only 69885.81 Sq. Feet.
- e.** That, the form giving particulars of development, Part of Appendix-A submitted by PP to PMRDA for obtaining revised sanction dated 21.07.2016, wherein PP has admitted that, at sr. no. 6 stating that "Zone of the plot is agricultural & no development zone", sr. no. 28 stating that, "the source of water to be used in the construction – tanker/ bore well", in fact no tanker water is used, but only bore well water is used for construction and same fact is admitted by PP in MPCB Visit.

12. MEASUREMENT AND DEMARCATION MAPS FROM DY. SUPERINTENDENT OF LAND RECORDS

- a.** That, the measurement maps and Boundary layout procured from Land Record Department Vide Mo. R. No. 166/10, 167/10, 168/10 for Village Nere-Dattawadi dated 16.02.2010 and Mo. R. No. 169/10, 170/10, 172/10, 173/10, 174/10 for Village-Kasarsai all dated 16.02.2010
- b.** It seems that, these map are prepared by setting in the AC office rooms without actual site measurement and land record department is totally failed to record the total number of trees at site, number of water bodies originating at site, forest land adjacent to the project site, hill area of the project land where development is not possible etc.

13. FARCE OF PERMISSION FOR FRESH WATER SUPPLY BY IRRIGATION DEPARTMENT AND IN ACTUAL HUGE



**QUANTITY OF GROUND WATER IS EXTRACTED
WITHOUT PERMISSION FROM CONCERN AUTHORITY:**

- a. That, the NOC for drinking water issued by Assistant Chief Engineer Irrigation Department Pune dated 30.09.2006
- b. That, the letter from Assistant Engineer Irrigation Division to Secretary, Irrigation Department Mantralaya for change in name of PP from Eiffel Infocity Pvt. Ltd. to Eiffel Developers & Realtor Ltd. dated 12.07.2012
- c. That, the PP has disclosed in 68th SEAC MoM, the fresh water requirement of project is 5600 CMD, which is very high and it will be meet by the water from Kasarsai dam, but permission to lift water was issued only for 2000 CMD.
- d. But PP never lifted water from the Kasarsai dam and project demand is fulfilled from the ground water extraction from one well and four bore wells, which is admitted by PP in MPCB site visit dated 30.08.2018 and this fact of illegal ground water extraction is depleting ground water level.
- e. There is no monitoring of ground water level and its quality at any point of time and this is the violation of condition No. xii of operation phase of EC dated 27.12.2006 and also violation of condition no. 3 (5) of Consent to establish dated 10.04.2006.

**14. ILLEGAL HILL CUTTING AND EXCAVATION AT PROJECT
SITE:**

- a. That, the major part of the project site is hill top / hill slope area site having slope of more than 1:5 and area under slope more than 1:5 is 83456.58 Sq. Mtrs. as admitted in sanction plan no. 04 of 04 granted by Collector of Pune vide no. PMH/TS/SR/21/2012 dated 31.03.2012.



- b.** That, total net area under actual township development is 500878.42 Sq. Mtrs. as disclosed in the same sanction.
- c.** That, the PP has procured 9 permissions from the learned Tehsildar of Paud Mulshi for excavation as below;

Sr. No.	Permission No.	Date	Quantity of Excavation (Brass)	Validity of Permission	Challan No.	Bank	Amount
1	MN/SR/12/07	20.02.2007	99	27.02.2007	39	UBI, Paud	10025
2	MN/SR/13/07	20.02.2007	99	27.02.2007	40	UBI, Paud	10025
3	MN/SR/17/07	22.02.2007	99	28.02.2007	45	UBI, Paud	10025
4	MN/SR/18/07	22.02.2007	99	28.02.2007	46	UBI, Paud	10025
5	MN/SR/19/07	23.02.2007	99	01.03.2007	48	UBI, Paud	10025
6	MN/SR/20/07	23.02.2007	99	01.03.2007	49	UBI, Paud	10025
7	MN/SR/21/07	22.02.2007	99	28.02.2007	47	UBI, Paud	10025
8	MN/SR/22/07	23.02.2007	99	01.03.2007	50	UBI, Paud	10025
9	MN/SR/23/07	20.02.2007	99	27.02.2007	51	UBI, Paud	10025

- d.** Therefore total quantity of excavation of minor minerals permitted by Learned Tehsildar Mulshi is = $9 \times 99 = 891$ brass = $2.835 \times 891 = 2575.88$ Cu. Mtrs.
- e.** It can be seen from the site condition and Google earth images, there is substantial hill cutting and excavation in illegal manner,

Sr. No.	Surface area of excavation and hill cutting M ²	Depth or Height (Mtrs)	Quantity in Cu. Mtrs.
1	16381.25	2.5	40953.125
2	37816.83	4	151267.32
3	20771.4	3	62314.2
4	24485.4	4	97941.6
5	33652.7	5	168263.5
Total	133107.58		520739.75



- f.** That, the PP has made hill cutting and excavation of 520739.75 Cu. Mtrs. against the permission of 2575.88 Cu. Mtrs. from Tehsildar.
- g.** That, this act is domesticating the conscious of the common man, but the authorities have no effect of such serious damage to environment. This damage is also culminated in to illegal cutting of trees.

15. VARIOUS BUILDING SANCTIONS ISSUED BY COLLECTOR OF PUNE AND PMRDA AND CONDITIONS IMPOSED THERE UNDER: 2006-2016

- a.** That, the said development is projected as Special Township Project and PP obtained first sanction on 20.01.2006 vide no. PRA/NA/SR/123/2006 for development of 273 bungalow on sub-divided plots in to sector R-13 to R-30. Total land area under development in this sanction was 159900 Sq. Mtrs.
- b.** That, the total land area disclosed in EC application dated 14.06.2006 is 97.28 Ha and area under development was disclosed is 48.64 Ha.
- c.** That, Collector of Pune granted various revised sanctions vide no. PMH/TS/SR/355/08 dated 07.09.2010, PMH/TS/SR/21/2012 dated 31.03.2012, PMH/TS/SR/30/2012 dated-10.09.2012, PMH/TS/SR/14/2013 dated-03.08.2013, PMH/TS/SR/29/2013 dated-08.11.2013, PMH/TS/SR/10/2014 dated-04.06.2014, PMH/TS/SR/11/2014 dated-05.06.2014, PRH/TS/SR/25/2015 dated-29.12.2015, PRH/TS/SR/26/2015 dated-29.12.2015 and BMU/CR-811/16-17 dated 30.09.2016.
- d.** That, the PP has mislead on account of the total land area, area not proposed for development, area under township



development, required green space area as per rule no. 5.2, proposed green space area, area under slope more than 1:5, balance net area under actual township development and floor space area etc.

Sr.	Area Statement	PMH/TS/SR /355/08 07.09.2010	PMH/TS/SR /21/2012 31.03.2012	PRH/TS/SR /26/2015 29.12.2015
1.	Total Land Area	686415	686415	686415
2.	Area Not Proposed For Development		102080	102080
3.	Area Under Township Development		584335	584335
4.	Required Green Space Area As Per Rule No. 5.2	343207.50	292167.5	292167.5
5.	Proposed Green Space Area	343233.82	292338.58	292244.66
6.	Area Under Slope More Than 1:5	83456.58	83456.58	83456.58
7.	Balance Net Area Under Actual Township Development		500878.42	500878.42
8.	Floor Space area (Maximum 50% of No. (7))	300342	250439.21	250439.21

- e. That, the development is divided in to sectors from R-1 to R-29, sectors R-21 area for bungalows, R-22 to R-29 is for development of residential, commercial, amenity, dispensary, vegetable market, essential shopping, fire stations, electric substations etc.
- f. That, the sanction no. PMH/TS/SR/29/2013 dated-08.11.2013 was granted for the development of the Sector R-29 having following details:

Sr.	Description	Details
1	Sector No.	R-29
2	Net Plot Area	38123.43 M ²
3	No. of Flats	1568
4	FSI	68030.6 M ²
5	Balcony	2024.8 M ²



6	Terrace	0 M ²
7	Staircase With Premium	1737.14 M ²
8	Staircase Without Premium	1737.12 M ²
9	Lift	114.66 M ²
10	Lift M/C	482.82 M ²
11	Parking Area / Ground Coverage	8690.11 M ²
12	Total BUA Sector R-29 (Sum of No. 4 to No. 11)	82817.25 M²

- g. That, the sanction no. BMU/CR-811/16-17 dated 30.09.2016 was granted for the development of the Sector R-22 to R-28

Sr.	Description	Details
1	Sector No.	R-22 to R-28
2	Net Plot Area	69887.81 M ²
3	No. of Flats	1555
4	FSI	75215.66 M ²
5	Balcony	2770.76 M ²
6	Terrace	14808.35 M ²
7	Staircase With Premium	2239.16 M ²
8	Staircase Without Premium	2240.16 M ²
9	Lift	150.12 M ²
10	Lift M/C	604.24 M ²
11	Parking Area / Ground Coverage	9308.53 M ²
12	Total BUA Sector R-22 to R-28 (Sum of No. 4 to No. 11)	107336.98 M²

- h. Therefore the total BUA of the Sector R-22 to R-29 is as below;

Sr.	Description	BUA Details	Flats
1	Total BUA Sector R-29 (Sum of No. 4 to No. 11)	82817.25 M ²	1568
2	Total BUA Sector R-22 to R-28 (Sum of No. 4 to No. 11)	107336.98 M ²	1552
3	Total BUA Sector R-22 to R-29	190094.23 M²	3120

- i. That, the BUA of commercial developments, fire station, electric substation, club house etc. is not disclosed by the PP on any sanction and these constructions are carried out even without sanction of local authority.



- j.** That, the total BUA of the illegal construction is 190094.23 Sq. Mtrs., total flats constructed are 3120, illegal shops constructed are 5 and 7 shops are under construction against none is sanctioned by SEIAA or MoEF.
- k.** Therefore this is the change in scope of project from its original sanction in EC dated 27.12.2006 and Consent to establish dated 10.04.2006 and it is clear cut violation of environment enactments of schedule of NGT Act-2010.

16. EC APPLICATION DATED 04.09.2012 BEFORE SEAC & SEIAA MAHARASHTRA FOR EXPANSION OF PROJECT

- a.** PP has applied before SEAC & SEIAA Maharashtra for Environment clearance on 04.09.2012 for prior Environment clearance, which was modified in March- 2013 and thereafter SEAC considered the project in its 60th, 65th and 68th meeting and directed to comply with very important direction, but PP intentionally avoided to comply with the direction and thereafter never saw the face of SEAC, SEIAA and carried out the enlarged illegal construction.

b. Details of modified EC Application filed in March-2013:

Sr.	Parameter Description	Quantity/ Explanation
1.	Total plot area Deductions Net plot area	203 acres (821512 sq m.) Area not proposed for development - 64065 sq m Hill area – 83456.58 sq m. Area for development- 738353 sq m.
2.	Permissible FSI (including TDR etc.)	Applicable FSI:0.5 FSI Area: 369177 sq m.
3.	Proposed Built up area (FSI & Non- FSI):	FSI Area: 369177 sq m. Non FSI area: 110753 sq.m Total BUA: 479930 Sq.m
4.	Estimated cost of the project:	Rs. 556 Crores
5.	No. of Buildings and	Total no. of buildings: 41 nos.



	its configuration	Bungalows:- 282 nos. Building configuration: S+G+7, S+G+8, S+G+14 Low rise development: - S+G+1 = 8.45 m. Maximum height of the building being 42 meter.
6.	No. of tenant and Shops	No. of residential flats : 1 BHK: 1440 nos., 2 BHK: 3680 nos. 3 BHK: 400 nos., Bungalows: 282 nos. Commercial, Educational, Hospital, Public Utilities Spaces: 83535 sqm.
7.	No. of Expected residents/users	Residential population: 23014 nos. Commercial + visitors population: 10064 nos Amenity population: 7 nos.
8.	Total water requirement	Fresh water demand= 2640 KLD & Source : Kasarsai dam. Recycled water supply: 1471 KLD For flushing :1534 KLD Green House :421 KLD For car washing : 115 KLD HVAC:- 1025 KLD
9.	Rain water Harvesting	Level of ground water table: 15-20m Size and no of RWH tank(s) and Quantity : No .of Rain water harvesting tanks: 3 no. with 630 kl capacity. • Size, no of recharge pits and Quantity : 307 nos of recharge bore wells Capacity of each recharge borewell is 7.2 cum/day
10.	Sewage and Wastewater	I. Sewage Generation: 3568 cum/day wastewater will be generated. The treated water coming from STP (3032 cum/day) will be used for secondary purposes like, gardening, flushing, car washing and HVAC. II. STP Technology – Wastewater produced will be treated on site in a Sewage Treatment Plant of capacity 3654 KLD working on 'Fluidized Aerobic Bioreactor (FAB) technology.
11.	Solid Waste	Pre-construction and construction



	Management	phase is 24.86 MT/day Operation Phase Dry waste MT/day:- 1.64 TPD Wet waste MT/day:- 10.09 TPD Quantity of waste oil - The quantity of waste oil from DG sets would be 22,016 lit/annum. Bio medical waste (kg/month):0.163 TPD STP sludge (Dry sludge) kg/day: 0.89TPD
12.	Green Belt Development	Total RG area: RG area other than green belt (Please specify for playground, etc.) Green house area : 50000 sqm. RG area under green belt: • RG on the ground (sq. m.) RG area: - 359386 sqm. Plantation Number and list of trees species to be planted in the ground RG: 17969 trees on RG area of 359386 sq.m will be planted.
13.	Energy	Power Supply Power requirement: 44.49 MW Source: MSEDCL Power Supply Power requirement: 44.49 MW Source: MSEDCL
14.	Building Material	1. Cement - 113169 bags 2. Sand - 9451 m³ 3. Aggregates- 14055 m³ 4. Steel - 1389 MT 5. Formwork- 154705 m² 6. Concrete -15727 m³ 7. Fly Ash (RMC 18-20%) - 1573 MT 8. Formwork (Shuttering) - 19338 m² 9. Forests & Timbers-75 MT 10. Energy - 250 KW

c. PP provided misleading information in Proposal dated 04.09.2012 on account of total land area of township form-1



item#3, government order or policy related to the project form-1, item-22 and forest land involved form-1, item#23.

- d.** PP also provided misleading information on account of Sr. III environmental sensitivity, item#10- Areas containing important, high quality or scarce resources (*Ground water resources, surface resources, forestry, agriculture, fisheries, tourism and minerals*), PP provides Nil info. In fact there is forest land at survey no. 62 of village Kasarsai where PP has encroached and discharged sewage water and waste water by excavating pit.
- e.** That, the proposed was apprised by former SEAC in its 60th SEAC Meeting held on 25.09.2012 at item no. 7 and issued following directions and but PP did not provided correct information and misled the SEAC and also violated & Non-complied said direction.

Sr.	Condition/ info sought
1.	Submit an explanatory note on plot history and details about area added/excluded from the project for which EC was granted in 2006.
2.	PP to include the construction of greenhouse in the project area calculations.
3.	Submit consent for total water requirement from a competent authority
4.	Submit the proposal for water supply from source to site also indicating the water treatment etc.
5.	Submit details of water balance for zero liquid discharge proposed for the project.
6.	Considering the topography, PP should restrict cutting of hills to retain native vegetation on the hill slope of plot. Every effort has to be made to plant native species.
7.	This is a special township project. Location clearance for the entire area involved is required. Submit the clearance from competent authority.
8.	Compliance with all stipulations for Special Township to be



	furnished.
9.	A large scale lay out plan superimposed on contour map to be submitted indicating the "no development zones", road network etc

- f. That, the proposed was apprised by former SEAC in its 65th SEAC Meeting held on 29.01.2013 at item no. 17 and issued following directions and but PP did not provided correct information and misled the SEAC and also violated & Non-complied said direction with the observation as below.

"SEAC noted that this is the special township scheme and EC was accorded for the area development in 2006. PP stated that some plots are deleted from the original scheme and some new added. Therefore, this is a newly recast project on a net plot area 7,38,353 sq.m. Location Clearance has been obtained for the proposed project."

The proponent is directed to comply with the following observations:

Sr.	Condition/ info sought
1.	Justify the proposed 68 m height of the building as per town planning DCR.
2.	Submit the consent for required water quantity from a competent authority
3.	Provide open spaces between two buildings as per NBC norms
4.	Justify the available capacity of sewers for the treated wastewater discharge
5.	Submit water calculations for the green house as the requirement is appears to be very much on the higher side.
6.	Submit modified EIA report with colour photographs.
Full appraisal of the project will be done after the submission of the above said points.	



- g.** That, the PP have submitted evasive and false, misleading reply to the above 60th & 65th SEAC minutes directions vide its letter dated 13.02.2013.
- h.** That, the PP filed the revised application with modified information along with consolidated statement, EIA Reports etc. but all was based on false and misleading information.
- i.** That, the proposed was apprised by former SEAC in its 68th SEAC Meeting held on 12.03.2013 at item no. 19 and issued following directions and but PP did not provided correct information and misleded the SEAC and also violated & Non-complied said direction with the observation as below.

"It was noted that This is a special township project for resident of nearly 35000 souls as informed by PP. The project has been recast by changing the height of buildings as indicated in the 65th SEAC meeting. Considering the magnitude of project its peculiar location by the foot of the hill and in rural area and various environmental aspects involved discussion were held with the PP and consultant on the basis of presentation made by them. Several issues aroused on which detail clarification is required. They are enlisted below."

Sr.	Condition/ info sought
1.	The requirement of water is very high about 5600m ³ whereas permission for water granted by Government is only about 2000m ³ /d, therefore, provision for balance will have to be indicated.
2.	Details of Raw water treatment and its quality shall be submitted.
3.	Treatment for sewage and water balance should be given along with the arrangement for disposal of excess treated effluent.



4.	The water balance prescribed appear to be impracticable. Full details along with calculations shall be submitted.
5.	Disposal of sewage will have to be indicated with full details addressing all environmental concerns. Unless the details are worked out sewage is definitely going to create great nuisance to residents and neighbors.
6.	Submit note on fire fighting along with diagram for entire township.
7.	PP to submit details of RWH and Storm Water Drainage.
8.	The project proponent shall draw up a sustainable model with appropriate EMP, as the proposed EMP (O&M) is inadequate.
9.	Submit a note on the existing trees, trees to be cut, trees to be transplanted and trees to be planted (nos., size, age, and species) as per MoEF guidelines. There is deficiency in ecology and BD in fauna which needs to be redone and report submitted.
After the clarification are furnished and a site visit by the Committee is made, detailed appraisal will be taken up.	

- j.** That, as per the decision of SEAC in 68th meeting to visit the site, but there not such site visit by the SEAC Members.
- k.** That, the PP has never visited the SEAC, SEIAA, DoE or MoEF for grant of EC after 68th SEAC meeting held on 12.03.2013 and not complied with the direction and never provided correct information.

**17. CLARIFICATION IN EIA NOTIFICATION DATED 04.04.2011
AND COMPLIANCE REPORT AGAINST EC DATED 27.12.2006**

- a.** That, the MoEF issued the clarification on Built up area and to lower down the ill practices adopted by various project proponent for misleading the authority in obtaining their environment clearance.



- b.** That, the PP has filed the only one compliance report against the EC dated 27.12.2006 and this compliance report is totally false, evasive and misleading. It is also stated that, the there is no construction started on the project site. But there was cutting of tree, excavation and cutting of hills going on site.

18. PLINTH CHECK CERTIFICATES AND OCCUPANCY CERTIFICATES:

- a.** That, the PP obtained the various sanctions since 2005 to March 2014 and started construction in the month nearby April-2014 and substantially raised for R-29 at the level of plinth on 04.07.2014 and for sector R-22 to R-28 on 01.09.2014.
- b.** That, the Plinth Check Certificate issued by Town Planning Department for buildings A-1 to A-13 on Sector R-29 dated 04.07.2014
- c.** That, the Plinth Check Certificate issued by Town Planning Department for buildings A-14, A-15, B-1, B-2, B-3, B-6, B-7, B-8, C-2, C-3, C-4, C-5, C-6 & C-7 on Sector R-22 TO R-28 dated 01.09.2014.
- d.** That, the fire NOC for Sector R-22, R-24, R-27, R-28 issued by Director of Maharashtra Fire Services-GoM dated 08.08.2014
- e.** That, the office note was prepared by Assistant director Town Planning on occupancy application dated 20.02.2015 and part completion certificate was granted by Collector Pune vide No. PRH/KV/960/2016 dated 29.01.2016
- f.** Also there was correction carried out in occupancy certificate and it was granted on 22.12.2016



- g.** There is application for obtaining occupancy certificate dated 15.07.2016 for buildings A-15, B-6, B-7, B-8, C-2, C-6 & C-7 on R-22 to R-28 and but not issued till today.
- h.** That, the part Completion Certificate for Buildings A-8, A-11 & A-12 on Sector R-29 vide no. C.R. No. 1609/16-17 dated 27.01.2017

**19. CONDITIONS IMPOSED IN COMMENCEMENT
CERTIFICATE FOR ENVIRONMENT PROTECTION AND
NOT COMPLIED BY PP**

- a.** That, the condition No. 7, 15, 17, 18, 19, 25, and 27 stipulated in Commencement certificate no. PMH/NA/SR/355/08 issued on 07.09.2010 is having direct bearing on the environment protection infrastructure as remedial measures and it was mandatory to comply with these conditions by PP, but PP have not complained said conditions intentionally and caused grave heart to environment and ecology.
- b.** That, the condition No. 4, 6, 16, 18, 19, 20, 26 and 29 stipulated in layout sanction certificate no. 42 issued on 07.01.2012 by Dy. Director Town Planning Pune and it was mandatory to comply with these conditions by PP, but PP have not complained said conditions intentionally and caused grave heart to environment and ecology.
- c.** That, the condition No. 4, 6, 16, 18, 19, 20, 26 and 29 stipulated in layout Commencement certificate no. PMH/TS/SR/21 issued on 31.03.2012 by Collector of Pune and it was mandatory to comply with these conditions by PP, but PP have not complained said conditions intentionally and caused grave heart to environment and ecology.



- d. That, the condition No. 2, 4, 10, 11, 12, 14 and 16 stipulated in layout Commencement certificate no. PMH/TS/SR/26/2015 issued on 29.12.2015 by Collector of Pune and it was mandatory to comply with these conditions by PP, but PP have not complained said conditions intentionally and caused grave heart to environment and ecology.
- e. That, the condition No. 22, 23, 24, 25, 29 (Misleading Condition) stipulated in Commencement certificate no. BMU/CR-811/16-17 issued on 30.09.2016 by PMRDA Pune is having direct bearing on the environment protection infrastructure as remedial measures and it was mandatory to comply with these conditions by PP but PP have not complained said conditions intentionally and caused grave heart to environment and ecology.
- f. Therefore this intentional negligence on part of Local Authority as well as PP should not be tolerated.

20. INTENTIONAL NON-COMPLIANCE BY PP TOWARDS OWN UNDERTAKING CUM AFFIDAVITS GIVEN BEFORE COLLECTOR PUNE AND PMRDA AS LOCAL AUTHORITY.

- a. That, the PP has given Bank Guarantee dated 19.05.2010 and 06.03.2012 for compliance environment norms and installation of environment infrastructure at site.
- b. That, the PP had given undertaking cum affidavits to the project sanctioning authority-Collector of Pune dated 28.01.2012 for compliance of terms and conditions of EC dated 27.12.2006, but PP did not complied with it.
- c. That, the PP had given undertaking cum affidavits to the project sanctioning authority dated 16.05.2015 for obtaining consent to operate from MPCB prior to start use of flats at site. But PP has



given occupancy to the individuals without obtaining such mandatory Consent to operate.

- d.** That, there is no compliance of conditions as undertaken in these affidavits, therefore these bank guarantees must be forfeited.

21. NON-COMPLIANCE TO THE REMEDIAL MEASURES, NON-INSTALLATION OF POLLUTION CONTROL DEVICES AND DEVELOPMENT OF RG AREA

a. FRESH WATER REQUIREMENT & ILLEGAL EXTRACTION

OF GROUND WATER- PP has admitted that, 2200 units out of 3120 units are under occupation and as per the DCR provisions, 5 person per unit the occupancy load and fresh water requirement per day per person is 135 litres, therefore total fresh water requirement is = $2200 \times 5 \times 135 = 14,85,000$ litres. It is admitted fact that, the PP is extracting ground water from 4 bore wells & one water well to meet this daily demand of fresh water since 2016. Also PP has not monitored the ground water quality.

b. SEWAGE WATER GENERATION & ITS TREATMENT- As

per DCR provisions sewage water generation per day per person is 90 litres, therefore total sewage water generation from the project is = $2200 \times 5 \times 90 = 9,90,000$ litres. Recently after complaint to MPCB, PP has installed scrap skeleton of two STP, those are not in scientific operation and huge quantity of sewage water is discharged in to the pits excavated. And also sewage water collected is in open tank and it is releasing methane, propane gases in the air causing damage to ecology.



- c. SOLID WASTE GENERATION & MANAGEMENT-** As per the norms solid waste generated per person per day is 0.45 kg, therefore solid waste generated from the project is = $2200 \times 5 \times 0.45 = 4950$ Kg. PP has admitted that, there is no segregation facility and he has not installed organic waste convertor at the project site. PP is collecting solid waste from project and it is dumped just outside the project side and thereafter it is burned in open environment and causing release of various poisonous gases in the air.
- d. AIR POLLUTION BY VEHICLES & DUE TO ILLEGAL INSTALLATION & OPERATIONS OF DG SETS-** There are 836 number of cars & 4863 number of scooters in sector R-29 and 164 number of cars & 2952 number of scooters in sector R-22 to R-28 and there is no remedial measure for carbon monoxide generated from these vehicles. That the PP has installed Seven DG sets having capacity of 500 KVA each for electric supply and there is no permission obtained for installation and operations of these DG Sets. That the DG Sets operation is releasing NO_x , SO_x , CO etc. and causing air pollution with release rate of 1500 mg/Nm³. That the DG Sets are making noise more than 60 dB (A) and there is no proper acoustic enclosures to control noise of the DG Sets. PP is causing nuisance in the surrounding area due to operation of the DG Sets. Therefore PP is causing serious Air pollution and infringed the provisions of Air Act and liable for Actions under the EPA and Pollution control Act.
- e. NO SOLAR ENERGY PANEL INSTALLED AT SITE-** That the total power required is 44.14 MW as disclosed by PP in



his EC application dated 04.09.2012 and PP was assured to save 10% of energy out of total demand. But there is no provision or remedial measures to conserve this energy by way of scientific method. And also PP is consuming the energy from MSEDCL source ultimately generated from Thermal Power generations. PP must use renewable energy sources like solar power to some what extent. Also for water heating residents are using gas geysers or electric geysers and there is no provision for solar water heater. Therefore there is huge damage on account of consumption of conventional or non-renewable energy.

- f. FELLING OF TREES AND NO TREE PLANTATION-** That, in 68th SEAC meeting held on 12.03.2013 PP assured to make plantation of 17969 trees on 359386 Sq. Mtrs. of R.G. area and there will be cutting of only 91 trees and did not disclosed the number of transplanted trees. Actual fact is that, there is no plantation of trees and actual 50000 trees are cut down by PP without any permission from concern authority. It is further submitted that, the SEAC were directed PP in its 68th meeting to *"9. Submit a note on the existing trees, trees to be cut, trees to be transplanted and trees to be planted (nos., size, age, and species) as per MoEF guidelines. There is deficiency in ecology and BD in fauna which needs to be redone and report submitted."* There is no compliance to this condition and SEAC is observed that, there is deficiency in ecology & BD (i.e. Bio-diversity) in fauna. Therefore there is no development of greenhouse area on the project site and this is serious damage to environment and ecology.



- g. TOP SOIL NOT PRESERVED AND NO SOIL TEST-** As per the mandatory conditions of environmental clearance dated 27.12.2006 & norms, PP must preserve the top soil excavated during the construction. In Amendment EC Application dated 04.09.2012, PP disclosed that there will be 15 cm top soil preservation. But PP has not preserved any top soil and there is no test of top soil.
- h. NO RAIN WATER HARVESTING** – That, the PP was proposed to collect rain water from roof top area in underground rain water harvesting tank and after treatment it will be used for domestic use and rain water from hardscape and soft cape area will be used for recharging. Also there will be 307 bore wells for recharge of ground water. Actual fact is that, there is no provision for rain water collection and there is no bore well for ground water recharge. This non-installation of rain water harvesting system has caused serious damage to the ground water level and caused ground water level deletion.
- i.** Therefore PP is causing serious Water Pollution, Air Pollution by infringement of the provisions EIA Notification-2006, Environment Protection Act-1986, Water (Prevention and control of Pollution) Act-1974 and Air (Prevention and control of Pollution) Act- 1981 and it is clear cut violation of Schedule I Act.

22. RTI APPLICATIONS AND REPLIES OF THE AUTHORITY

- a.** That, the applicant has obtained the information from DoE/SEIAA, MoEF, PMRDA, MPCB, Collector Pune, Forest Department and Land Record Department etc. from 03.08.2018.



- b.** That, in reply of the above RTI Application MoEF has informed on 28.08.2018 that there is no EC granted to the project.
- c.** That, the in reply of the above RTI Application MPCB has informed on 06.09.2018 that as per site visit 30.08.2018, there is no EC, Consents obtained by PP and Proposed directions dated 03.09.2018 is issued to the PP.
- d.** That, in reply of the above RTI Application DoE / SEIAA has informed on 08.10.2018 that, there is EC granted to the project under challenge. And the project was considered by SEAC in its 60th, 65th and 68th meeting.
- e.** That, the collector office Pune has provided files and record available with them on 17.01.2019.
- f.** That, the Dy. Superintendent Land record have provided the village maps showing forest land and Forest department provided the forest land details.

**23. DAMAGE TO ENVIRONMENT AND ECOLOGY ON
ACCOUNT OF ILLEGAL CONSTRUCTION:**

- a.** That, the PP has carried out the construction of 29 residential buildings, 1 commercial building, 1 club house, amenity buildings, electric substation, fire station comprising 3120 flats, 5 shops with total BUA of 190094.20 Sq. Mtrs. excluding shops, club house, amenity building, electric substation, fire station.
- b.** That, this construction is carried out without any Environment Clearance and Consent to Operate. And 2200 flats are under enjoyment without any consent to operate despite their undertakings.



- c.** That, the project proponents has used huge quantity of the natural resources for the construction of the project without any Expert Appraisal and Impact Assessment and caused damage to the environment and ecology in substantial nature.
- d.** Quantities of construction material used and admitted by PP in EC Application dated 04.09.2012 as follow:

Sr.	Material	Quantity
1.	Cement	113169 bags
2.	Sand	9451 m ³
3.	Aggregates	14055 m ³
4.	Steel	1389 MT
5.	Formwork	154705 m ²
6.	Concrete	15727 m ³
7.	Fly Ash (RMC 18-20%)	1573 MT
8.	Formwork (Shuttering)	19338 m ²
9.	Forests & Timbers	75 MT
10.	Energy	250 KW

- e.** That the GHG emission especially carbon (Embodied Carbon & Operational Carbon) from the martial process and its use during the construction and operation phase is huge and it has adverse impact on the environment and therefore the prior impact assessment is required for the better protection and improvement of the environment with remedial measures. But PP intentionally failed to prepare such EIA and further neglected to implement such assessment in his project and caused damage to environment.
- f.** That, the illegal huge excavation, illegal hill cutting, felling of 50000 trees, encroachment to forest land, discharge of sewage water on forest land, damage to fauna, illegal ground water extracting from bore wells & No permission from CGWA, no solid waste treatment and disposal, solid waste is



burnt in open air, not treatment of swage & waste water, no soil preserved, No RG area development, no tree plantation, non-installation of Rain Water Harvesting, submission of false information to SEAC & SEIAA, non-compliance to undertaking, non-compliance to SEAC Minutes, non-submission of monitoring and compliance report, and these are causing irreparable substantial damage to the environment & ecology, .

g. PP is careless, reckless and unapologetic towards the environment protection and to perform his fundamental duties

h. Principal Laid down by Hon'ble Supreme Court in Sterlite Industries (I) Ltd. Vs. Union of India & Ors. 2013 (4) SCC 575:

"39. we are of the view that the appellant-company should be held liable for a compensation of Rs. 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, any less amount, would not have the desired deterrent effect on the appellant-company."

i. Principal laid down by Hon'ble Supreme Court in Goel Ganga Developers (I) Pvt. Ltd. Vs Union of India & Ors Case vide judgment dated 10.08.2018:

"57. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that



damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has maneuvered and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone upto 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area etc.. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs.100 crores or 10% of the project cost whichever is more. if the project proponent has taken advantage of Transfer of Development Rights (for short 'TDR') with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects.

59. (x) Project proponent shall not be permitted to raise construction of two buildings having 454 tenements;

59. (xi) We direct that the project proponent shall only be permitted to complete construction of a total 807 flats, 117 shops/offices and cultural centre including club house; "
Hon'ble SC have permanently blocked of basements.

- j.** That, the environmental compensation imposed on the Project Proponents must be exemplary to give justify the



environment damage by selecting reasonable option instead of notional.

k. EXEMPLARY DAMAGES should be awarded not only to compensate the plaintiff (Environment) but also to punish the defendant and to deter him from similar conduct in future. The House of Lords has ruled that exemplary damages can be allowed in three categories of cases. The first category is oppressive, arbitrary or unconstitutional action of the Government or its servants. Cases in the second category are those in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff. Third category consists of cases in which exemplary damages are expressly authorized by statute.

1. Mindful of the provision in Section 20 of the National Green Tribunal Act, 2010 guiding the course of decision making with the application of Principles of Sustainable Development, Precautionary Principle and Polluter Pays Principle and conscious of the care necessary to avoid misconstruction of 'Polluter Pays Principle' as 'Pay and Pollute Principle', therefore there PP shall have the imposition of exemplary and deterrent environmental compensation to be just and necessary to pass "a clear message that environmental compliance is supreme and the party which is non-complying the

m. That, the PP have constructed 3120 flats without any EC and consents therefore the damages for restoration & restitution of this area comes to the tune of Rs. 1500 Crores.



n. There is an impact to the tune of Rs. 1500 Crore Rupees till filing of this Notice due to these illegal construction activities of PP and PP may kindly be charged with environment compensation more than Rs. 1500 Crores for exemplary and deterrent effect by sending clear message in the community of Polluters & violators, that compliance to the environmental norms is supreme.

24. That this entire illegal activity show that inherent lack of coordination between the local authority/ sanctioning authority and SEAC, SEIAA, Environment Department and MPCB and this act cannot be neglected to protect environment. Therefore concerns officers are forewarned by this notice to take appreciate actions against the project propone for his default on immediate basis, otherwise my client will proceed to prosecute these officers also. Please take serious note.

25. THEREFORE IT REQUESTED TO THE GOVERNMENT AUTHORITY TO TAKE APPROPRIATE ACTION AGAINST THE PP FOR RESTORATION AND RESTITUTION OF THE ENVIRONMENT AND ECOLOGY DAMAGED BY HIM INTENTIONALLY

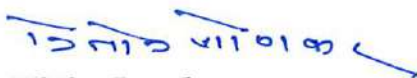
- a. You Noticee nos. 1 to 15 are called upon to take appropriate steps to demolish the illegal structure.
- b. All the noticees are brought to the notice that there is inherent lack of coordination between different departments of government and the same is not in the interest of environment and public, therefore you all may initiate appropriate actions within your power to protect the environmental degradation under taken by Noticee No. 16 & 17-PP.



- c.** You Noticee no. 16 & 17 is called upon to stop the operation and construction activity at site with immediate effect, until rectification of all environmental anomalies.
- d.** You Noticee no. 16 & 17 is called upon to remove the construction waste, stop the discharge of untreated waste water.
- e.** You Noticee no. 16 & 17 is called upon to stop dumping of untreated solid waste in open area & burning of waste causing air pollution.
- f.** You Noticee no. 16 & 17 is called upon to plant the trees as per the environmental norms.
- g.** You Noticee no. 16 & 17 is called upon to stop entire construction at project site in violation of environment norms.

Take further note that any dereliction in the duty would definitely invite appropriate legal action and the responsible officers would be made by name parties on their failure to take appropriate legal action despite having brought the violations to notice. Should you fail to stop the construction activity, I have definite instructions to proceed against you all before appropriate fora.

Hope good counsel prevails upon you all.



Nitin Lonkar
(Advocate)

Tanaji Balasaheb Gambhire

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Near Shivaji Maratha High School,
White House Lane, Pune-411002
Cell No. 9420181896,
E-mail: - tanaji_9june@yahoo.com

Complaint**Date: 28.02.2019**

To,
Hon'ble Sr. Police Inspector

Hinjawadi Police Station at Hinjawadi,
Taluka-Mulshi, District-Pune

Subject: - Threat to life & limb (including implicating in false Criminal Cases) of the complainant due to informing the appropriate authorities about the Project Proponent's deliberate & international crime, violations of environmental laws, which even attracts Criminal liability on the Directors of Project Proponent.

Complaint against the below Accused persons & Companies.**1. M/s. XRBIA DEVELOPERS LIMITED**

Formerly Known as "Eiffel Developers & Realtors Limited" and it was formerly known as "Eiffel Developers & Realtors Private Limited" and it was formerly known as "Eiffel Infocity Private Limited"

A company originally incorporated on 22.09.2004 under the Company Act-1956 with UID No. - U45209PN2004PLC019772

Having registered office at -

Office No. 125/126, Patil Plaza Mitramandal Chowk, Parvati, Pune-411009.

Having corporate office at -

929, Mantri House, First Floor, Near Dnyaneshwar Paduka Chowk, F.C. Road, Pune- 411 004

Through its Directors

1A. Mr. Rahul Rashiklal Nahar,

1B. Mr. Vishal Rashiklal Nahar,

1C. Mr. Shekhar Dattatray Savlekar

2. M/S. XRBIA HINJEWADI DEVELOPERS PRIVATE LIMITED

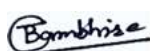
A company incorporated under the Company Act-1956 with UID No. -U45200DL2010PTC204015

Having registered office at - Chembur Central,

Estern Express Highway, Opp. Chheda Nagar,

Ghatkoper (East), Mumbai-400077

TRUE COPY



Tanaji Balasaheb Gambhire

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White House Lane, Pune-411002
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E-mail: - tanaji_9june@yahoo.com

Having corporate office at -

929, Mantri House, First Floor, Near Dnyaneshwar Paduka Chowk,
F. C. Road, Pune-411004

Through its Directors

2A. Mr. Manojkumar Murlidhar Kamble,

2B. Mr. Gajanan Sadashiv Dongare.

3. MR. KIRAN A BHALERAO

Having address at-

929, Mantri House, First Floor,
Near Dnyaneshwar Paduka Chowk,
F. C. Road, Pune-411004

4. ADV. RAGHUNATH MAHABAL

Flat No. A-201/202/203, B-201/202/203/302,
Chandravijay HSG, Society, Opp. Bansuri Hotel,
Mahatma Phule, Mulund East, Mumbai-400081

Dear Sir / Madam,

1. That, I, Mr. Tanaji Balasaheb Gambhire, is residing on above mentioned address of Pune city with my family. I am Technical Consultant in Petrochemical, Oil and Gas Sector and I am also having expertise in the field of business strategy and planning including the litigation strategy, documentation and representation.
2. That, I have worked in many country providing my services in technical expertise for several years. But I have been victimized, maltreated, offended and oppressed in our own nation by the mighty and resourceful lobby of builders and developers having deep unholy nexus with corrupt politicians and bureaucrats working in various government authorities and this was violating my fundamental rights provided under Constitution of India.
3. Therefore, I decided to raise my voice against such type of malafide practitioners and white collar criminals, those are doing their illegal business under the shelters of their mighty fullness by using corrupt resources in the politics and bureaucracy.
4. That, I am always approaching court of law to seek justice for public at large to stop such type of illegal practices and this will set good

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examples for the youngsters of our nation and to encourage the people to adopt legal ways to build the lawful society.

5. That, After studying the various acts applicable to the real estate sector, it has come to my knowledge that, many builder, developers, bureaucrats and politicians are violating the laws applicable for real estate sector blindly and openly by steering in the eyes of law and these vary fact is damaging not only ex-chequer but also to the public at large.
6. That, I have filed the cases against law violating builders, developers, corrupt bureaucrats in various court of law and concern quasi-judicial authorities and I am contesting these matters till Hon'ble Supreme Court of India and Hon'ble Supreme Court of India have concluded matters in my favour.
7. That, I am also voluntarily working as RTI Activist and environmentalist working for protection of environment. I have exposed many polluter by legal way before the Hon'ble National Green Tribunal and Hon'ble Supreme Court.
8. That, I had filed the RTI Applications on 03.08.2018 seeking information of the M/s. Xrbia Developers Ltd. project at Village - Dattawadi near Hinjewadi and after receiving the information & revelation of the violation filed representations to the concern officers of MPCB, DoE-GoM etc. the MPCB was not able to trace the information which I sought and from my verbal complaint/ submissions/ representations, MPCB decided to visited site.
9. That, MPCB on 28.08.2018 visited the site and observed that, PP have committed very serious violation as recorded in their visit report. Thereafter MPCB issued proposed directions on 03.09.2018 to PP and called him for hearing on 10.09.2018 and also informed me on 06.09.2018 to present for hearing.
10. That, I appeared in the said hearing on 10.09.2018 at Regional Office, MPCB Pune conducted in RO Office at 11.30 AM and at that time my one co-applicant in other cases Mr. Tushar Namdev Kakade & another known RTI activist Mr. Vijaykumar Vable was there at MPCB office waiting outside in waiting room/ Passage. I submit that, there were four representatives from Project Proponents side present in the hearing and one of the representative of PP himself have

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admitted that, they have constructed 3120 flats, 5 shops, 29 residential buildings & one commercial buildings, one Club House, one electric substation, one fire station and they have not obtained any prior EC & Consent to establish for this enlarged construction activity and these facts are admitted before the quasi-judicial authority of RO-MPCB during the course of hearing on 10.09.2016 at MPCB office.

- 11.** That the above accused have completed construction of total BUA more than 190094.20 Sq. Mtrs. Out of proposed BUA 479930 Sq. Mtrs. (including FSI Area of 143242.3 Sq. Mtrs. out of 369177 Sq. Mtrs. and 46851.97 Sq. Mtrs. out of 110753Sq. Mtrs.) and the construction for remaining 12 residential buildings, 282 bungalows, 7 shops, primary school, essential shopping, vegetable market, dispensary etc. is yet to complete.
- 12.** That, after of completion of hearing, I walked out of RO office and reached in waiting room to meet my co-applicant and Mr. Vable, immediately one of the PP representative (who was present in the hearing but I don't know his name) came chasing me and requesting to have talk with me and this episode happened in front of my co-applicant Mr. Kakade and Mr. Vable and we was very shocked & surprised by this conduct of PP representative, but I straight away refused to talk and I told him, I am not willing to make any conversation with him or with anybody in this present violation and I informed him for not to follow me or do not try to communicate with me by any means. I told him if you have to say something you please convey the same to authorities by complying given directions in today's hearing & not to me. Thereafter, I left the MPCB office premises with co-applicant and Mr. Vable.
- 13.** That, I have exposed the M/s. Xrbia Developers Limited, have committed very serious intentional violations of Environment (Protection) Act-1986 r/w EIA Notification-2006, Water (Prevention and Pollution Control) Act-1971, Air (Prevention and Pollution Control) Act-1984 Indian Forest Act-1927, Indian Wildlife (Protection) Act-1972, Forest (Conservation) Act-1980, Bio-logical Diversity Act-2002, Development Control Regulations, Maharashtra Regional and Town Planning Act-1966, Maharashtra Land Revenue

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Code-1963, Income Tax Act & other acts by damaging environment and ecology and also duped thousands of crore rupees taxes of government in their residential and commercial project situated at Survey No. 36, 38/2, 38/3, 39, 40/1d, 42, 56, 57 of Village-Dattawadi (Nere) and 52, 53, 54 of Village- Kasarsai, Taluka-Mulshi and District-Pune.

- 14.** That, these project proponents have committed very serious intentional violations as reveled from the information received under RTI Act-2005 and in view to stop me from approaching the various government authority and court of law for filing of legal complaints against them.
- 15.** That, the associate Mr. Raghunath Mahabal advocate of these project proponents met me on 26.09.2018 at 15th Floor, New Administrative Building, Mantralaya, in the office of Environment Department, Government of Maharashtra and he intimated me that, Project proponent is knocking the doors to implicate you in false criminal cases. But I ignored these things as I do not know any of the director or any concern personally and also I have never meet them or I never saw them any point of time and then there was no point on wasting my time on these false issues.
- 16.** That, I was shocked by reading the wild and baseless allegations made by project proponent in their reply submitted to the MPCB on 09.10.2018, copy of same was received from MPCB on 11.01.2019 and then I realized that, the Project Proponents were given threat through Mr. Raghunath Mahabal on 26.09.2018 at Environment Department-Mumbai, which I was not realized on 26.09.2018. The project proponents have planned and trying to adopt illegal way of implicating me in various false criminal proceedings and also planning to damage to my life though their antisocial network. And this is the incident to file present complaint.
- 17.** That, the Environment Department-GoM vide online reply dated 08.10.2018 to my RTI application has informed that, the PP have not obtained any environment clearance. MoEF vide its letter dated 28.08.2018 has also informed that, the PP have not obtained any environment clearance. PMRDA has also provided part information of project on 06.09.2018. MPCB also initiated substantial action on

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PP. Also, I have received village revenue plans in reply to my RTI application from land record department, Paud, Mulshi and site construction shows that, there is illegal construction damaging forest land.

- 18.** That, after receiving information under RTI Act for the project under violation, PP has procured Consent to Establish dated 10.04.2006 from MoEF for area development it is important to note that, this EC do not mention the exact location of the prosed project land. That the sewage water generation allowed in consent was set to 70 CMD and PP was directed to install the comprehensive STP. But PP is generating 1300 CMD sewage water and has installed STP without any consent to operate and not confirmed by MPCB and not operated scientifically. That the PP is generating the solid waste more than 7000 Kg per day and dumping this waste just outside of the project and burning this waste. PP was restricted from use of residential complex and not to hand over possession of flats to individuals by MPCB, as noted in condition no.12 of Consent to establish.
- 19.** Further it is come to my notice that, PP has procured environment clearance dated 27.12.2006 from MoEF for area development of 1000 plots (for construction of bungalows) on alleged land area admeasuring 97.28 Ha, for construction of 48.64 Ha, it is important to note that, this EC do not mention the exact location of the prosed project land. But admittedly PP has made construction of 30 residential buildings comprising of 3120 flats and two commercial buildings comprising of shops, one amenity buildings and One Water Storage & Supply Building etc. this is nothing but the change in the original scope of the project and as per the condition no. 6 of the EC dated 27.12.2006, it was mandatory on part of project proponents to obtain the amendment or fresh EC to accommodate the illegal enlarged construction activity. PP applied for fresh EC dated 04.09.2012 before SEIAA Maharashtra, project apprised by SEAC in 60th, 65th and 68th meeting and SEAC imposed condition on PP and directed to comply with it. But PP did not turned to the SEAC or SEIAA till today and proceeded with his illegal construction activity intentionally in total violation of Environment Enactments attracting criminal prosecution having punishment of more than 5 years.

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20. That, project under violation is having common boundary with the reserved forest of village Kasarsai and PP has damaged the forest land at survey numbers 55, 60, 61, 62, 66 and 67 etc of reserved forest of Village Kasarsai, Taluka Mulshi District Pune by dumping construction waste, carrying out illegal construction of STP plant and discharging of sewage water on reserved forest land causing damage to ecology.
21. That, the PP have alleged that, he reshuffled project from 97.28 Hectors a and recasted the project proposed alleged holding rights of 203 Acres or 821512 Sq. Mtrs. & further stated 738353 Sq. Mtrs, but in fact PP is not holding any such right and submitted false documents and affidavits.
22. That, the project proponent had obtained permission from irrigation department-GoM for fresh water supply from Kasarsai dam to the project, but in actual PP is extracting ground water from One Water Well and three bore wells and this fact is admitted by PP and recorded during site visit dated 28.08.2018 done by MPCB. Therefore this illegal extraction of ground water is damaging the ground water level of the area.
23. That, the Project Proponent have committed criminal acts committed under Environment (Protection) Act-1986 r/w EIA Notification-2006, Water (Prevention and Pollution Control) Act-1971, Air (Prevention and Pollution Control) Act-1984, Indian Forest Act-1927, Indian Wildlife (Protection) Act-1972, Forest (Conservation) Act-1980, Biological Diversity Act-2002 having punishment more than 5 years.
24. That, the Project Proponent have caused the damage to environment, ecology and ex-chequer to the tune of more than Rs 1500/- Crores with help of corrupt government officers, professionals and now he is scared of the legal proceedings that I have initiated before MPCB, Environment Department, MoEF, Forest Department, Revenue Department, Income tax Department, Anti-Corruption Department etc.
25. That, the M/s. Eiffel Developers and Realtor has changed his name to M/s. Xrbia Developers Limited and its authorized representative Mr. Kiran A Bhalerao has filed an affidavit cum undertaking dated 28.01.2012 before Collector of Pune giving undertaking to follow the

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conditions in the environment clearance and other permission. But they did not followed these conditions and acted contrary to the undertaking & affidavit, therefore they committed the offences under section 199, 200, 406 & 468 of IPC.

- 26.** That, the M/s. Xrbia Developers Limited and its authorized representative Mr. Shekhar Dattatrey Salvekar has filed an affidavit cum undertaking dated 16.05.2015 before Collector of Pune & PMRDA giving undertaking to obtain the permission of consent to operate from MPCB before starting use of flats. But they did not followed these conditions and acted contrary to the undertaking & affidavit, therefore they committed the offences under section 199, 200, 406 & 468 of IPC.
- 27.** That, the Project proponent has made illegal excavation and hill cutting of an area admeasuring 133107.58 Sq. Mtrs. and quantity of Illegal excavation & hill cutting is 520739.75 Cu. Mtrs. against the permission of only of 2575.88 Cu. Mtrs. from Tehsildar, therefore they committed the offences under section 406 & 420 of IPC.
- 28.** That, the Project Proponent have made illegal cutting of tree like Teak Wood (genus *Tectona grandis*) and Sandal Wood (*Santalum album*) listed from reserve trees as per the Maharashtra Felling of Trees (Regulation) Act 1964 and this is admitted fact in Para-3.10 of Old EC Application dated 24.06.2006 for illegal exaction and illegal hill cutting and such trees are also present on the remaining part of the hill area of project site. Also PP himself admitted in EIA Report-2013 that there is presence of the Wild boar, Monkey, Barking-Deer, Jackal, Hare (*Lepus*) from Mammals class, Krait, Frogs, Viper from reptile class and Bulbuls, mayena, Sunbirds, Cuckoo, Golden Oriole from Birds, Also PP has admitted in EC application dated 14.06.2006 that there is presence of the biologically protected species in table 4.5a, 4.5b, 4.5c, and 4.5d. Project Proponent have suppressed this important fact from SEIAA/SEAC & DoE-GoM in it EIA Report filed in February-2013 and it was important to obtain the permission from the National Bio-diversity Authority Board with intimation to State Bio-Diversity Board. But PP and its directors have not obtained any such mandatory Permission. Therefore they have committed crime under section 3 and 7 of the Biological Diversity Act-2002.

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- 29.** Therefore, considering the above serious crime, Hon'ble authority may kindly register an FSI against the concern accused/ authorized persons of Project Proponent listed in cause title list para- Accused list-1, 1A, 1B, 1C, 2, 2A, 2B, 3 & 4 and also on persons those will found responsible during investigation.
- 30.** Further Hon'ble Authority may kindly initiate necessary criminal action against the project proponent's directors and professional associates for threatening complainant and putting complainant life in danger.
- 31.** The abovementioned accused have committed crime U/s. 41, 44, & 47 of Water (Prevention and control of Pollution) Act-1974, U/s. 37 & 40 of Air (Prevention and control of Pollution) Act-1981, U/s. 15 & 16 of the Environment (Protection) Act-1986, U/s. 63 of Indian Forest Act-1927 and U/s. 3A Forest (Conservation) Act-1980, under section 3 and 7 of the Biological Diversity Act-2002 r/w Sections 34, 120B, 199, 200, 406, 420, 468, 504 & 506 of IPC.

Yours Sincerely,

Tanaji Balasaheb Gambhire
(Complainant)

INDEX OF EVIDENCE / DOCUMENTS SHOWING CRIME AND VIOLATION

SR.	DESCRIPTION OF EVIDENCE / DOCUMENTS	PAGE NO.
1.	<u>ANNEXURE-A-1</u> Copy of the Revenue Map of Village- Kasarsai issued by Land Record Department dated 1952	20
2.	<u>ANNEXURE-A-2</u> Copy of the Revenue Map of Village- Marunji issued by Land Record Department dated 1989	21
3.	<u>ANNEXURE-A-3</u> Copy of the Revenue Map of Village- Dattawadi issued by Land Record Department dated 1993	22
4.	<u>ANNEXURE-A-4</u>	23

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	Copy of the Revenue Map of Village- Nere issued by Land Record Department dated Nil	
5.	<u>ANNEXURE-A-5</u> Copy of EIA Notification-1994 dated 04.05.1994	24-44
6.	<u>ANNEXURE-A-6</u> Copy of Amended EIA Notification-2004 dated 07.07.2004	45-47
7.	<u>ANNEXURE-A-7 {Colly.}</u> Copy of company incorporation certificate and change in names from 2004 to 2012	48-50
8.	<u>ANNEXURE-A-8</u> Copy of Gazette Notification No. TPS-1804/Pune R.P. DCR/UD-13 for regulations of development of Township in area under Pune Regional Plan dated 16.11.2005 released on 21.11.2005	51-60
9.	<u>ANNEXURE-A-9</u> Copy of amendment in Gazette Notification No. TPS-1804/Pune R.P. DCR/UD-13 for addition of rule 1.2 as sub-proviso dated 06.01.2006 released on 07.01.2006	61-62C
10.	<u>ANNEXURE-A-10</u> Copy of Consent to Establish for area development procured by PP from MPCB vide No. BO/RO(P&P)/CC-364 dated 10.04.2006	63-67
11.	<u>ANNEXURE-A-11</u> Copy of Application for Environment clearance from MoEF dated 14.06.2006	68-291
12.	<u>ANNEXURE-A-12</u> Copy of S.O.1553(E), EIA Notification-2006 dated 14.09.2006	292-328
13.	<u>ANNEXURE-A-13</u> Copy of NOC for drinking water issued by Assistant Chief Engineer Irrigation Department Pune dated 30.09.2006	329-331
14.	<u>ANNEXURE-A-14</u> Copy of Environment Clearance procured under EIA Notification 1994 and amendment-2004 from MoEF for	332-336

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	area development of special township scheme vide No. 21-153/2006-IA-III dated 27.12.2006	
15.	<u>ANNEXURE-A-15</u> Copy of permission for excavation of minor mineral procured from Tehsildar Mulshi from 20.02.2007 to 23.02.2007	337-354
16.	<u>ANNEXURE-A-16</u> Copy of Special Township Regulations sanctioned by Govt. of Maharashtra vide Notification No. TPS-1807/99/CR-713/07/UD-13 dated 08.07.2008 published in MGG at Page No. 2553 to 2557 dated 31.07.2008	355-360
17.	<u>ANNEXURE-A-17</u> Copy of Letter of intent (LOI) issued by Collector of Pune vide No. PMH/N.A./S.R./355/08 Pune-1 dated 05.01.2009	361-364
18.	<u>ANNEXURE-A-18</u> Copy of Corrigendum of Notification No. TPS-1807/99/CR-713/07/UD-13 under section 18 (3) of MR & TP Act-1966 dated 27.04.2009	365-367
19.	<u>ANNEXURE-A-19</u> Copy of Corrigendum of Gazette notification TPS-1807/99/CR-713/07/UD-13 for correction dated 28.05.2009	368-391
20.	<u>ANNEXURE-A-20</u> Copy of location clearance for special township project under challenge dated 08.06.2009	392-393
21.	<u>ANNEXURE-A-21</u> Copy of Corrigendum of Letter of intent issued by Collector of Pune vide No. PMH/Ka.Vi./1491/09 Pune-1 dated 24.09.2009	394-395
22.	<u>ANNEXURE-A-22</u> Copy of Corrigendum of Letter of intent issued by Collector of Pune vide No. PMH/Ka.Vi./2701/09 Pune-1 dated 19.12.2009	396

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23.	<u>ANNEXURE-A-23</u> Copy of Measurement Plan and Boundary layout procured from Land Record Department Vide Mo. R. No. 166/10, 167/10, 168/10 for Village Nere-Dattawadi dated 16.02.2010 and Mo. R. No. 169/10, 170/10, 172/10, 173/10, 174/10 for Village-Kasarsai all dated 16.02.2010	397-398
24.	<u>ANNEXURE-A-24</u> Copy of Bank Guarantee of Rs. 97,50,000/- for development of amenities dated 19.05.2010	399-401
25.	<u>ANNEXURE-A-25</u> Copy of Revised Sanction Plan by Collector of Pune vide no. PMH/TS/SR/355/08 dated 07.09.2010	402-414
26.	<u>ANNEXURE-A-26</u> Copy of S.O.695(E), Clarification to EIA Notification-2006 dated 04.04.2011	415-421
27.	<u>ANNEXURE-A-27</u> Copy of the Evasive Compliance report filed by Eiffel Developers and Realtors Ltd. dated 31.10.2011	422-427
28.	<u>ANNEXURE-A-28</u> Copy of layout sanction condition imposed by Dy. Director Town Planning dated 07.01.2012	428-436
29.	<u>ANNEXURE-A-29</u> Copy of undertaking for Bank Guarantee of remaining amount before obtaining layout sanction dated 21.01.2012	437-439
30.	<u>ANNEXURE-A-30</u> Copy of undertaking for compliance of conditions no. 1 to 14 from layout sanction by Dy. Director town planning dated 28.01.2012	440-445
31.	<u>ANNEXURE-A-31</u> Copy of objection raised by Collector of Pune for sanctioning of layout dated 06.02.2012	446-447
32.	<u>ANNEXURE-A-32</u>	448-450

Tanaji Balasaheb Gambhire

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	Copy of Bank Guarantee of Rs. 5,17,00,000/- for development amenities dated 06.03.2012	
33.	<u>ANNEXURE-A-33</u> Copy of Revised Sanction Plan by Collector of Pune vide no. PMH/TS/SR/21/2012 dated 31.03.2012	451-461
34.	<u>ANNEXURE-A-34</u> Copy of the letter from Assistant Engineer Irrigation Division to Secretary, Irrigation Department Mantralaya for change in name of PP from Eiffel Infocity Pvt. Ltd. to Eiffel Developers & Realtor Ltd. dated 12.07.2012	462-463
35.	<u>ANNEXURE-A-35</u> Copy of Application for prior Environment Clearance for newly recast project before SEIAA dated 04.09.2012	464-529
36.	<u>ANNEXURE-A-36</u> Copy of Revised Sanction Plan by Collector of Pune vide no. PMH/TS/SR/30/2012 dated 10.09.2012	530-536
37.	<u>ANNEXURE-A-37</u> Copy of minutes of 60 th SEAC meeting dated 25.09.2012	537-543
38.	<u>ANNEXURE-A-38</u> Copy of Consolidated Statement submitted by PP dated January-3013	544-564
39.	<u>ANNEXURE-A-39</u> Copy of minutes of 65 th SEAC meeting dated 29.01.2013	565-570
40.	<u>ANNEXURE-A-40</u> Copy of Evasive compliance Report of 65 th SEAC MoM filed by PP dated 18.02.2013	571-585
41.	<u>ANNEXURE-A-41</u> Copy of EIA Report filed by PP dated February-2013	586-746
42.	<u>ANNEXURE-A-42</u> Copy of revised Application for prior Environment Clearance for newly recast project before SEIAA dated March-2013	747-806
43.	<u>ANNEXURE-A-43</u> Copy of Consolidated Statement submitted by PP dated March-3013	807-831

Tanaji Balasaheb Gambhire

296, Shukrawar Peth, Laxmi Apt.,
Near Shivaji Maratha High School,
White House Lane, Pune-411002
Cell No. 9420181896,
E-mail: - tanaji_9june@yahoo.com

44.	<u>ANNEXURE-A-44</u> Copy of representation before SEAC March-2013	832-931
45.	<u>ANNEXURE-A-45</u> Copy of minutes of 68 th SEAC meeting dated 12.03.2013	932-940
46.	<u>ANNEXURE-A-46</u> Copy of Sanction Plan for amenity by Collector of Pune vide no. PMH/TS/SR/14/2013 dated 03.08.2013	941-945
47.	<u>ANNEXURE-A-47</u> Copy of Revised Sanction Plan by Collector of Pune vide no. PMH/TS/SR/29/2013 dated 08.11.2013	946-951
48.	<u>ANNEXURE-A-48</u> Copy of objection letter by Collector of Pune dated 17.11.2013	952
49.	<u>ANNEXURE-A-49</u> Copy of FSI Statement for Sector R-22 to R-29 by PP dated 24.12.2013	953-954
50.	<u>ANNEXURE-A-50</u> Copy of Sanction Plan for dispensary by Collector of Pune vide no. PMH/TS/SR/10/2014 dated 04.06.2014	955
51.	<u>ANNEXURE-A-51</u> Copy of Revised Sanction Plan by Collector of Pune vide no. PMH/TS/SR/11/2014 dated 05.06.2014	956-964
52.	<u>ANNEXURE-A-52</u> Copy of Plinth Check Certificate issued by Town Planning Department for buildings A-1 to A-13 on Sector R-29 dated 04.07.2014	965-967
53.	<u>ANNEXURE-A-53</u> Copy of fire NOC for Sector R-22, R-24, R-27, R-28 issued by Director of Maharashtra Fire Services-GoM dated 08.08.2014	968-974
54.	<u>ANNEXURE-A-54</u> Copy of Plinth Check Certificate issued by Town Planning Department for buildings A-14, A-15, B-1, B-2, B-3, B-6, B-7, B-8, C-2, C-3, C-4, C-5, C-6 & C-7 on Sector R-22 TO R-28 dated 01.09.2014	975-976

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55.	<u>ANNEXURE-A-55</u> Copy of office note by Assistant director Town Planning on occupancy application dated 20.02.2015	977-983
56.	<u>ANNEXURE-A-56</u> Copy of undertaking cum affidavit for obtaining consent to operate before occupancy dated 16.05.2015	984-985
57.	<u>ANNEXURE-A-57</u> Copy of Sanction for Essential Shopping and Vegetable Market by Collector Pune vide No. PRH/TS/SR/25/2015 dated 29.12.2015	986
58.	<u>ANNEXURE-A-58</u> Copy of Revised Layout Sanction by Collector Pune vide No. PRH/TS/SR/26/2015 dated 29.12.2015	987-993
59.	<u>ANNEXURE-A-59</u> Copy of part completion certificate by Collector Pune vide No. PRH/KV/960/2016 dated 29.01.2016	994-999
60.	<u>ANNEXURE-A-60</u> Copy of Application along with list of documents for development permissions for group housing submitted to PMRDA by PP dated 27.06.2016	1000-1002
61.	<u>ANNEXURE-A-61</u> Copy of Application for obtaining occupancy certificate dated 15.07.2016	1003
62.	<u>ANNEXURE-A-62</u> Copy of affidavit submitted by PP to PMRDA for obtaining revised sanction undertaking title of land dated 21.07.2016	1004-1008
63.	<u>ANNEXURE-A-63</u> Copy of form giving particulars of development, Part of Appendix-A submitted by PP to PMRDA for obtaining revised sanction dated 21.07.2016	1009-1014
64.	<u>ANNEXURE-A-64</u> Copy of revised sanction issued by PMRDA vide no. BMU/CR-811/16-17 dated 30.09.2016	1015-1022
65.	<u>ANNEXURE-A-65</u>	1023-1033

Tanaji Balasaheb Gambhire

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	Copy of S.O.3999(E), EIA Notification-2016 diluting EIA Notification-2006 and Pollution Control Acts dated 09.12.2016	
66.	<u>ANNEXURE-A-66</u> Copy of corrected occupancy certificate dated 22.12.2016	1034-1042
67.	<u>ANNEXURE-A-67</u> Copy of S.O.804(E), EIA Notification-2017 for regularization of violation cases dated 14.03.2017	1043-1049
68.	<u>ANNEXURE-A-68</u> Copy of Judgment passed by the Hon'ble NGT (PB) in OA 677 of 2016, quashing EIA Notification- 2016 dated 08.12.2017	1050-1104
69.	<u>ANNEXURE-A-69</u> Copy of Circular issued by department of environment dated 29.01.2018	1105-1107
70.	<u>ANNEXURE-A-70</u> Copy of RTI Application to PMRDA, Pune dated 03.08.2018	1108
71.	<u>ANNEXURE-A-71</u> Copy of RTI Application to RO-MPCB, Pune dated 03.08.2018	1109
72.	<u>ANNEXURE-A-72</u> Copy of online RTI Application to Environment Department, Mumbai dated 03.08.2018	1110-1111
73.	<u>ANNEXURE-A-73</u> Copy of online RTI Application to MoEF, Delhi dated 03.08.2018	1112-1113
74.	<u>ANNEXURE-A-74</u> Copy of letter from PMRDA, Pune informing to contact record room required information dated 06.08.2018	1114-1115
75.	<u>ANNEXURE-A-75</u> Copy of letter from MPCB Pune for inspection of documents dated 07.08.2018	1116
76.	<u>ANNEXURE-A-76</u>	1117-1118

Tanaji Balasaheb Gambhire

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	Copy of RTI application reply by MoEF stating that, there is no EC for the project dated 28.08.2018	
77.	<u>ANNEXURE-A-77</u> Copy of MPCB site visit report dated 30.08.2018	1119-1120
78.	<u>ANNEXURE-A-78</u> Copy of MoEF website status for Compliance report and monitoring report dated 31.08.2018	1121-1122
79.	<u>ANNEXURE-A-79</u> Copy of MPCB proposed direction u/s. 33A of water (P&CP) Act-1974 and Sec. 31A of Air (P&CP) Act-1981 issued to PP dated 03.09.2018	1123-1124
80.	<u>ANNEXURE-A-80</u> Copy of letter inviting to attend the hearing dated 06.09.2018	1125
81.	<u>ANNEXURE-A-81</u> Copy of the minutes of the hearing conducted at RO-MPCB, Pune dated 10.09.2018	1126-1130
82.	<u>ANNEXURE-A-82</u> Copy of reply by Environment Department-GoM stating that, no EC is granted for the project dated 08.10.2018	1131
83.	<u>ANNEXURE-A-83</u> Copy of false and evasive Compliance report filed by PP to MPCB dated 09.10.2018	1132-1172
84.	<u>ANNEXURE-A-84</u> Copy of RTI Application to Range Forest Office, Paud-Mulshi dated 11.12.2018	1173
85.	<u>ANNEXURE-A-85</u> Copy of RTI Application to Forest Department, Pune dated 13.12.2018	1174
86.	<u>ANNEXURE-A-86</u> Copy of RTI Application to RO-MPCB, Pune dated 13.12.2018	1175
87.	<u>ANNEXURE-A-87</u> Copy of RTI Application to Dy. Superintendent Land Record, Paud-Mulshi dated 19.12.2018	1176

Tanaji Balasaheb Gambhire

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88.	<u>ANNEXURE-A-88 (Colly.)</u> Copy of RTI application reply by MPCB along with SRO letter dated 11.01.2019	1177-1178
89.	<u>ANNEXURE-A-89</u> Copy of online RTI Application vide no. PUCLO/R/2019/60031 to collector of Pune dated 14.01.2019	1179-1180
90.	<u>ANNEXURE-A-90</u> Copy of online RTI Application vide no. MOENF/R/2019/50043 to MoEF Delhi dated 14.01.2019	1181-1182
91.	<u>ANNEXURE-A-91</u> Copy of online RTI Application vide no. UDDEP/R/2019/60033 to UDD-13 Mumbai dated 14.01.2019	1183-1184
92.	<u>ANNEXURE-A-92</u> Copy of online RTI Application vide no. PUCLO/R/2019/60037 to collector of Pune dated 16.01.2019	1185-1186
93.	<u>ANNEXURE-A-93</u> Copy of RTI Application to Dy. Superintendent Land, Paud-Mulshi Record for obtaining measurement plans dated 17.01.2019	1187
94.	<u>ANNEXURE-A-94</u> Copy of online RTI Application vide no. PUCLO/R/2019/60040 to collector of Pune dated 19.01.2019	1188-1189
95.	<u>ANNEXURE-A-95</u> Copy of RTI reply for Application PUCLO/R/2019/60037 by Collector Pune dated 19.01.2019	1190
96.	<u>ANNEXURE-A-96</u> Copy of online RTI Application vide no. PUCLO/R/2019/60043 to collector of Pune dated 23.01.2019	1191-1192
97.	<u>ANNEXURE-A-97</u>	1193

Tanaji Balasaheb Gambhire

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White House Lane, Pune-411002
Cell No. 9420181896,
E-mail: - tanaji_9june@yahoo.com

	Copy of RTI reply for Application MOENF/R/2019/50043 by MoEF dated 24.01.2019	
98.	<u>ANNEXURE-A-98</u> Copy of RTI reply for Application UDDEP/R/2019/60033 by UDD-13 Mumbai dated 24.01.2019	1194
99.	<u>ANNEXURE-A-99</u> Copy of RTI reply for Application PUCLO/R/2019/60031 by Collector Pune dated 05.02.2019	1195
100.	<u>ANNEXURE-A-100</u> Copy of RTI reply for Application PUCLO/R/2019/60043 by Collector Pune dated 05.02.2019	1196
101.	<u>ANNEXURE-A-101</u> Copy of Site Photographs taken by applicant dated 01.08.2018	1197-1218
102.	<u>ANNEXURE-A-102</u> Copy of Site Photographs taken by applicant dated 12.01.2019	1219-1250
103.	<u>ANNEXURE-A-103</u> Copy of Google Earth images from 1984 to 2018	1251-1304
104.	<u>ANNEXURE-A-104</u> Copy of Google Earth Hill view images from 2005 to 2018	1305-1326
105.	<u>ANNEXURE-A-105</u> Copy of Google Earth images for surface area of excavation details	1327-1331
106.	<u>ANNEXURE-A-106</u> Copy of Xrbia Website Images	1332-1334
107.	<u>ANNEXURE-A-107</u> Copy of Project Brochure obtained from Xrbia website	1335-1354

Tanaji Balasaheb Gambhire
(Complainant)

Total documents attached herewith this complaint: 107 Numbers

TRUE COPY

Bambhise

O.C

2553

NITIN LONKAR

Advocate

Supreme Court of India
(Regd. A.D. / Post / Courier / By Hand)

ANNEXURE-A-3

NOTICE

Dated: 18/03/2019

To,

1. THE SECRETARY

Home Department,
Government of Maharashtra,
Mantralaya, Madam Kama Road,
Mumbai-400032

2. DIRECTOR GENERAL OF POLICE

Chhatrapati Shivaji Maharaj Marg,
Colaba, Mumbai, Maharashtra 400001

3. THE COMMISSIONER OF POLICE,

Pimpri Chinchwad Police,
Pimpri Chinchwad City,
Pimpri-411018

4. MRS. NAMRATA PATIL,

DCP Pimpri Chinchwad Police,
Pimpri Chinchwad City,
Pimpri-411018

5. MR. YASHWANT GAVARI,

Senior Police Inspector,
Hinjawadi Police Station,
Hinjawadi, Taluka- Mulshi,

Subject: Non-registration of FIR in Cognizable and non-bailable offence by Senior Police Inspector by stating that, "he has to keep the will (*marji*) of his superior and superior should give consent to register such FIR".

Complaint Against: Deputy Commissioner of Police Mrs. Namrata Patil and Sr. PI of Hinjawadi PS Mr. Yashavant Gavari.

Dear Sir/ Madam,

1. Under the instruction of my client Mr. Tanaji Balasaheb Gambhire presently R/o- 296, Shukrawar Peth, Laxmi Apartment, Flat No-16, White House Lane, Near Shivaji Maratha High School, Pune-411002, I have to address you by this notice as under;
2. That my client is Environment Protection Activist and RTI Activist residing in Pune and My client visited Hinjawadi Police Station to register the FIR against the accused Builder / Developer and their directors & Associates on 03.03.2018 at 12.30 PM, but duty officer sent him to visit the former Assistance Commissioner of Police Mr. Shridhar Jadhav for Hinjawadi Police. My client was called by ACP around 01.30 PM and explained his case, but ACP told my client to visit his office

in evening 7.00 PM and accordingly my client visited his office at 7.00 PM near post office Hinjawadi, after reaching his office he was not available in his office and his assistant told ACP went to visit CP at HQ, therefore, my client called ACP and he instructed my client to come to New Sangavi Police station, my client waited at New Sangavi police station for ACP till 11.00 PM, but he never turned-up over there and also did not revert. Therefore, my client left the New Sangavi Police station.

3. Again on 04.03.2018 on 12.30 PM, my client visited Hinjewadi Police Station and requested duty officer to register my FIR, but duty officer sent my client to visit PI Mr. Jogdanad and explained his case, then PI Jogdand asked my client to have common meeting with Sr. PI Yashawant Gavari, as usual Sr. PI was not present in PS and he came to PS at 7.00PM and then my client gave representation to Sr. PI Hinjawadi PS - Yashawant Gavari in presence of PI Jogdand. After hearing my complaint Sr. PI Yashawant Gavari told me, that he need consent from his senior officer DCP Namrata Patil, without his senior consent FIR cannot be lodged. My client requested Sr. PI Yashawant Gavari, that my client have no concern of your internal unwritten protocol, as you are the station in charge

and you have powers to register my FIR, but he compelled me to visit DCP.

4. That the Sr. PI Yashawant Gavari, told my client to visit the PS on next day i.e. 05.03.2019 as DCP Namrata Patil is visiting the Hinjawadi Police Station.
5. Having left no option, my client visited the Hinjawadi Police Station on 05.03.2018 and meet DCP Namrata Patil at 5.30 PM, but without going in to my client's complaint she used an arrogant language with prejudice mind by saying that, she cannot register the FIR against the builder. My client told her that, he had brought all evidence documents from concern government department showing the crime. But it was clearly that, DCP Namrata Patil was reluctant to take action against the accused builder/ developer, she was doing mis-behaved with my client and threatening my client by stating that, she will not be registering FIR and do whatever you want to do and thrown out my client.. This conduct was shocking for my client and for co-complainant Mr. Tushar Kakade.
6. That the Sr. PI Yashawant Gavari and DCP Mrs. Namrata Patil were pressurizing to file the complaint to JMFC and obtain the order under 156 (3), then only they can entertain my

complaints and also they were pressuring me to file complaint in Marathi.

7. Thereafter, at around 9.30 PM, she left the PS and SR. PI Yashawant Gavari told my client, he cannot register the FIR, as he wants to protect his job and if he is sacked from the job my client is not going to give me my bread & butter. He cannot go against the will of his superior. But he will send PI Jogdand to visit Hon'ble Commissioner to take permission for registering FIR and you get reply by next one week.
8. That the despite clear cut direction of Hon'ble Supreme Court to register preliminary investigation and then register the Offence, Sr. PI and DCP have not followed the Court Order and it amount to contempt of Court and intentional negligence of duty and guidelines of Hon'ble Supreme Court. The Supreme Court in (2012) 7 SCC 407 Samaj Parivartan Samudaya & Ors. Vs. State of Karnataka & Ors. has observed that,

"63. We must notice that Criminal offences are primarily offences against the State and secondly against the victim. In this case, if the investigation by specialized agency finds that the suspect persons have committed offences with or without involvement of persons in power, still such violation undoubtedly would have been a great loss to environmental & natural resources and would hurt both the State and national economy. We cannot expect an ordinary

complainant to carry the burden of proving such complex offences before the Court of competent jurisdiction by himself and at his own cost. Doing so would be travesty of the criminal justice system."

9. That the Sr. PI and DCP have not applied their minds and misused their position to help and facilitate the might and resourceful polluter builder and developer. As per the Supreme Court of India in (2014) 2 SCC 1, Lalita Kumari Vs. State of U.P. held that,

"120. In view of the aforesaid discussion, we hold:

120.1 The Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2 If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3 If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4 The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5 The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7 While ensuring and protecting the rights of the accused and the complainant; a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8 Since the General Diary/ Station Diary/ Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

10. That the Sr. PI and DCP have lack of knowledge and social responsibility to protect the interest of society at large and they are not vigilant.

2560

NITIN LONKAR

Advocate

Supreme Court of India

(Regd. A.D. / Post / Courier / By Hand)

- 11.** That, my client is fighting for public interest and protection of environment and ecology at his own means, but Sr. PI and DCP have harassed him and acted against the law.
- 12.** Therefore, Hon'ble Secretary may kindly be initiate action against Sr. PI and DCP and further direct any other competitive officer to register my FIR by keeping these officers away from this case.


Nitin Lonkar
(Advocate)

NITIN LONKAR
Advocate
Supreme Court of India
E-71, Preet Vihar, New Delhi-92
Mob: +91-9560466009

2561
GOVERNMENT OF MAHARASHTRA

ANNEXURE-A-4

No. Comp-2019 /CR- 19 /SEIAA
Environment Department,
217(Annex), Mantralaya, Mumbai - 400 032.
Date :12/06/ 2019

By Fax/ RPAD/ Speed Post/e-mail

To,

1. **M/s. Xrbia Developers Limited**

Having registered office at –

Office No. 125/126, Patil Plaza Mitramandal Chowk,
Parvati, Pune-411009.

Having corporate office at -

929, Mantri House, First Floor,
Near Dnyaneshwar Paduka Chowk,
F.C. Road, Pune- 411 004

2. **M/S. Xrbia Hinjewadi Developers Private Limited**

Having registered office at – Chembur Central,

Eastern Express Highway, Opp. Chheda Nagar,
Ghatkoper (East), Mumbai-400077

Subject: - Proposed Directions u/s 5 of the Environmental (P) Act, 1986 r.w. EIA Notification-2006 dated 14.9.2006

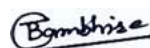
Reference: - Complaint / Notice of Mr. Tanaji B. Gambhire through Advocate Nitin Lonkar dated 01.03.2019

WHEREAS, it was obligatory on your part to obtain prior Environment Clearance from the Competent Authority, as per the EIA Notification dated 14.9.2006, before starting any building construction activity.

AND WHEREAS, we are in receipt of above referred, wherein following issues are raised by the complainant in respect of your building construction project "Xrbia Hinjewadi Township" at residential and commercial project situated at Survey No. 36, 38/2, 38/3, 39, 40/1d, 42, 56, 57 of Village-Dattawadi (Nere) and 52, 53, 54 of Village- Kasarsai, Taluka-Mulshi and District-Pune

- a) PP obtained EC dated 27.12.2006 from MoEF for area development of an area admeasuring 97.28 Ha with land for development was 48.64 Ha. EC was granted for development of 1000 plots on which bungalow was to be constructed. And MoEF imposed condition no. 6. "In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this ministry."
- b) Project Proponent obtained Consent to establish dated 10.04.2006 for new project for development of an area 97.28 Ha.
- c) PP made recasting of project by obtaining various permissions from Ministry Urban Development, Mumbai, collector of Pune from 2006 to 2014 and in between PP applied for revised EC on 04.09.2012 before SEIAA for 41 residential buildings, 282 bungalows, amenity

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buildings, school buildings with an FSI Area: 369177 Sq. Mtrs., Non-FSI Area: 110753 Sq. Mtrs. and for Total BUA: 4799330 Sq. Mtrs.

- d) But PP without obtaining any prior Environment clearance from SEIAA, without obtaining any prior Consent to establish and without obtaining any prior Consent to operate from MPCB and made substantial change in the scope of project completed 29 residential buildings out of proposed 41 buildings, 1 commercial building completed without obtaining any sanction from local authority and another one more commercial building is under construction, completed one club house. PP completed total BUA of 190094.20 Sq. Mtrs., Therefore without accommodating this substantial change in the original scope of EC dated 27.12.2006 PP carried out the construction and this is one of major serious intentional violation.
- e) That the project was appraised by former SEAC in its 60th, 65th and 68th meeting by imposing important condition and sought additional data/ information, but there is no compliance to the said conditions and PP has not provided any information to the SEAC.
- f) No application for prior Consent to Establish, No application for prior Consent to Operate from MPCB and construction carried out by the present PP without these mandatory permission.
- g) PP has carried out the illegal excavation and hill cutting of an area admeasuring 133107.58 Sq. Mtrs. and quantity of Illegal excavation & hill cutting is 520739.75 Cu. Mtrs.
- h) PP has made felling of tick wood trees and other indigenous species more than 50000.
- i) PP has made encroachment on forest land at survey no. 62 of village Kasarsai, Taluka-Mulshi District-Pune and there was discharge of sewage water and waste water on same land by excavating pit on the same land which is now covered with construction waste and STP construction is in progress.
- j) No permission from Ground Water Authority is obtained and PP is extracting ground water in illegal manner from four (4) bore well and one (1) water well at project site. Also there is no ground water test for its quality.
- k) PP has not preserved top layer of the fertile soil excavated during the construction of four basements and there is no soil test.
- l) PP has recently installed STP at project site after complaint to MPCB and which is not in scientific operation. Sewage waste & waste water is directly discharged to pit excavated in forest land causing huge water pollution causing ground water pollution of forest land.
- m) PP has not obtained any permission for installation of the DG Sets and there is illegal operation of DG Sets causing huge air pollution.
- n) PP has undertaken to plant 17969 trees at project site & periphery, but PP has not made any plantation of trees and this is contrary to his undertaking and there is no development of Green Belt as per the CPCB norms and PP has not provided 10 % Open space for recreational purpose as per norms.
- o) PP has not installed Solid waste treatment unit and composting pits. There is no segregation of biodegradable and non-biodegradable waste. Solid waste is directly thrown/ dumped to the opposite side area of project site and then it is burnt openly causing air pollution.
- p) PP has not installed of Rain water harvesting system for ground water recharge and there is substantial depletion in ground water level

- q) PP has not installed any energy saving devices of solar system.
- r) Burden on natural resources (Building Material) due to illegal construction without any appraisal and assessment and it has caused illegal consumption of building material than none permitted legally.
- s) There is complete non-application of mind by the local authority while issuing building sanction and the building sanction granted by local authority without EC is totally illegal and has no legal sanctity.
- t) All authorities are allowing PP for further illegal construction without Environment Clearance.
- u) All authorities are failed to stop illegal construction at site deliberately and neglected to perform their duties for protection of environment and acted against the law and also government authorities failed to take legal action for violation of the provisions of EIA Notification-2006 r/w Environment (Protection) Act, 1986 a/w Water (Prevention and Pollution Control) Act-1971 and Air (Prevention and Pollution Control) Act-1984, solid waste rules etc.
- v) The act of intentional non-action clearly indicates that, there is unholy bureaucratic nexus misusing their positions for protection of PP.
- w) Serious intentional violations and illegal acts of noticees are damaging the environment and giving counter blast to the precautionary principle sustainable development and PP is causing huge irreparable damage to the Environment.
- x) Thus it is mandatory to stop the project construction permanently and this illegal construction either be demolished or government to take over this structure for public purposes without providing any benefits to PP.
- y) PP is careless, reckless and unapologetic towards the environment protection and to perform his fundamental duties.
- z) There is Carbon footprint impact to the tune of Rs. 1500 Crore Rupees till filing of this notice due to these illegal construction activities of PP and PP may kindly be charged with environment compensation more than Rs. 1500 Crores for exemplary and deterrent effect by sending clear message in the community of violators, that compliance to the environmental norms is supreme.

AND WHEREAS, as per the Complaint / Notice above referred, you have not obtained mandatory prior Environment Clearance, Consent to Establish, Consent to Operate, Forest Clearance etc. for your Residential & Commercial Building Construction Project at residential and commercial project situated at Survey No. 36, 38/2, 38/3, 39, 40/1d, 42, 56, 57 of Village-Dattawadi (Nere) and 52, 53, 54 of Village-Kasarsai, Taluka-Mulshi and District-Pune. This amounts to violation of the Environment (Protection) Act-1986 r/w EIA Notification-2006, Water (Prevention and Pollution Control) Act-1971, Air (Prevention and Pollution Control) Act-1984, Indian Forest Act-1927, Indian Wildlife (Protection) Act-1972, Forest (Conservation) Act-1980, Bio-logical Diversity Act-2002.

NOW THEREFORE, in view of the above non-compliances, you are hereby directed to show cause as under: -

- a) Why your building construction activity shall not be stopped forthwith for the violation of Environment Impact Assessment Notification dated 14.09.2006, issued by the ministry of

Environment & Forest, Government Of India, for not obtaining prior Environmental Clearance from the Competent Authority / Government of Maharashtra?

- b) Why further legal action shall not be initiated against you under the provisions of the Environment (Protection) Act, 1986 and Rules made there under?

Take notice that; you are hereby directed to submit your reply within a period of 15 days from the date of receipt of this Proposed Directions, after receipt of reply, you may call for personal hearing, so as to take appropriate decision in the matter, failing which, this office has no option than to initiated further legal action against you including stoppage of your construction activity, which please note.



(Ahil Diggikar)
Principal Secretary, &
Member Secretary- SEIAA

Copy to:

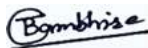
PUNE METROPOLITAN REGIONAL DEVELOPMENT AUTHORITY-PMRDA

Through Metropolitan Commissioner & CEO,

You are the sanctioning authority of the aforesaid project therefore you are hereby requested to take appropriate actions against project proponent and also to submit the documents related to Project.

Enclosed: Copy of Complaint / Notice of Mr. Tanaji B. Gambhire through Advocate Nitin Lonkar dated 01.03.2019 is attached herewith

TRUE COPY



XRBIA HINJEWADI DEVELOPERS PRIVATE LIMITED**1ST FLOOR, MANTRI HOUSE, 929, F.C.ROAD PUNE Pune MH 411004**

Dt.19.06.2019

To,
 Maharashtra Pollution Control Board,
 2nd Floor, Jog Center,
 Near Vodafone, Old Pune-Mumbai Road
 Wakdewadi, Pune – 411003

Subject: - Proposed directions u/s 33A and 31A of the Water/Air Acts.

Reference: - 1) Your letter No.RQP/943/18, dated-03.09.2018.
 2) Visit by your FO dated- 30.08.2018.
 3) Hearing In your office In presence of the Complainant in this matter on 10.09.2018.
 4) Reply dated- 09.10.2018 by Shri. Raghunath Bhalchandra Mahabal on behalf of Xrbia Hinjewadi Township.

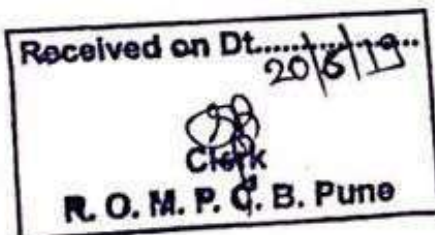
Sir,

With reference to our reply by Shri. Raghunath Bhalchandra Mahabal as referred in reference No.4 above. We want to clarify as below.

Shri. Raghunath Bhalchandra Mahabal has replied to your letter dated-03.09.2018 by his reply dated- 09.10.2018 on our behalf. However para No.30 and 31 out of total 36 paras mentioned in the reply should be treated as deleted from the reply.

Allegations against the Complainant Mr Tanaji Gambhire made in the above mentioned reply notice are not based on whatsoever proof therefore they were unintentional and might be stereotypic in nature. Hence company wish to delete / withdraw the same from above mentioned reply.

Thanking You,



For Xrbia Hinjewadi Developers Pvt. Ltd.

For XRBIA HINJEWADI DEVELOPERS PVT. LTD.

Authorized Signatory

TRUE COPY

Bgmhise

4th Floor, E-71, Preet Vihar, New Delhi-
110092. Contact No. 9560466009,
E-mail: nitinlonkar@gmail.com



ANNEXURE-A-6
NITIN LONKAR
ADVOCATE

LETTER REPLY
(R.P.A.D/SPEED POST)

Dated: - 19/06/2019

To,

Mr. Ajay Jogdand

Police Inspector (Crime)
Hinjawadi Police Station,
Hinjawadi, Taluka- Mulshi,
District-Pune.

Subject: Reply of your letter dated 18.04.2019 outward number
2703/2019

Reference:

1. Complaint of Mr. Tanaji Balasaheb Gambhire dated
05.03.2019
2. Notice of Adv. Nitin Lonkar on behalf of complainant dated
16.03.2019

Mr. Jogdand,

1. I am issuing this reply to your letter dated 18.04.2019 on
behalf of my client Mr. Tanaji Balasaheb Gambhire R/o-
296, Shukrawar Peth, Laxmi Apartment, Near Shivaji
Maratha High School, White House Lane, Pune-411002.
2. At the outset I would like to point out that, you have not
mentioned any reason as to why cognizance cannot be
taken in the environmental violation matter despite being
specifically pointed out various environment violations and
various offences.
3. That your statement in respect of my client despite being
called on various occasions was not present is completely

TRUE COPY

Bombhise

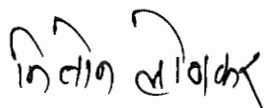
4th Floor, E-71, Preet Vihar, New Delhi-
110092. Contact No. 9560466009,
E-mail: nitinlonkar@gmail.com



NITIN LONKAR
ADVOCATE

false. As my client called you several times but you failed to receive or revert to him. Also, you have not issued any notice to be present before you for enquiry.

4. That the above fact only shows that, you have complete disrespect towards the Hon'ble Supreme court orders / guidelines in respect of environmental matters and other offences arising out of same.
5. That your inaction shows that, you wish to follow the orders of superiors contrary to the law.
6. Also you have not attached the copy of opinion received from the Assistant government pleader district court Pune.
7. Above acts of yours demonstrate that, you are favoring the project proponent wherein the construction has been carried out without prior environment clearance and without various mandatory permissions from Forest Department, MPCB, Wildlife Board of India, Bio-Diversity Board of India etc. and this is clear cut criminal offence under respective acts.


Nitin Lonkar

(Advocate for Complainant)



16.02.2022

To,

The Member Secretary,
**State Environmental Impact Assessment
Authority (SEIAA) - Maharashtra**

Member Secretary
**State Expert Appraisal Committee-III
(SEAC-III) Maharashtra**
Environment Department, Govt. of Maharashtra
15th floor, New Administrative Building,
Mantralaya, Mumbai-400032

Subject: Application for 'Environmental Clearance': Terms of Reference (ToR) and Environment Clearance (Fresh case under violation): **read with EIA Violation Notification 14.03.2017 AND Office Memorandum dated 28.01.2022**

Project / Activity: **Xrbia Hinjewadi Developers Private Limited.**
(hereafter called as Project Proponent (PP) as Developers – Applicant)
Residential project – “Xrbia Hinjewadi Special Township” - Sector R-22 to R-28 and Sector R-29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune

Reference:

1. Environmental Clearance form GoI, MoEF file No. 21-153/2008-IA-III dated 27.12.2006 (Plot area 97.28 ha)
2. MoEF&CC Notification 14.03.2017
3. MoEF&CC OM dated 09.09.2019
4. Standard Operating Procedure (SOP) published by MoEF&CC on 07.07.2021
5. MoEF&CC OM dated 28.01.2022
6. NGT Order No. (I.A. No. 136/2020) of M/s Embassy Property Development Pvt. Ltd. dated 10.02.2022

TRUE COPY

Dear Sir,

The application is hereby made without prejudice to the rights and subject to orders that may be passed from time to time from Hon'ble National Green Tribunal and/or any other competent court. This is without admitting but assuming that there is a cognizable violation, as may be finally decided by the Hon'ble Tribunal or Courts.

1. We, **Xrbia Hinjewadi Developers Private Limited. (hereafter called as Project Proponent (PP) as Developers – as Applicant)** had constructed a Residential project "**Xrbia Hinjewadi Special Township**" – Sector R-29 and Sector R-22 to R-28 at S.Nos.38/2 and others, Village Nere, Dattawadi, Taluka Mulshi, District Pune.
2. The earlier Environmental Clearance (EC) for development of township "Silicon City" was received on 27.12.2006 based on Form 1 & 1A and Conceptual Plan for total plot area 97.28 ha under Category 8(b) "Township and Area development project category". (As per EC, it was mentioned ... *the Township will have 1000 plots, which will be sold to individuals for construction of bungalows. The Total area for construction as per the approved plan is 48.64 ha...*)
3. Now, we are applying for a fresh application for Environmental Clearance for residential Sector R-29 and Sector R-22 to R-28 under 8(b) "Township and Area development project category". The project has been completed as per the revised sanctioned plan under Special Township PLU from PMRDA on 25.12.2015 and the revised NA order sanctioned by District Collector. Area allotment details have been mentioned below.

Details (All areas in m ²)	Sector R-22 to 28	Sector R-29	Total
Sector area in m ²	79,109	38,123	1,17,232
FSI area in m ²	75,212	68,031	1,43,242
Non-FSI area in m ²	17,289	15,348	32,637
Total Construction area	92,501	83,378	1,75,879

4. The earlier EC letter granted on 27.12.2006.
5. The project was considered and discussed in the 60th State Expert Appraisal Committee (SEAC) meeting, Maharashtra, and had submitted a compliance reply on 06.12.2012.
6. Location clearance was received from Govt. of Maharashtra on 08.06.2009 as well as received the NA order from District Collector, Pune for Township on 07.09.2010 for the plot area 81.20 ha. Also revised NA order and Town planning letter have been received under Township development.
7. Agreement for development was done between Xrbia Hinjewadi Development Pvt. Limited, on 20.07.2012. (For sectors R-22 to R-28 and Sector R-29). Also received revised TP letter from Town planning, Collector Pune, and NA order on 10.09.2012, 08.11.2013, and 29.12.2015.
8. Again, re-submitted a separate application for EC under Category 8(b) for Sector R-22 to Sector R-28 and Sector R-29 on 12.06.2013 by Xrbia Hinjewadi Development Pvt. Limited.
9. We started the construction activity after receiving the Development Permission (DP) & Commencement Certificate (CC) from Collector Office on 10.09.2012. (Sector R-22 to Sector R-28)

and have taken DP and CC from PMRDA for (Sector-29) on 20.10.2016.

10. The construction of all the residential sectors was completed in the year 2016-2017. Out of 4,86,400 m² (48.64 ha) of the total construction area granted in the EC, around 1,75,879 m² (17.5 ha) of the construction has been completed.
11. The occupancy Certificate was taken in the year 2016-2019. The project was handed over to society and registration was completed in the year 2017-2018.
12. Project Chronology (Diary of the events) is given below:

Sr.	Documents	Date
1.	Environmental Clearance from GoI, MoEF File No. 21-153/2008-IA-III Plot area - 97.28 ha Company Name: Eiffel Infocity Pvt. Ltd.	27.12.2006
2.	Consent to Establish from MPCB -Consent No. BO/RO/(P&P)/364 Plot area - 97.28 ha Company name: M/s. Nahar Silicon City	10.04.2006
3.	Consent to Establish from MPCB Consent No. BO/RO/(P&P)/EIC No. PN-3230- 09/E/CC/231 Plot area - 1,00,700 m ² BUA - 30,658 m ² Company Name : Eiffel Developers & Realtors Ltd. "Silicon City" S. No. 52, 53, 54, Village Dattawadi & Kasarsai, Taluka Mulshi, District Pune	08.07.2009
4.	Location Clearance form Govt. of Maharashtra क्रमांक -टिपीएस -१८०७/९९/प्र. क्र. ७५३/०७/नवि -१३ दिनांक - ८.०६.२००९ Plot area - 81.20 ha Company Name: Eiffel Infocity Pvt. Ltd.	08.06.2009
5.	Collector Office: Letter of Intent क्र. पमअ/कवि /१४९१/०९ पुणे -०१, दिनांक २४/०९/२००९	24.09.2009

Sr.	Documents	Date
	Company name: Eiffel Developers and Realtors Ltd.	
6.	NA order क्र. पमअ/एनए/एसआर/३५५/०८ पुणे -०१, दिनांक ०७/०९/२०१० Plot area - 81.20 ha Company name: Eiffel Developers and Realtors Ltd.	07.09.2010
7.	Submitted application for Environmental Clearance at SEAC, Maharashtra	02.12.2011
8.	Revised - Town Planning letter to Collector	07.01.2012
9.	Revised NA order क्र. पमअ/टी एस /एसआर/२१/२०२१ पुणे -३१, दिनांक ३१/०३/२०१२ Plot Area : 58,34,335 m ² Company name: Eiffel Developers and Realtors Ltd.	31.03.2012
10.	Agreement for sale between Xrbia Development Limited and Xrbia Hinjewadi Development Pvt. Ltd.	20.07.2012
11.	Revised Letter of TP to Collector (Sector R-22 to Sector R-28 and Sector R-29)	23.07.2012
12.	Commencement Certificate (R-22 to R-28 and R-29)	10.09.2012
13.	Submitted separate application for Environmental Clearance at SEAC, Maharashtra (R-22 to R-28 and R-29) Company Name: Xrbia Hinjewadi Developers Pvt. Ltd.	12.06.2013
14.	Letter of TP to Collector (R-22 to R-28 and R-29)	19.08.2013
15.	Revised NA order (R-29)	08.11.2013
16.	Revised NA order (R-22 to R-28)	05.06.2014
17.	Special Township - PLU sanctioned plan Vide no. 42 dated 07/01/2012 Company name: Xrbia Developers Ltd.	25.12.2015
18.	Second revised NA order (Plot area 5,84,335 m ²)	29.12.2015
19.	Revised building plan from PMRDA (Development Permission and commencement Certificate) (Sector R-22- Sector R-28)	30.09.2016

Sr.	Documents	Date
	Letter no. / C.R. No. 811/16-17/Mouze - नेरे दत्तवाडी Company Name: Xrbia Developers Ltd.	
20.	Revised building plan from PMRDA (Sector R -29) Letter no. / C.R. No. 10.02.16-17/Mouze - नेरे दत्तवाडी Mulshi Company name: Xrbia Developers Ltd.	20.10.2016
21.	Part Occupancy Certificate - PMRDA	07.11.2016
22.	Part Occupancy Certificate - PMRDA	27.01.2017
23.	Corrected Completion Certificate - PMRDA	01.02.2017
24.	Formation of Society - Certificate	11.09.2017

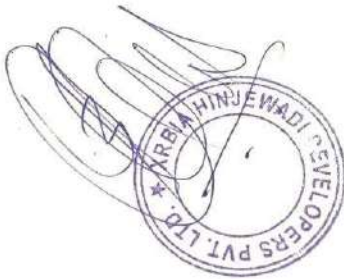
13. **For identifying and handling violation cases, The Ministry of Environment Forest & Climate Change (MoEF&CC) had published an independent Notification on 14.03.2017** for consideration of violation projects for scrutiny under EAC. *(Para 13 (1): the Central Government hereby directs that the projects or activities or the expansion or modernization of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and will be dealt strictly as per the procedure specified in the following manner:-.....)*

14. The window for submission was valid till 13.09.2017 and was extended further from 14.03.2018 to 13.04.2018 based on court direction and MoEF&CC Office Memorandum dated 16.03.2018.
15. **MoEF&CC also issued Office Memorandum (OM) 09.09.2019** w.r.t. 14.03.2017, about consideration of Category-B violations proposals at State level, under through "lateral entry".
16. **MoEF&CC published a Standard Operating Procedure (SOP) on 07.07.2021.** This SOP was challenged in the Madurai Bench of the High Court of Madras in the matter of W.P. (MD) No. 11757 of 2021 titled Fatima Vs Union of India and was interim stayed vide order dated 15.07.2021.
17. **As per the MoEF&CC OM dated 28.01.2022,** in a recent ***order of Hon'ble Supreme Court, in the matter of Electrosteel Steels Limited Vs Union of India and Ors., dated 9.12.2021,*** it was stated that the interim by Madras High Court was misunderstood. As per the Madras High Court, the interim stay order passed has no application beyond the territorial Jurisdiction of the Madras High Court.
18. Case of Violation was listed at Hon'ble National Green Tribunal (NGT) O.A. No. 33/2019 (I.A. No. 31/2019) and was disposed of by the Hon'ble National Green Tribunal (NGT). The enclosed following Daily Order dated 19.05.2021 was passed.
19. In light of this, MoEF&CC issued the detailed Office Memorandum, dated 28.01.2022, explaining the procedural way ahead to handle the violation cases, with emphasis supplied with it, including the Judgement of the Hon'ble Supreme Court.

20. Hence, we would like to apply for Terms of Reference and Environment Clearance (Fresh Case) for the changes/addition/variation in total covered built-up construction area occurred and executed in the project under violation as per the MoEF&CC Notification 14.03.2017 and MoEF&CC published Office Memorandum (OM) for identification and handling of violation cases under EIA Notification 2006 a Standard Operating Procedure (SOP) on 07.07.2021 and Office Memorandum dated 28.01.2022.
21. In view of the submissions made above, kindly consider the application and expedite the process of grant of Environment Clearance.

Thanking you,
Yours faithfully,

For Xrbia Hinjewadi Developers Private Limited.



AUTHORIZED SIGNATORY

Enclosures:

1. Copy of Form 1 & 1 A including all respective Annexures
2. Copy of NGT Order

APPENDIX I

(See Paragraph-6)

CATEGORY - B

Note : If space provided against any parameter is inadequate, Kindly upload supporting document under 'Additional Attachments if any' at the last part of the Form1. Please note that all such Annexures must be part of single pdf document.

(I) Basic Informations

S.No.	Item	Details	
	Whether proposal involved violation of EIA notification	Yes	
	Weather Consent to Establishment Obtained	Yes	
	Upload copy of CTE	NA	
1.	Name of the Project	Residential project – “Xrbia Hinjewadi Special Township” - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune M/s. Xrbia Hinjewadi Developers Private Limited. (hereafter called as Project Proponent (PP) as Developers – Applicant)	
	Proposal No	SIA/MH/MIS/72296/2022	
2.	Project Sector	INFRA-2	
3.	Location of the project	Nere Dattawadi, Pune	
4.	Shape of the project land Uploaded GPS file Uploaded copy of survey of India Toposheet	Block (Polygon) Annexure-GPS file  Annexure-Survey of india toposheet	
5.	Brief summary of project	Annexure-Brief summary of project	
6.	State of the project	Maharashtra	
Details of State of the project			
S.no	State Name	District Name	Tehsil Name
(1.)	Maharashtra	Pune	Mulshi
7.	Town / Village	Nere Dattawadi, Pune	
8.	Plot/Survey/Khasra No.	Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune	
9.	S. No. in the schedule	8(b) Townships and Area Development projects.	
10.	Proposed capacity/area/length/tonnage to be handled/command area/lease area/number or wells to be drilled	a. Sector Area – R 22-28: 79,109 m2 b. Sector Area – R 29: 38,123 m2 1. Total Sector Area – (R-29, R22-28): 1,17,232 m2 a. FSI area – Sector R 22-28: 75,212 m2 b. FSI area – Sector R 29: 68,031 m2 2. Total FSI area – Sector (R-29, R22-28): 1,43,242 m2 a. Non FSI area – Sector R 22-28: 17,289 m2 b. Non FSI area – Sector R 29: 15,348 m2 3. Total Non FSI area – Sector (R-29, R22-28): 32,637 m2 1. Total BUA area – Sector R 22-28:	

		92,501 m2 2. Total BUA area – Sector R 29: 83,378 m2 3. Total BUA area ha.
11.	New/Expansion/Modernization	New
12.	Category of project	B
13.	Does it attract the general condition? If yes, please specify	No
14.	Is there any court order to consider your project under 'A' Category if	Yes Annexure-Uploaded court order to consider your project under 'A' Category
15.	Does it attract the specific condition?	No
16.	Is there any litigation pending against the project? Attach court order(s) given in this regard	Yes Annexure-Uploaded Attach court order(s)_given in this regard
17.	Nearest railway station along with distance in kms.	Chinchwad Railway Station, 10.9 km
18.	Nearest airport along with distance in kms	Pune International Airport, 22.7 km
19.	Nearest Town/City/District Headquarters along with distance in kms	Hinjewadi , 4.45 km
20.	Distance of the project from nearest Habitation	4.45 , 4.45 km
21.	Details of alternative sites examined shown on a toposheet	No
22.	Whether part of interlinked projects?	No
23.	Whether the proposal involves approval/clearance under the Forest (Conservation)Act,1980?	No
24.	Whether the proposal involves approval/clearance under the wildlife (Protection)Act,1972?	No
25.	Whether the proposal involves approval/clearance under the C.R.Z notification,2011?	No
26.	Whether there is any Government Order/Policy relevent/relating to the site?	No
27.	Whether there is any litigation pending against the project and/or land in which the project is proposed to be set up? (a)Name of the Court (b)Name of the Sub court (c) Case No. (d) Orders/directions of the court, if any and relevance with the proposed project.	Yes NGT NGT Western Zone Original Application No. 33/2019 (WZ) (I. A. No. 31/2019 (WZ)) Order attached with cover letter annexure

28.	Project Cost(in Lac.)	34700
30.	Whether the proposed project/activity located in notified Industrial area(Yes/No)	No

Activity

- 1 Construction, operation or decommissioning of the Project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.)**

S.No	Information/Checklist confirmation	Yes/No	Details there of (with approximate quantities/rates, wherever possible) with source of information data
1.1	Permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan)	No	Development was carried in line with the topography & without disturbing natural drainage pattern. Project has been approved by Town Planning Dept. Pune.
1.2	Clearance of existing land, vegetation and buildings?	Yes	EC received on dated 27.12.2006 for total construction area was 48.64 Ha & construction work completed at site is 1,75,879 m2.
1.3	Creation of new land uses?	No	Its Special Township project
1.4	Pre-construction investigations e.g. bore houses, soil testing?	Yes	Construction work already initiated as per EC received on dated 27.12.2006 for total construction area was 48.64 Ha & construction work completed at site is 1,75,879 m2. Hydrogeological study conducted & Soil samples taken within the plot premises for geotechnical investigation.
1.5	Construction works?	Yes	EC received on dated 27.12.2006 for total construction area was 48.64 Ha & construction work completed at site is 1,75,879 m2.
1.6	Demolition works?	No	No demolition at site
1.7	Temporary sites used for construction works or housing of construction workers?	Yes	Temporary labour camp was constructed for construction workers. The labour camp was provided with Drinking water and sanitary facilities and was later dismantled.
1.8	Above ground buildings, structures or earthworks including linear structures, cut and fill or excavations and fill or excavations	Yes	EC received on dated 27.12.2006 for total construction area was 48.64 Ha & construction work completed at site is 1,75,879 m2. Excavation had been carried

			out for foundation work and underground utilities. The excavated top soil was used for landscaping. The construction debris was utilized for backfilling and levelling of the plot & remaining was disposed to authorized site.
1.9	Underground works including mining or tunneling?	No	No underground works including mining/ Tunnelling was required except for minor activities like excavation of earth only for foundation, laying down of pipes, underground storage tank, electric cables, etc.
1.10	Reclamation works?	No	Not applicable
1.11	Dredging?	No	Not applicable
1.12	Offshore structures?	No	Not applicable
1.13	Production and manufacturing processes?	No	Not applicable
1.14	Facilities for storage of goods or materials?	Yes	Only construction material was stored in temporary storage site.
1.15	Facilities for treatment or disposal of solid waste or liquid effluents?	Yes	Construction Stage: Septic Tank for labour colony was provided, construction debris were sent to the authorized agency. Operational Stage: Organic Waste Composting for solid waste disposal and Sewage Treatment Plant for treatment of waste water has been provided.
1.16	Facilities for long term housing of operational workers?	No	No, long term housing facility for operational workers.
1.17	New road, rail or sea traffic during construction or operation?	No	There were movements of trucks for material transport during construction phase. Existing roads were used for the transport purpose.
1.18	New road, rail, air water borne or other transport infrastructure including new or altered routes and stations, ports, airports etc?	No	No new road, rail, air waterborne or other transport infrastructure was built or altered. Existing road was used for the transportation.
1.19	Closure or diversion of existing transport routes or infrastructure leading to changes in traffic movements?	No	There was no diversion or closure of the Completed transport routes and infrastructure.
1.20	New or diverted transmission lines or pipelines?	No	There was no shifting of electrical transmission line. But the project involves construction of new internal pipelines for fresh water, recycled water, rain water , sewer lines and internal power distribution lines.

1.21	Impoundment, damming, culverting, realignment or other changes to the hydrology of watercourses or aquifers?	No	Not Applicable
1.22	Stream crossings?	No	Not Applicable
1.23	Abstraction or transfers of water from ground or surface waters?	No	Not Applicable
1.24	Changes in water bodies or the land surface affecting drainage or run-off?	Yes	The land use was changed permanently. The existing drainage system was upgraded due to provision of proper storm water and sewer network.
1.25	Transport of personnel or materials for construction, operation or decommissioning?	Yes	Construction phase: There was temporary movement of personnel, machines and materials for construction phase. The impact on the surrounding was negligible as the man and materials were transported from local areas and thus there was fraction of noise and emissions. Post Construction: There is regular movement of vehicles and residents/employees post construction after completion of the project and hand over.
1.26	Long-term dismantling or decommissioning or restoration works?	No	Not Applicable since there is no dismantling involved in the project.
1.27	Ongoing activity during decommissioning which could have an impact on the environment?	No	No ongoing activity/decommissioning that will impact the Environment.
1.28	Influx of people to an area in either temporarily or permanently?	Yes	Construction phase: During the construction phase only construction workers were staying till construction completed. Operation phase: On completion of the project, there is regular movement of residents, visitors, staff and related personals. Total nos. of population : 14,624 nos.
1.29	Introduction of alien species?	No	No, Project proponent has provided all the indigenous species.
1.30	Loss of native species or genetic diversity?	No	No threat of species loss was occurred.
1.31	Any other actions?	No	No other action with reference to construction.

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

S.No	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
2.1	Land especially undeveloped or agricultural land (ha)	No	The land was used for construction of Township project.
2.2	Water (expected source & competing users) unit: KLD	Yes	Source: Local Authority 1. Total Water Requirement-1,974 m3/day 2. Fresh water requirement- 1,316 m3/day 3. Flushing water requirement-658 m3/day 4. Landscaping water requirement-73 m3/day 5. Waste water generation-1,579 m3/day 6. Wastewater to municipal drain-675m3/day 7. Swimming Pool Water Demand-Tanker water Population details Residential population-14,624 no.
2.3	Minerals (MT)	No	Not Applicable
2.4	Construction material – stone, aggregates, sand / soil (expected source – MT)	Yes	Construction Material was sourced from local market.
2.5	Forests and timber (source – MT)	No	Not Applicable
2.6	Energy including electricity and fuels (source, competing users) Unit: fuel (MT),energy (MW)	Yes	Source of power supply: MSEDCL During Operation Phase i) Max. Demand Load-4,973 kW ii) Connected Load-6,604 kW
2.7	Any other natural resources (use appropriate standard units)	No	No other natural resources used.

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

S.No	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
3.1	Use of substances or materials, which are hazardous (as per MSIHC rules) to human health or the environment (flora, fauna, and water supplies)	No	No hazardous material was used for construction.
3.2	Changes in occurrence of disease or affect disease vectors (e.g. insect or water borne diseases)	No	No such activity was carried out which could have changed occurrence of disease or affect disease vectors.
3.3	Affect the welfare of people e.g. by changing living conditions?	Yes	Project is positively affecting the welfare of people by providing state of art infrastructure. The project has provided job opportunities to

			skilled and unskilled local people.
3.4	Vulnerable groups of people who could be affected by the project e.g. hospital patients, children, the elderly etc.	No	People are not affected by project, as project aims to provide good infrastructure to the people in operation phase. All necessary Environmental Management practices are being followed in true spirit.
3.5	Any other causes	No	No use or storage of harmful or hazardous material within the project area during construction and operation phase.

4 Production of solid wastes during construction or operation or decommissioning (MT/month)

S.No	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
4.1	Spoil, overburden or mine wastes	No	Not Applicable
4.2	Municipal waste (domestic and or commercial wastes)	Yes	1. Total Solid waste generation - 4,387 kg/day 2. Bio-degradable waste - 2,632 kg/day 3. Non-Biodegradable waste - 1,754 kg/day Dry waste is handed over to authorized vendor for further processing. Wet waste is treated in organic waste composing machine.
4.3	Hazardous wastes (as per Hazardous Waste Management Rules)	No	No hazardous waste is be generated.
4.4	Other industrial process wastes	No	Not Applicable.
4.5	Surplus product	No	Not Applicable.
4.6	Sewage sludge or other sludge from effluent treatment	Yes	About 15 kg/day sewage sludge is generated. Dry sludge is used as manure for plantation & gardening purposes inside the premises.
4.7	Construction or demolition wastes	Yes	Construction waste was used as fill material for levelling and road, pathway construction.
4.8	Redundant machinery or equipment	No	No redundant machinery or equipment at project site
4.9	Contaminated soils or other materials	No	No contamination of soil because land was kept unutilized before the development. Soil testing was done prior to construction activity.

4.10	Agricultural wastes	No	Not applicable
4.11	Other solid wastes	No	Not applicable

5 Release of pollutants or any hazardous, toxic or noxious substances to air(Kg/hr)

S.No	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
5.1	Emissions from combustion of fossil fuels from stationary or mobile sources	Yes	Vehicular movement and DG sets can be sources of air pollution. The D.G sets are used only in case of power failure.
5.2	Emissions from production processes	No	Not Applicable.
5.3	Emissions from materials handling including storage or transport	Yes	There was fugitive emission from transportation and handling of material such as sand, cement etc. Dust emission due to vehicular movement during construction phase. Regular water sprinkling & tarpaulin covers were provided to cover dust emissions.
5.4	Emissions from construction activities including plant and equipment	Yes	Dust emissions occur during excavation and earthwork. Proper care was taken to reduce dust emission.
5.5	Dust or odours from handling of materials including construction materials, sewage and waste	Yes	Dust generated during transport and handling of material. Regular water sprinkling & tarpaulin covers were provided to cover dust emissions.
5.6	Emissions from incineration of waste	No	No incineration of waste is carried out at site.
5.7	Emissions from burning of waste in open air (e.g. slash materials, construction debris)	No	No burning of waste is carried out at site.
5.8	Emissions from any other sources	No	None

6 Generation of Noise and Vibration, and Emissions of Light and Heat:

S.No	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data

6.1	From operation of equipment e.g. engines, ventilation plant, crushers	Yes	Construction phase: The significant source of noise pollution was the machinery used for construction and vehicular movement. Operation phase: During operation phase the only source of noise is operation of mechanical equipment, vehicular traffic and DG sets however, these are operated during emergency only.
6.2	From industrial or similar processes	No	Not Applicable
6.3	From construction or demolition	Yes	The construction activities included the noise generating activities i.e. Excavation activities etc., Concreting and mixing, Heavy vehicle movement, Operation of D.G sets. Precautions were taken to control noise pollution i.e. High noise generating activities were carried out during day time only, Workers working near high noise machinery were provided with ear muffs/ear plugs, Acoustic enclosure for DG Set provided.
6.4	From blasting or piling	No	No blasting activities were carried out.
6.5	From construction or operational traffic	Yes	During Construction Phase: There was transportation of materials for construction work. Precautions were taken to reduce the impacts of the vehicular movement. During Operation Phase: The vehicular parking is restricted only in the adequate parking area provided, which helps in reducing noise pollution due to traffic congestion. Adequate tree plantation also helps to reduce the noise level and enhance air quality
6.6	From lighting or cooling systems	Yes	Noise generation from DG sets & cooling system.
6.7	From any other sources	No	Not Applicable

7 Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea:

S.No	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data

7.1	From handling, storage, use or spillage of hazardous materials	No	No handling, storage or use of hazardous waste is envisaged.
7.2	From discharge of sewage or other effluents to water or the land (expected mode and place of discharge)	No	The total sewage generated is 1,579 m ³ /day and it is treated in STP capacity of 1,600 m ³ /day (650 m ³ /day+ 950 m ³ /day). The treated sewage from STP is utilized for gardening, flushing and vehicle washing makeup thus there is no impact on the surface / ground water.
7.3	By deposition of pollutants emitted to air into the land or into water	No	No risk of contamination
7.4	From any other sources	No	Not Applicable.
7.5	Is there a risk of long term build up of pollutants in the environment from these sources?	No	Not Applicable

8 Risk of accidents during construction or operation of the Project, which could affect human health or the environment

S.No	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
8.1	From explosions, spillages, fires etc from storage, handling, use or production of hazardous substances	No	DG set can be provided with proper acoustic enclosure. Fire Fighting system has been provided.
8.2	From any other causes	No	Not applicable
8.3	Could the project be affected by natural disasters causing environmental damage (e.g. floods, earthquakes, landslides, cloudburst etc)?	No	The project falls under seismic zone-III as per IS1893 (Part-1):2002. The structural design is accordingly performed. Hence, no risk due to natural hazards is envisaged

9 Factors which should be considered (such as consequential development) which could lead to environmental effects or the potential for cumulative impacts with other existing or planned activities in the locality

S.No	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
9.1	Lead to development of supporting utilities, ancillary development or development stimulated by the project which could have impact on the environment e.g.: Supporting infrastructure (roads, power supply, waste or waste water treatment, etc.)	Yes	The project provides a well-designed residential area for the new occupants. Supporting infrastructure like RWH, STP Solar panel etc will be provided. The site and nearby areas are developed with good

	◦ housing development ◦ extractive industries ◦ supply industries ◦ Other		supportive infrastructure like roads, transport facility, entertainment and hospitals.
9.2	Lead to after-use of the site, which could have an impact on the environment	No	Not Applicable
9.3	Set a precedent for later developments	No	Not Applicable
9.4	Have cumulative effects due to proximity to other existing or planned projects with similar effects	No	Not Applicable

(III) Environmental Sensitivity

S.No	Areas	Name/Identity	Aerial distance (within 15km.) Proposed project location boundary
1	Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value	No	None in 15 km radius
2	Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests	Yes	Marunji Dam-1.19 km Kasaria Dam-3.10 km
3	Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration	No	None in 15 km radius
4	Inland, coastal, marine or underground waters	No	None in 15 km radius
5	State, National boundaries	No	None in 15 km radius
6	Routes or facilities used by the public for access to recreation or other tourist, pilgrim areas	Yes	Hinjewadi Kasarai Road- 2 km
7	Defence installations	Yes	Dehu cantonment -9.8 km
8	Densely populated or built-up area	Yes	Talegaon
9	Areas occupied by sensitive man-made land uses (hospitals, schools, places of worship, community facilities)	Yes	Vidya Valley World school-4.52 km St Elis school - 6.12 km
10	Areas containing important, high quality or scarce resources.(ground water resources,surface resources,forestry,agriculture,fisheries,tourism,minerals)	Yes	Marunji Dam-1.19 km Kasaria Dam-3.10 km
11	Areas already subjected to pollution or environmental damage.(those where existing legal environmental standards are exceeded)	No	None in 15 km radius
12	Areas susceptible to natural hazard which could cause the project to present environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions) similar effects	No	None in 15 km radius

(IV) PROPOSED TERMS OF REFERENCE FOR EIA STUDIES

1	Uploaded Proposed TOR File	Annexure-TOR file
2	Uploaded scanned copy of covering letter	Annexure-scanned copy of covering letter
3	Uploaded Pre-Feasibility report(PFR)	Annexure-PFR
4	Uploaded additional attachments(only single pdf file)	Annexure-Additional attachments
5	Uploaded Form-1A	Annexure-Form-1A
6	Uploaded Conceptual Plan	Annexure-Conceptual Plan

ADDITIONAL MULTIPLE ENTERIES

Sr. no.	Remarks	Uploaded Additional Attachments
1	Environment Clearance copy	Annexure-Additional Attachments
2	Consent To Establish	Annexure-Additional Attachments

(V) Undertaking

The aforesaid application and documents furnished here with are true to my knowledge

V. (i)	Name	XRBIA HINJEWADI DEVELOPERS PRIVATE LIMITED			
	Designation	Authorised Signatory			
	Company	XRBIA HINJEWADI DEVELOPERS PRIVATE LIMITED			
	Address	1st Floor, Mantri House, 929, FC Road, Pune			
Essential Details Sought					
S. No.	EDS Sought Date	EDS Sought	Letter		
NO Record					
Additional Details Sought					
S. No.	ADS Sought Date	ADS Sought	Letter		
(1.)	20/05/2022	Kindly submit the compliance as per the minutes of 242 (day 1) meeting of SEIAA.			
(2.)	14/03/2023	In the serene developers & Ors NGT case on dated 20/02/2023, NGT has given discussion, we make it further clear that the proceeding for grant of ex post facto EC, which is pending before SEIAA, shall not be treated to have been stayed by us, rather the same would be expedited. the committee is further directed to make inspection after giving notice to the parties concerned.	EDS Letter		
Transferred Details(Category A To B)					
S. No.	Category A(Proposal No)	Category B(Proposal No)	Transferred Date	Reason	Letter

2588

NO Record

APPENDIX – II (See paragraph 6)

FORM-1 A

(Only for construction projects listed under item 8 of the Schedule)

CHECK LIST OF ENVIRONMENTAL IMPACTS

(Project proponents are required to provide full information and wherever necessary attach explanatory notes with the Form and submit along with proposed environmental management plan & monitoring programme)

1. LAND ENVIRONMENT

	(Attach panoramic view of the project site and the vicinity)																																																																
1.1	Will the existing land use get significantly altered from the project that is not consistent with the surroundings? (Proposed land use must conform to the approved Master Plan / Development Plan of the area. Change of land use if any and the statutory approval from the competent authority are submitted). Attach Maps of (i) site location, (ii) surrounding features of the proposed site (within 500 meters) and (iii) the site (indicating levels & contours) to appropriate scales. If not available attach only conceptual plans.	The land use of project area is Special Township. Project is in line with Development Plan of PMRDA and earlier EC from Government of Maharashtra vide file no. No.21-153/2006-IA-III dated 27.12.2006 Following documents are attached as supporting documents. 1. Building configuration and area statement attached as Annexure II as and Master plan layout attached as Annexure III																																																															
1.2	List out all the major project requirements in terms of the land area, built up area, water consumption, power requirement, connectivity, community facilities, parking needs, etc.	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="6" style="text-align: center;">Area details</th> </tr> <tr> <th style="width: 5%;">Sr.</th> <th style="width: 20%;">Details</th> <th style="width: 15%;">Sector Area – R 22-28</th> <th style="width: 15%;">Sector Area – R 29</th> <th style="width: 15%;">Total Sector area</th> <th style="width: 10%;">Unit</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Total Sector area</td> <td style="text-align: center;">79,109</td> <td style="text-align: center;">38,123</td> <td style="text-align: center;">1,17,232</td> <td style="text-align: center;">m²</td> </tr> <tr> <td style="text-align: center;">2.</td> <td>FSI area</td> <td style="text-align: center;">75,212</td> <td style="text-align: center;">68,031</td> <td style="text-align: center;">1,43,242</td> <td style="text-align: center;">m²</td> </tr> <tr> <td style="text-align: center;">3.</td> <td>Non FSI area</td> <td style="text-align: center;">17,289</td> <td style="text-align: center;">15,348</td> <td style="text-align: center;">32,637</td> <td style="text-align: center;">m²</td> </tr> <tr> <td style="text-align: center;">4.</td> <td>Total construction area</td> <td style="text-align: center;">92,501</td> <td style="text-align: center;">83,378</td> <td style="text-align: center;">1,75,879</td> <td style="text-align: center;">m²</td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: center;">Building details</th> </tr> <tr> <th style="width: 5%;">Sr</th> <th style="width: 20%;">Details</th> <th style="width: 75%;"></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Building details</td> <td>Residential building - 29 No. Open Amphitheatre, Club house and Swimming pool</td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: center;">Tenements & shops details</th> </tr> <tr> <th style="width: 5%;">Sr</th> <th style="width: 20%;">Details</th> <th style="width: 75%;"></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Tenements</td> <td style="text-align: right;">3,120 Nos.</td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: center;">Population details</th> </tr> <tr> <th style="width: 5%;">Sr.</th> <th style="width: 20%;">Details</th> <th style="width: 75%;"></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Residential users</td> <td style="text-align: right;">14,624 Nos</td> </tr> </tbody> </table>	Area details						Sr.	Details	Sector Area – R 22-28	Sector Area – R 29	Total Sector area	Unit	1.	Total Sector area	79,109	38,123	1,17,232	m ²	2.	FSI area	75,212	68,031	1,43,242	m ²	3.	Non FSI area	17,289	15,348	32,637	m ²	4.	Total construction area	92,501	83,378	1,75,879	m ²	Building details			Sr	Details		1.	Building details	Residential building - 29 No. Open Amphitheatre, Club house and Swimming pool	Tenements & shops details			Sr	Details		1.	Tenements	3,120 Nos.	Population details			Sr.	Details		1.	Residential users	14,624 Nos
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		Water consumption			
		Sr.	Description		Unit
		1.	Fresh water	1,316	m ³ /day
		2.	Recycled water (Flushing)	658	m ³ /day
		3.	Recycled water (Gardening)	73	m ³ /day
		4.	Recycled water (Vehicle Washing)	0	m ³ /day
		5.	Excess treated water	675	m ³ /day
		6.	Total water requirement	1,974	m ³ /day
		Solid waste generation details			
		Sr.	Details		Unit
	Total solid waste	4,387	kg/day		
1.	Bio-degradable waste	2,632	kg/day		
2.	Non-Biodegradable waste + Inert waste	1,755	kg/day		
3.	STP sludge	15	Kg/day		
		Energy requirement			
		Sr.	Details		Unit
		1.	During Construction Phase	50	kVA
		2.	During Operation Phase		
			i) Connected load	4,973	kW
			ii) Demand load	6,604	kW
		Parking details			
		Sr.	Details		Unit
		1.	Cycle	7,076	Nos.
		2.	Two-Wheeler	7,076	Nos.
3.	Four-Wheeler	328	Nos.		
4.	Total Parking area	17,988	m ²		
		Connectivity	Railway: Chinchwad Railway Station 10.9 km from the project site. Airway: Pune Airport- 22.7 km from the project site. Roadway: Hinjewadi Kasrai road- 02 Km. Location Plan attached as Annexure IV		
1.3	What are the likely impacts of the proposed activity on the existing facilities adjacent to the proposed site? (Such as open spaces, community facilities, details of the existing landuse, disturbance to the local ecology).	The Township project was a well-planned activity result in organized open spaces and green areas. The biodiversity in the area is increase due to green areas. Community cum recreational facilities developed hence no stress on the existing facility is anticipated.			
1.4.	Will there be any significant land disturbance resulting in erosion, subsidence & instability? (Details of soil type, slope analysis, vulnerability to subsidence, seismicity etc may be given).	The main reasons for erosion are overexploitation of groundwater, instable slopes, landslides etc. The construction involved cutting and filling operations. The project involved construction of roads and development of green areas, which reduce the chances of erosion and subsidence. Subsidence was not anticipated, as ground water were not be used as a source of water supply. As per seismic-zoning map of India, the project site falls under zone III. Structural design requirements has been as per zone III.			

Application for Environmental Clearance for Residential Project "Xrbai Hinjewadi Special Township"

1.5	Will the proposal involve alteration of natural drainage systems? (Give details on a contour map showing the natural drainage near the proposed project site)	The project is planned in such a manner that it was not alter the existing drainage pattern of the area.
1.6	What are the quantities of earthwork involved in the construction activity-cutting, filling, reclamation etc. (Give details of the quantities of earthwork involved, transport of fill materials from outside the site, etc.)	The project area was required minor cutting and filling work. Excavation for foundation and road construction work had prominent activity. The debris and excavated soil Top soil was used for landscaping. The construction debris was used for backfilling & levelling of the plot & remaining was used in landscaping
1.7	Give details regarding water supply, waste handling etc during the construction period.	Supply Source: Water supply during construction phase was from water tanker Storage: Water for construction had been stored in a tank constructed temporarily at site Waste handling: Sanitation facilities like toilet blocks and bathrooms was provide for the construction workers and site staff and the sewage generated was collected and treated in a septic tank.
1.8	Will the low lying areas & wetlands get altered? (Provide details of how low lying and wetlands are getting modified from the proposed activity)	No wet lands and low-lying areas on the site.
1.9	Whether construction debris & waste during construction cause health hazard? (Give quantities of various types of wastes generated during construction including the construction labour and the means of disposal)	No health hazards. Minor quantity of construction debris had been generated which was used in backfilling and landscape. Construction waste was utilized at site for road paving and plinth filling.

2. WATER ENVIRONMENT

2.1	Give the total quantity of water requirement for the proposed project with the break up of requirements for various uses. How will the water requirement met? State the sources & quantities and furnish a water balance statement.	Detailed water utilization chart Enclosed as Annexure V																																																			
2.2	What is the capacity (dependable flow or yield) of the proposed source of water?	The water demand met from Local Authority																																																			
2.3	What is the quality of water required, in case, the supply is not from a municipal source? (Provide physical, chemical, biological characteristics with class of water quality)	<table><tr><th>Sr.</th><th>Parameters</th><th>Unit</th><th>Drinking water</th></tr><tr><td>1.</td><td>pH</td><td>-</td><td>6.5-8.7</td></tr><tr><td>2.</td><td>Colour (unit on Platinum Cobalt scale)</td><td>-</td><td>5</td></tr><tr><td>3.</td><td>Odour</td><td>-</td><td>Unobjectionable</td></tr><tr><td>4.</td><td>Turbidity</td><td>NTU</td><td>5</td></tr><tr><td>5.</td><td>Total Hardness (as CaCO₃)</td><td>mg/l</td><td>300</td></tr><tr><td>6.</td><td>Chlorides</td><td>mg/l</td><td>250</td></tr><tr><td>7.</td><td>Sulphates</td><td>mg/l</td><td>200</td></tr><tr><td>8.</td><td>Fluorides</td><td>mg/l</td><td>1</td></tr><tr><td>9.</td><td>Nitrates</td><td>mg/l</td><td>45</td></tr><tr><td>10.</td><td>Lead</td><td>mg/l</td><td>0.05</td></tr><tr><td>11.</td><td>Arsenic</td><td>mg/l</td><td>0.01</td></tr></table>				Sr.	Parameters	Unit	Drinking water	1.	pH	-	6.5-8.7	2.	Colour (unit on Platinum Cobalt scale)	-	5	3.	Odour	-	Unobjectionable	4.	Turbidity	NTU	5	5.	Total Hardness (as CaCO ₃)	mg/l	300	6.	Chlorides	mg/l	250	7.	Sulphates	mg/l	200	8.	Fluorides	mg/l	1	9.	Nitrates	mg/l	45	10.	Lead	mg/l	0.05	11.	Arsenic	mg/l	0.01
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Application for Environmental Clearance for Residential Project "Xrbai Hinjewadi Special Township"

2.4	How much of the water requirement can be met from the recycling of treated wastewater? (Give the details of quantities, sources and usage)	Treated water from Sewage treatment plant is used for flushing in toilet and gardening purpose. <table><tr><th>Sr.</th><th>Details</th><th></th><th>Unit</th></tr><tr><td>1.</td><td>Total sewage generated</td><td>1,579</td><td>m³/day</td></tr><tr><td>2.</td><td>Total STP capacity</td><td>1,600</td><td>m³/day</td></tr><tr><td>3.</td><td>Treated water recycled for flushing</td><td>658</td><td>m³/day</td></tr><tr><td>4.</td><td>Treated water recycled for gardening</td><td>73</td><td>m³/day</td></tr><tr><td>5.</td><td>Sludge generation</td><td>15</td><td>kg/day</td></tr></table>	Sr.	Details		Unit	1.	Total sewage generated	1,579	m ³ /day	2.	Total STP capacity	1,600	m ³ /day	3.	Treated water recycled for flushing	658	m ³ /day	4.	Treated water recycled for gardening	73	m ³ /day	5.	Sludge generation	15	kg/day
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2.5	Will there be diversion of water from other users? (Please assess the impacts of the project on other existing uses and quantities of consumption)	No diversion was anticipated.																								
2.6	What is the incremental pollution load from wastewater generated from the proposed activity? (Give details of the quantities and composition of wastewater generated from the proposed activity)	The total sewage of about 1,579 m³/day is generated from residential buildings. We provided separate STP to the composition of waste water is given in the table indicating the quality of raw waste water before treatment. <table><tr><th>Parameters</th><th>Values</th><th>Units</th></tr><tr><td>pH</td><td>7-8</td><td>mg/l</td></tr><tr><td>BOD</td><td>250 - 300</td><td>mg/l</td></tr><tr><td>COD</td><td>450 - 600</td><td>mg/l</td></tr><tr><td>O & G</td><td>10-20</td><td>mg/l</td></tr><tr><td>TSS</td><td>100-200</td><td>mg/l</td></tr></table> Mitigation measures: Domestic Effluent treated in the Sewage Treatment plant of capacity 1,600 m³/day. (1 no 650 m³/day & 1 no 950 m³/day)	Parameters	Values	Units	pH	7-8	mg/l	BOD	250 - 300	mg/l	COD	450 - 600	mg/l	O & G	10-20	mg/l	TSS	100-200	mg/l						
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2.7	Give details of the water requirements met from water harvesting? Furnish details of the facilities created.	Recharge pits were provided for rainwater harvesting within project area.																								
2.8.	What would be the impact of the land use changes occurring due to the proposed project on the runoff characteristics (quantitative as well as qualitative) of the area in the post construction phase on a long term basis? Would it aggravate the problems of flooding or water logging in any way?	There was no change of land use. The project had proper storm water drainage facility as per Strom Water Drain Remarks by concerned authority. So there was no problem of water logging due to this project.																								
2.9	What are the impacts of the proposal on the ground water? (Will there be tapping of ground water; give the details of ground water table, recharging capacity, and approvals obtained from competent authority, if any)	Water demand for the construction as well as operational phase was met from sources such as Local Authority Rainwater harvesting scheme were practiced for groundwater recharge, which have a positive impact on the ground water table.																								
2.10	What precautions/measures are taken to prevent the run-off from construction activities polluting land & aquifers? (Give details of quantities and the measures taken to avoid the adverse impacts)	To prevent degradation and maintain the quality of water source, adequate control measures have been provided to check the surface run-off, as well as uncontrolled flow of water into any water body. • Avoid excavation during monsoon season. • Rainwater harvesting can serve as a solution to water problem in worst case scenario. Following methods can increase efficiency of rainwater harvesting and recharging groundwater. • Storm water line and RWH all along the periphery of plot to prevent surface runoff. • Reduce and filter surface runoff. • Use vegetated swales and depressions to reduce runoff.																								

Application for Environmental Clearance for Residential Project "Xrbai Hinjewadi Special Township"

2.11	How is the storm water from within the site managed? (State the provisions made to avoid flooding of the area, details of the drainage facilities provided along with a site layout indication contour levels)	During rainy season, after the rainfall some part of the rainwater percolates into the ground and joins ground water table, a part is retained as soil moisture, some part is lost in evapotranspiration and the remaining part overflows as storm water runoff. The quantity of runoff reaching the sewers or drains is considerable as compared with sanitary sewage The project have proper storm water drainage facility as per Storm Water Drain Remarks by concerned authority. So there is no problem of water logging due to this project.
2.12	Will the deployment of construction labourers particularly in the peak period lead to unsanitary conditions around the project site (Justify with proper explanation)	No, the deployment of construction labourers was not led to any unsanitary condition. The construction labourers had been provided with temporary shelter shades within the project premises. Labour camp was provided with drinking water and sanitary facilities. Housekeeping was done in labour camp on regular basis.
2.13	What on-site facilities are provided for the collection, treatment & safe disposal of sewage? (Give details of the quantities of wastewater generation, treatment capacities with technology & facilities for recycling and disposal)	The Sewage Treatment Plant (STP) is designed to treat the raw waste water generated from project STP details are attached as Annexure VI
2.14	Give details of dual plumbing system if treated waste used is used for flushing of toilets or any other use.	Not applicable

3. VEGETATION

3.1	Is there any threat of the project to the biodiversity? (Give a description of the local ecosystem with it's unique features, if any)	There was no sensitive ecosystem present at site that was disturbed by the project, as existing land use in surrounding area is Residential
3.2	Will the construction involve extensive clearing or modification of vegetation? (Provide a detailed account of the trees & vegetation affected by the project)	No. There is very scanty vegetation of trees, grasses and shrubs along with very common fauna prevalent elsewhere in the area.
3.3	What are the measures proposed to be taken to minimize the likely impacts on important site features (Give details of proposal for tree plantation, landscaping, creation of water bodies etc. along with a layout plan to an appropriate scale)	About Green belt areas are provided for the project. The green belt is developed for control of pollution and aesthetic view of the complex.

4. FAUNA

4.1	Is there likely to be any displacement of fauna- both terrestrial and aquatic or creation of barriers for their movement? Provide the details.	No. The site and its surroundings do not support any habitat for any group of wild animals
4.2	Any direct or indirect impacts on the avifauna of the area? Provide details.	No. There was no direct or indirect impact on the avifauna of the area.
4.3	Prescribe measures such as corridors, fish ladders etc. to mitigate adverse impacts on fauna	Since the project had not any adverse impact on fauna hence mitigation measure not relevant

5. AIR ENVIRONMENT

5.1	Will the project increase atmospheric concentration of gases & result in heat islands? (Give details of background air quality levels with predicted values based on dispersion models taking into account the increased traffic generation as a result of the proposed constructions)	The Project result in negligible increase in the atmospheric concentrations of gases due to D.G. operations (backup power only) and the increased traffic. The project activity was not result in the formation of any heat islands, as it does not involve any significant change in the land use pattern or the concreting of areas.

Application for Environmental Clearance for Residential Project "Xrbai Hinjewadi Special Township"

5.2	What are the impacts on generation of dust, smoke, odorous fumes or other hazardous gases? Give details in relation to all the meteorological parameters.	Diesel generator sets operated for back-up power supply are identified as the only major sources of gaseous and particulate emission. Impact of vehicular is not significant. SO ₂ , SPM, NO _x and CO emissions are expected due to fuel combustion in generator sets.																				
5.3	Will the proposal create shortage of parking space for vehicles? Furnish details of the present level of transport infrastructure and measures proposed for improvement including the traffic management at the entry & exit to the project site.	<table><tr><th>Sr.</th><th>Details</th><th></th><th>Unit</th></tr><tr><td>1.</td><td>Cycle</td><td>7,076</td><td>No.</td></tr><tr><td>2.</td><td>Two-Wheeler</td><td>7,076</td><td>No.</td></tr><tr><td>3.</td><td>Four-Wheeler</td><td>328</td><td>No.</td></tr><tr><td>4.</td><td>Total Parking area</td><td>17,988</td><td>m²</td></tr></table>	Sr.	Details		Unit	1.	Cycle	7,076	No.	2.	Two-Wheeler	7,076	No.	3.	Four-Wheeler	328	No.	4.	Total Parking area	17,988	m ²
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5.4	Provide details of the movement patterns with internal roads, bicycle tracks, pedestrian pathways, footpaths etc., with areas under each category.	Internal roads, footpaths/ pedestrian pathways had within the residential project.																				
5.5	Will there be significant increase in traffic noise & vibrations? Give details of the sources and the measures proposed for mitigation of the above.	Considering the addition of vehicles due to the project with the existing roads and vehicles plying on them, there are marginal increase in the noise levels but was result in an impact.																				
5.6	What will be the impact of DG sets & other equipment on noise levels & vibration in & ambient air quality around the project site? Provide details.	DG set used in construction and operation phase only in case of power failure. The DG Sets are as per the guide lines laid down by EPR for specific noise emission standards. Measures shall be taken for reduction of noise by using acoustic enclosures. Noise emissions are expected from various construction equipment and machinery but was not result in an impact.																				

6. AESTHETICS

6.1	Will the proposed constructions in any way result in the obstruction of a view, scenic amenity or landscapes? Are these considerations taken into account by the proponents?	The land use of the site had mainly residential. The project was not result in obstruction of view, scenic amenity or landscape. However, the buildings are developed in such a way that the organised open areas and landscaped areas are at the centre so that all can enjoy the green areas.
6.2	Will there be any adverse impacts from new constructions on the existing structures? What are the considerations taken into account?	Internal roads, footpaths/ pedestrian pathway was developed within the special township project.
6.3	Whether there are any local considerations of urban form & urban design influencing the design criteria? They may be explicitly spelt out.	The project had been designed as per the Regional Planning DCR PMRDA
6.4	Are there any anthropological or archaeological sites or artefacts nearby? State if any other significant features in the vicinity of the proposed site have been considered.	No anthropological or archaeological sites or artefacts are found near the site area.

7. SOCIO-ECONOMIC ASPECTS

7.1	Will the proposal result in any changes to the demographic structure of local population? Provide the details.	No. Majority of the labour recruited were from local area and only minimal skilled workers would be from outside, which was anticipated to be very small and was not alter the existing demographic profile of the area.
7.2	Give details of the existing social infrastructure around the proposed project.	The Project comes in Residential area and has all basic infrastructural facilities as schools, medical establishments, shops, etc.
7.3	Will the project cause adverse effects on local communities, disturbance to sacred sites or other cultural values? What are the safe guards proposed?	No. The Project have positive impact on local communities. Employment opportunities for skilled and unskilled workers are provided within project area.

8. BUILDING MATERIALS

8.1	May involve the use of building materials with high-embodied energy. Are the construction materials produced with energy efficient processes? (Give details of energy conservation measures in the selection of building materials and their energy efficiency)	The buildings have Sewage Treatment Plant, Rainwater harvesting systems, Solar hot water system, Solar lighting in common areas and RG.																				
8.2	Transport and handling of materials during construction may result in pollution, noise & public nuisance. What measures are taken to minimize the impacts?	Adequate mitigation measures were adopted. Construction equipment with idling control technologies were used. Regular maintenance of the equipment's was carried out. The construction activities were carried out during the daytime only. The workers exposed to high noise generating provided with earplugs earmuffs. As per Environmental Management Plan.																				
8.3	Are recycled materials used in roads and structures? State the extent of savings achieved?	Fly ash in cement concrete. Typically, 20-25 % of fly ash was substituted in cement.																				
8.4	Give details of the methods of collection, segregation & disposal of the garbage generated during the operation phases of the project.	The bio-degradable and non-bio degradable waste is segregated at source of waste generation. Total solid waste generation: 4,387 kg/day <table><tr><th>Sr.</th><th>Details</th><th></th><th>Unit</th></tr><tr><td></td><td>Total solid waste</td><td>4,387</td><td>kg/day</td></tr><tr><td>1.</td><td>Bio-degradable waste</td><td>2,632</td><td>kg/day</td></tr><tr><td>2.</td><td>Non-Biodegradable waste + Inert waste</td><td>1,755</td><td>kg/day</td></tr><tr><td>3.</td><td>STP sludge</td><td>15</td><td>Kg/day</td></tr></table>	Sr.	Details		Unit		Total solid waste	4,387	kg/day	1.	Bio-degradable waste	2,632	kg/day	2.	Non-Biodegradable waste + Inert waste	1,755	kg/day	3.	STP sludge	15	Kg/day
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9. ENERGY CONSERVATION

9.1	Give details of the power requirements, source of supply, backup source etc. What is the energy consumption assumed per square foot of built-up area? How have you tried to minimize energy consumption?	Source of power supply: MSEDCL DG Set is provided as emergency backup. <table><tr><th>Sr.</th><th>Details</th><th></th><th>Unit</th></tr><tr><td>1.</td><td>During Construction Phase</td><td>50</td><td>kVA</td></tr><tr><td>2.</td><td>During Operation Phase</td><td></td><td></td></tr><tr><td></td><td>i) Connected load</td><td>4,973</td><td>kW</td></tr><tr><td></td><td>ii) Demand load</td><td>6,604</td><td>kW</td></tr></table>	Sr.	Details		Unit	1.	During Construction Phase	50	kVA	2.	During Operation Phase				i) Connected load	4,973	kW		ii) Demand load	6,604	kW
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9.2	What type of, and capacity of, power back-up to you plan to provide?	DG Set is provided as emergency backup for lighting in common areas, lifts and fire pump etc. DG set capacity & numbers are: Number of Transformer & Capacity: 9 nos. X 630 KVA & 1no 500 kVA Oil type Transformer Number of Diesel Generator & Capacity: 1nos. X 500 KVA & 1 no x 125 kVA																				
9.3	What are the characteristics of the glass you plan to use? Provide specifications of its characteristics related to both short wave and long wave radiation?	Single glazed glass provided for residential project.																				
9.4	What passive solar architectural features are being used in the building? Illustrate the applications made in the proposed project.	The building structure were designed in such a way that solar water heating can be utilised maximum for day time.																				
9.5	Does the layout of streets & buildings maximise the potential for solar energy devices? Have you considered the use of street lighting, emergency lighting and solar hot water systems for use in	We had provided solar water heating system.																				

	the building complex? Substantiate with details.										
9.6	Is shading effectively used to reduce cooling/heating loads? What principles have been used to maximize the shading of Walls on the East and the West and the Roof? How much energy saving has been affected?	Yes. Shading hds been effectively used to reduce the cooling loads.									
9.7	Do the structures use energy-efficient space conditioning, lighting and mechanical systems? Provide technical details. Provide details of the transformers and motor efficiencies, lighting intensity and air-conditioning load assumptions? Are you using CFC and HCFC free chillers? Provide specifications.	Yes, rooms were so dimensioned that effective air conditioning can be carried out. Public areas were cooled by natural ventilation. The design of the building is such that maximum use of natural ventilation can be achieved. The walls, roofs and openings were so designed that influx of heat is minimum.									
9.8.	What are the likely effects of the building activity in altering the micro-climates? Provide a self assessment on the likely impacts of the proposed construction on creation of heat island & inversion effects?	Heat emission from the project can be from the following sources: Heat absorbed from the concrete structures, heat generated from equipments/ appliances, and due to increased population in the project. However the heat generated was not be significant and dissipated in the lush greens and open areas provided within. Hence it concluded that the heat island effect has not be a concern for the project.									
9.9.	What are the thermal characteristics of the building envelope? (a) roof; (b) external walls; and (c) fenestration? Give details of the material used and the U-values or the R values of the individual components.	<table border="1"> <tr> <td align="center" colspan="3">U value in Watts/m² Kelvin</td></tr> <tr> <td>Roof</td><td align="center">0.409</td><td>Watts/m² Kelvin</td></tr> <tr> <td>Wall</td><td align="center">0.352</td><td>Watts/m² Kelvin</td></tr> </table>	U value in Watts/m ² Kelvin			Roof	0.409	Watts/m ² Kelvin	Wall	0.352	Watts/m ² Kelvin
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Wall	0.352	Watts/m ² Kelvin									
9.10	What precautions & safety measures are proposed against fire hazards? Furnish details of emergency plans.	The firefighting system compromise of hydrant system and portable extinguishers. External yard hydrants were installed around all buildings in the complex in galvanized steel fire hose cabinet (weather proof). All external yard hydrants were at one-meter height from finished ground level as per National Building Code. External fire hydrants were located such that no portion of any building is more than 40 m from a hydrant, and the external hydrants are not vulnerable to mechanical or vehicular damage.									
9.11	If you are using glass as wall material provides details and specifications including emissivity and thermal characteristics.	We were used glass for windows only. We provided single clear glass.									
9.12	What is the rate of air infiltration into the building? Provide details of how you are mitigating the effects of infiltration.	The following measures adopted to mitigate the effects of infiltration: - Aluminium windows with rubber gasket, so that the windows are sealed, provided. - Maximum day light and ventilation.									
9.13	To what extent the non-conventional energy technologies are utilised in the overall energy consumption? Provide details of the renewable energy technologies used.	Non-conventional energy system is provided. We provided solar water heating system.									

10. Environment Management Plan

	The Environment Management Plan would consist of all mitigation measures for each item wise activity to be undertaken during the construction, operation and the entire life cycle to minimize adverse environmental impacts as a result of the activities of the project. It would also delineate the environmental monitoring plan for compliance of various environmental regulations. It will state the steps to be taken in case of emergency such as accidents at the site including fire.	Enclosed as Annexure VII

Annexure I

Environment clearance received vide no. No.21-153/2006-IA-III dated 27th December,2006

No. 21-153/2006-IA -III
Government of India
Ministry of Environment and Forests
(I.A. Division)

Paryayaran Bhawan,
CGO Complex, Lodhi Road
New Delhi 110003
Dated: December 27, 2006

To

Mr. Rahul R. Nahar
M/s Eiffel Infocity Pvt. Ltd.
125/6/7, Patli Plaza,
First Floor, Near Mitra Mandal Chowk,
Pune-411009

**Subject: Environmental Clearance for construction of proposed township
"Silicon City" at Vill.- Dattawadi, Tal. -Mulshi, Distt.- Pune,
Maharashtra.**

Sir,

I am directed to refer to your application seeking prior environmental clearance for the above project under the EIA Notification 1994 as amended on July 7, 2004. The above proposal has been appraised as per prescribed procedure on the basis of the mandatory documents enclosed with the application viz., the Questionnaire, EIA, EMP, Public Hearing proceedings and the additional clarifications furnished in response to the observations of the Expert Appraisal Committee (EAC) constituted by the competent authority in its meeting held on 13-14 October, 2006.

2. The project proponent is proposing for development of township "Silicon City" at Vill.- Dattawadi, Tal. -Mulshi, Distt.- Pune, Maharashtra. The project involves development of township on a total plot area of 97.28 Ha. The township will have 1000 plots which will be sold to individuals for construction of bungalows. Total area for construction as per approved plan is 48.64 Ha. Total water requirement will be 60 cu. m. /day and total wastewater generated will be appx. 38 cu. m./ day. A common sewage treatment plant will be provided to treat sewage. The solid waste generation will be 1.0mt/d. The solid waste management will be entrusted to a private operator. However, composting of biodegradable component will be encouraged.

3. The EIA report submitted along with the application predicts that the impact of the project on the air quality will be negligible. There will be slightly adverse impact on air quality and soil quality during construction phase. There will be no negative impact on water quality of the receiving water body during construction as well as operation phase. There will be positive impact on land use pattern due to landscaping and greenbelt development. Plantation of

trees and development of recreational area, surrounding area will have positive impact on overall land use.

4. The EAC after due consideration of the relevant documents submitted by the project proponent, responses to the public concerns expressed during the public hearing and additional clarifications furnished in response to its observations have recommended the grant of environmental clearance for the project mentioned above subject to compliance with the EMP and other stipulated conditions. Accordingly, the Ministry hereby accords necessary environmental clearance for the project subject to the strict compliance with the specific and general conditions mentioned below:

PART A- SPECIFIC CONDITIONS

I. Construction Phase

i. All required sanitary and hygienic measures should be in place before starting construction activities and to be maintained throughout the construction phase.

ii. Soil and ground water samples will be tested to ascertain that there is no threat to groundwater quality by leaching of heavy metals and other toxic contaminants.

iii. A First Aid Room will be provided at the project site both during construction and operation of the project.

iv. Adequate drinking water and sanitary facilities should be provided for construction workers at the site. The safe disposal of wastewater and solid wastes generated during the construction phase should be ensured.

v. Disposal of muck including excavated material during construction phase should not create any adverse effects on the neighboring communities and be disposed off taking the necessary precautions for general safety and health aspects of people.

vi. Diesel power generating sets used during construction phase should be of "enclosed type" to prevent noise and should conform to rules made under Environment (Protection) Act 1986, prescribed for air and noise emission standards.

vii. Ambient noise levels should conform to residential standards both during day and night when measured at boundary wall of the premises. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase.

viii. Vehicles hired for bringing construction material at site should be in good condition and should have valid "pollution under check"(PUC) certificate and to conform to applicable air and noise emission standards.

ix Construction spoils including bituminous material and other hazardous materials must not be allowed to contaminate watercourses and the dump sites for such material must be secured so that they should not leach into the ground water.

x Any hazardous waste generated during construction phase should be disposed of as per applicable Rules & norms with necessary approvals of the Maharashtra State Pollution Control Board

xi Regular supervision of the above and other measures for monitoring should be in place all through the construction phase so as to avoid disturbance to the surroundings.

II. Operation Phase

The environmental clearance recommended to the project is subject to the specific conditions as follows:

i. Necessary permission of competent authority shall be taken to store diesel in the premises for operation of DG set.

ii. Diesel power generating sets proposed as source of back up power for lifts and common area illumination should be of "enclosed type" and conform to rules made under Environment (Protection) Act 1986, prescribed for air and noise emission standards as per CPCB guidelines. Exhausts should be discharged by stack, raised to 4 meters above the rooftop.

iii. During nighttime the noise levels measured at the boundary of the building shall be restricted to the permissible levels to comply with the prevalent regulations.

iv. Noise barriers should be provided at appropriate locations so as to ensure that the noise levels do not exceed the prescribed standards.

v. Weep holes in the compound walls shall be provided to ensure natural drainage of rainwater in the catchment area.

vi. The sewage treatment plants should be certified by an independent expert for efficiency as well as adequacy and should submit a report in this regard to the Ministry before the project is commissioned for operation. The wastewater should be treated to tertiary level and after treatment reused for flushing of toilets and gardening. Discharge of treated sewage, if any, shall conform to the norms & standards prescribed by Maharashtra State Pollution Control Board.

vii. Oil & Grease trap shall be provided to remove oil and grease from the surface run off and suspended matter shall be removed in a settling tank before its utilization for rainwater harvesting.

viii. The solid waste generated should be properly collected & segregated. Wet garbage should be composted and dry/inert solid waste should be disposed of for land filling.

ix Any hazardous waste including biomedical waste should be disposed of as per applicable Rules & norms with necessary approvals of the Maharashtra State Pollution Control Board.

x The green belt design along the periphery of the plot shall achieve attenuation factor conforming to the day and night noise standards prescribed for residential land use. The open spaces inside the plot should be suitably landscaped and covered with vegetation of indigenous variety.

xi Incremental pollution loads on the ambient air quality, noise and water quality should be periodically monitored after commissioning of the project.

xii. The ground water levels and its quality should be monitored regularly.

xiii. A Report on the energy conservation measures should be prepared incorporating details about building materials & technology, R & U Factors etc and submitted to the Ministry in three months time.

xiv. The values of R & U for the building envelope should meet the requirements of the hot & humid climatic location. Details of the building envelope should be worked out and furnished in three months time.

PART - B. GENERAL CONDITIONS

i) The environmental safeguards contained in the EIA Report should be implemented in letter and spirit.

ii) Provision should be made for the supply of kerosene or cooking gas and pressure cooker to the laborers during construction phase.

iii) All the laborers to be engaged for construction works should be screened for health and adequately treated before the issue of work permits.

iv) 6 monthly monitoring reports should be submitted to the Ministry and its Regional Office.

5. Officials from the Regional Office of MOEF, Bhopal who would be monitoring the implementation of environmental safeguards should be given full cooperation, facilities and documents / data by the project proponents during their inspection. A complete set of all the documents submitted to MoEF should be forwarded to the CCF, Regional office of MOEF, Bhopal.

6. In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry.

7. The Ministry reserves the right to add additional safeguard measures subsequently, if found necessary, and to take action including revoking of the environment clearance under the provisions of the Environment (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time bound and satisfactory manner.

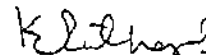
8. All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department (if required), CRZ Regulations etc. shall be obtained by project proponents from the competent authorities.

9. A copy of the environmental clearance letter would be marked to the local NGO(s), if any, from whom suggestion/representation were received at the time of public hearing.

10. The project proponent should advertise in at least two local Newspapers widely circulated in the region, one of which shall be in the vernacular language informing that the project has been accorded environmental clearance and copies of clearance letters are available with the Maharashtra State Pollution Control Board and may also be seen on the website of the Ministry of Environment and Forests at <http://www.envfor.nic.in>. The advertisement should be made within 7 days from the day of issue of the clearance letter and a copy of the same should be forwarded to the Regional office of this Ministry at Bhopal.

11. These stipulations would be enforced among others under the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification, 2006.

12. The project authority will enter in to MOU with all buyers of the property, flats/shops etc. to ensure operation and maintenance of the assets handed over to the society formed by the residents/owners of the buildings.


(K.C. RATHORE)

Additional Director (IA)
rathore27@yahoo.com
Tele: 24368526

Copy to:-

1. The Secretary, Department of Environment, Government of Maharashtra, New Administrative Building, 15th Floor, Opp. Mantralaya, Mumbai.
2. The Member Secretary, Maharashtra State Pollution Control Board, Kalptaru Point, 3rd Floor, Near Sion Circle Opp. Cine Planet Cinema, Sion(E), Mumbai.
3. The CCF, Regional Office, Ministry of Environment & Forests, Bhopal.
4. IA - Division, MOEF, New Delhi - 110001.
5. Guard file.

(K. C. RATHORE)
Additional Director (IA)

Annexure II**Area Statement**

Sr.	Details	Sector Area – R 22-28	Sector Area – R 29	Total Sector area	Unit
1.	Total Sector area	79,109	38,123	1,17,232	m²
2.	FSI area	75,212	68,031	1,43,242	m²
3.	Non FSI area	17,289	15,348	32,637	m²
4.	Total construction area	92,501	83,378	1,75,879	m²

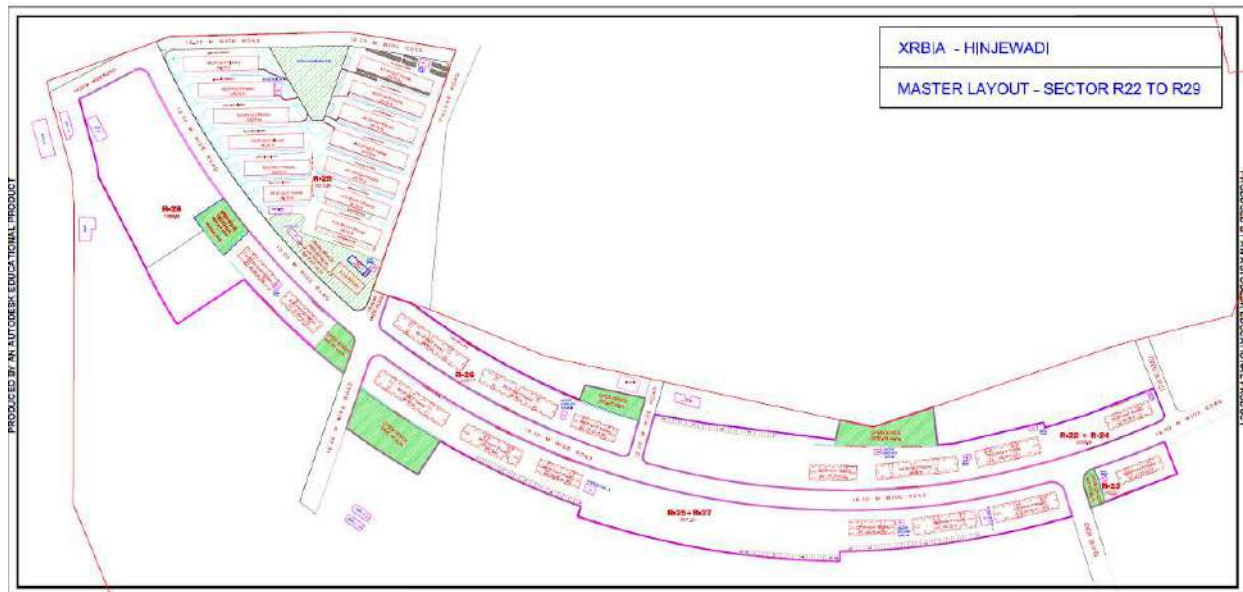
Building configuration

Sr.	Building Name	Number of floors	Total No of Flats (no.)	Population
	Sector I			
1	A1	P+G+7	64	320
2	A2	P+G+7	96	480
3	A3	P+G+7	112	560
4	A4	P+G+7	112	560
5	A5	P+G+7	112	560
6	A6	P+G+7	112	560
7	A7	P+G+7	176	704
8	A8	P+G+7	176	704
9	A9	P+G+7	160	640
10	A10	P+G+7	160	640
11	A11	P+G+7	112	560
12	A12	P+G+7	96	480
13	A13	P+G+7	80	480
	Total		1568	7248
	Club house	G		
	Sector II			
14	A14	P+G+8	72	360
15	A15	P+G+8	72	360
16	B1	P+G+7	176	704
17	B2	P+G+7	176	704
18	B3	P+G+7	64	320
19	B6	P+G+7	64	320
20	B7	P+G+7	80	480
21	B8	P+G+7	176	704
22	C2	P+G+7	64	320
23	C3	P+G+7	176	704
24	C4	P+G+7	80	480

Application for Environmental Clearance for Residential Project "Xrbai Hinjewadi Special Township"				
25	C5	P+G+7	80	480
26	C6	P+G+7	80	480
27	C7	P+G+7	64	320
28	D1	P+G+7	64	320
29	D6	P+G+7	64	320
	Total		1552	7376

Annexure III

Master Plan



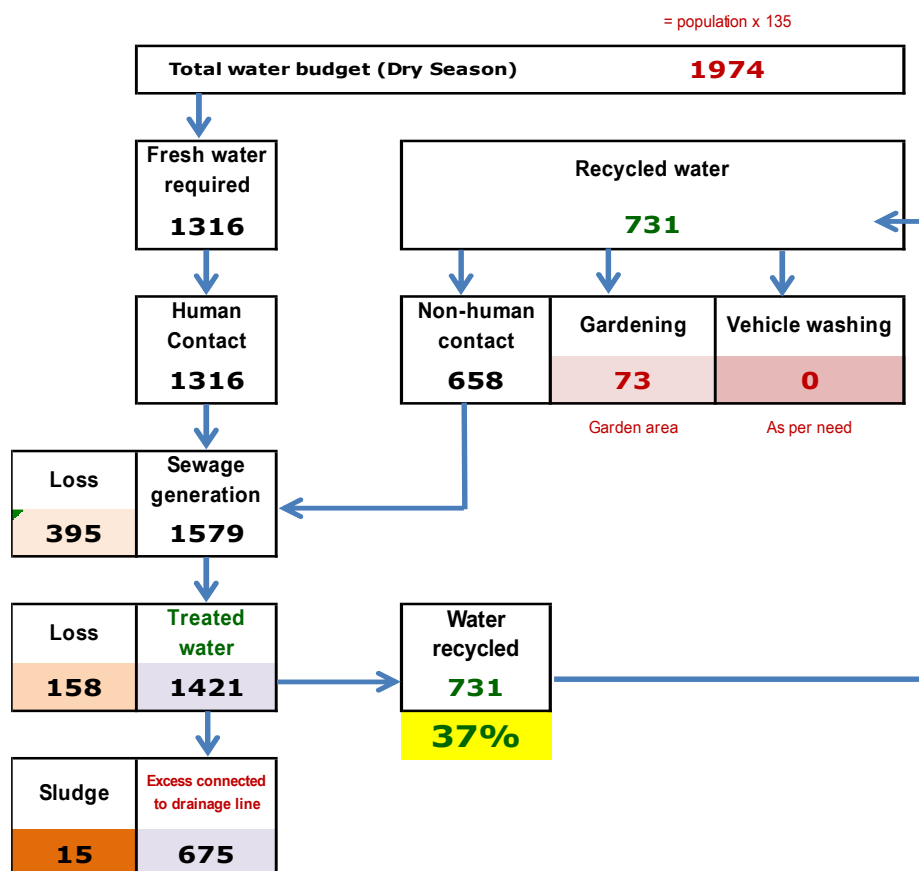
Annexure IV

Location Plan



Annexure V

Water utilization Statement



	Dry Season	Wet Season
Total water budget	1,974	1,974
Fresh water requirement	1,316	1,316
Human contact	1,316	1,316
Non-human contact	658	658
Gardening	73	15
Vehicle washing	0	0
Losses (total) & sludge	568	568
Sewage generation	1,579	1,579
Treated water	1,421	1,421
Water recycled	731	673
Excess connected to drainage line	675	733
% recycled	37	34

Rounded off to Integer values

Annexure VI

Sewage Treatment Plant

Calculation for STP Capacity:

Total Estimated population: 14,624 no.

Total water demand: 19,742 m³/day

Total sewage generation: 1,579 m³/day

STP Capacity: 1600 m³/day (2 no of STP provided having capacity 1 no 650 m³/day & 1 no 950 m³/day)

The expected characteristics of raw sewage and treated sewage are given below-

Sr.	Parameters	Raw Sewage	Treated Sewage
1	pH	6.5 - 7.5	7.0 - 8.5
2	Suspended Solids	100 – 200 mg/l	<10 mg/l
3	BOD (3 days 28°C)	280 – 350 mg/l	<20 mg/l
4	COD	500 – 600 mg/l	<30 mg/l
5	Oil & Grease	30 – 60 mg/l	-

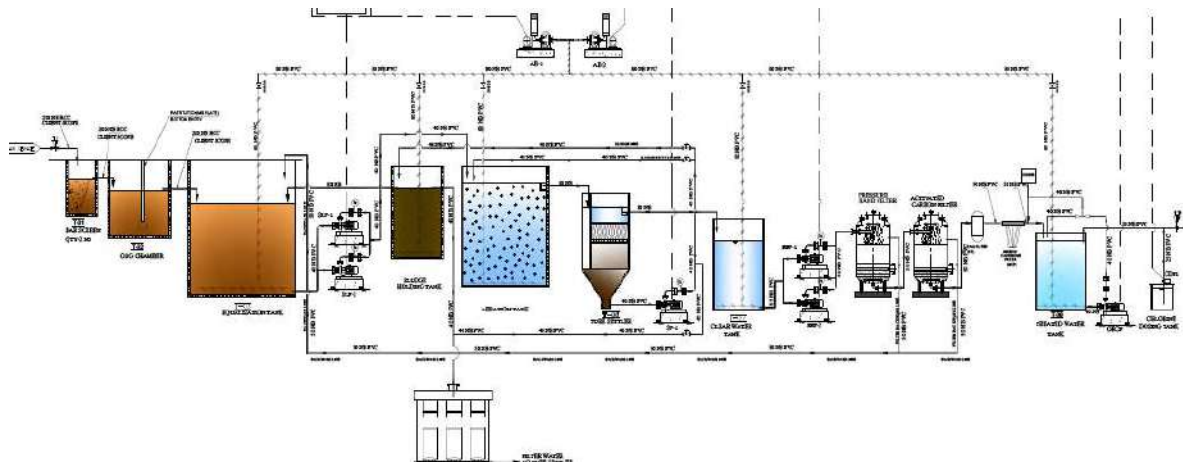
Expected Treatment:

- The Sewage from the building along with waste would be treated in sewerage treatment plant
- The sewerage treatment plant shall be designed to treat combined sewage (i.e. soil and wastewater). The treatment plant shall be compact type with minimum 2.4 m headroom above maximum water level (platform level) for maintenance. The process of treatment shall be divided into three parts
 - Primary Treatment
 - Secondary Treatment
 - Tertiary Treatment
- The treatment shall be extended aeration with Activated Sludge Process. The air shall be distributed through diffused aeration system single coarse bubble and fine pore diffusers. After the tertiary treatment, treated effluent is used for landscape irrigation & toilet flushing purpose.

Units and its function

Name of the Unit	Purpose
Bar Screen Chamber	For removing unwanted floating materials
Equalization Tank	To even out the flow variations, and continuous uniform mixing operations with coarse bubble.
Aeration Tank	Activated Sludge Process for developing the bacterial culture, which stabilizes the waste aerators.
Secondary clarifier/Plate settler	To separate out the solids from the treated sewage, and to separate clear supernatant water, Clarifloculator has been proposed with flash mixer to add coagulant to allow more settlement of fine particles.
Intermediate Tank	To collect the supernatant clear water from the settling tank for further treatment.
Filter Press	A Sludge holding tank has been provided with filter press for dewatering sludge. Sludge cakes shall be used as manure.
Pressure Sand Filter	To filter out minute suspended solids if any in the treated water.
Activated Carbon Filter	To remove color and Odor if any in the filtered water.
Final holding tank	To collect the final treated water from the outlet of Activated carbon filter for reuse

STP Flow Sheet



Annexure VII

Environmental Management Plan during Construction Phase

Sr.	Environmental Components	Predicted Impacts	Probable source of Impact	Mitigation Measures	Remarks
Construction phase					
1.	Ambient Air Quality	Negative impact inside construction site premises. No negative impact outside site.	Dust emissions from excavation, air emissions from machinery and other construction activities at site.	Dust reduction measures such as road watering. Periodic maintenance of construction equipment. Use of good quality fuels. Use of Personal Protective Equipments	Impacts are temporary during construction phase. Impacts has been confined to short distances, as coarse particles will settle within the short distance from activities.
2.	Noise	Negative impact near noise generation sources inside premises. No significant impact on ambient noise levels in the surrounding area.	Noise generated from construction activities and operation of construction equipment and DG sets	Use of well-maintained equipment. Heavy construction activity limited to day- time hours only. Use of noise mufflers in and construction vehicle. Use of earplugs/muffs by construction staff.	Temporary impacts during construction phase. No blasting or other high noise activities envisaged.
3.	Water	No significant negative impact.	Surface runoff from project site. Oil/fuel and waste spills. Improper debris disposal. Discharge of sewage from labour camp.	Silt fences to reduce run-off Secondary containment and dykes in material storage areas. Sewage treatment in septic tanks.	Labour has employed to reduce size of labour camps. No perennial surface water resource adjacent to site. No excavation work is carried out.
4.	Land	Minor negative impact	Excavation, Construction debris, waste from labour camp.	Reutilization and recycling of construction debris. Waste from labour camps is collected and composted on site. Non compostable waste is transported to landfill site. Topsoil is conserved and used for landscaping in functional phase.	-
5.	Aesthetics	Minor negative impacts	Construction activities and Excavation	The impacts has been compensated by extensive tree plantation and gardening in the use phase.	Short term impact restricted only in the initial stages of construction.

Environmental Management Plan during Functional Phase

Sr.	Environmental Components	Predicted Impacts	Probable Source of Impact	Mitigation Measures	Remarks
Functional phase					
1.	Ambient Air Quality	Minor Negative impact	Particulate and gaseous emissions from DG sets and vehicle movement	Use of low sulphur good fuel Periodic maintenance of DG sets. Use of CNG/LPG as a fuel encouraged.	200 kVA DG set used.
2.	Noise	Minor negative impact inside premises.	Noise from vehicle movement and operation of diesel generator sets during power failure.	Housing of DG sets in buildings with appropriate acoustics. Traffic management measures to reduce noise. Appropriate trees which act as noise barriers planted in the premises and along roadside.	--
3.	Water	No significant adverse impact	Oil/ fuel and waste spills in vehicle parking area. Discharge of sewage. Discharge of contaminated storm water	Sewage water is treated and recycled. Rainwater harvesting and recharge of groundwater aquifer is proposed. Good housekeeping and storm water management followed.	Recycled water is used for gardening flushing purpose.
4.	Land	No negative impact	Storage and disposal of solid wastes. Discharge of sewage. Fuel and material spills.	Treatment and reuse of sewage water. Integrated waste management and spill control plan. Dry garbage is sent for recycling and wet garbage is composted.	Segregation of dry and wet garbage is done before disposal.
5.	Biological	Overall Positive impact	Habitat disturbance	Green spaces inside the premises help to compensate the earlier effect from vegetation. Landscaping and extensive plantation in the premises.	Landscaping help in reducing any adverse impacts on air and noise quality.
6.	Socio-economic	Overall positive impact	Increased job opportunity in household maintenance and ancillary services.	--	Positive and long-term impact
7.	Traffic Pattern	No significant Impact	The complex is likely to add moderately to the traffic flow considered during peak hour.	Traffic Management practises is employed. Adequate parking space provided in the premises.	

Brief Summary of project

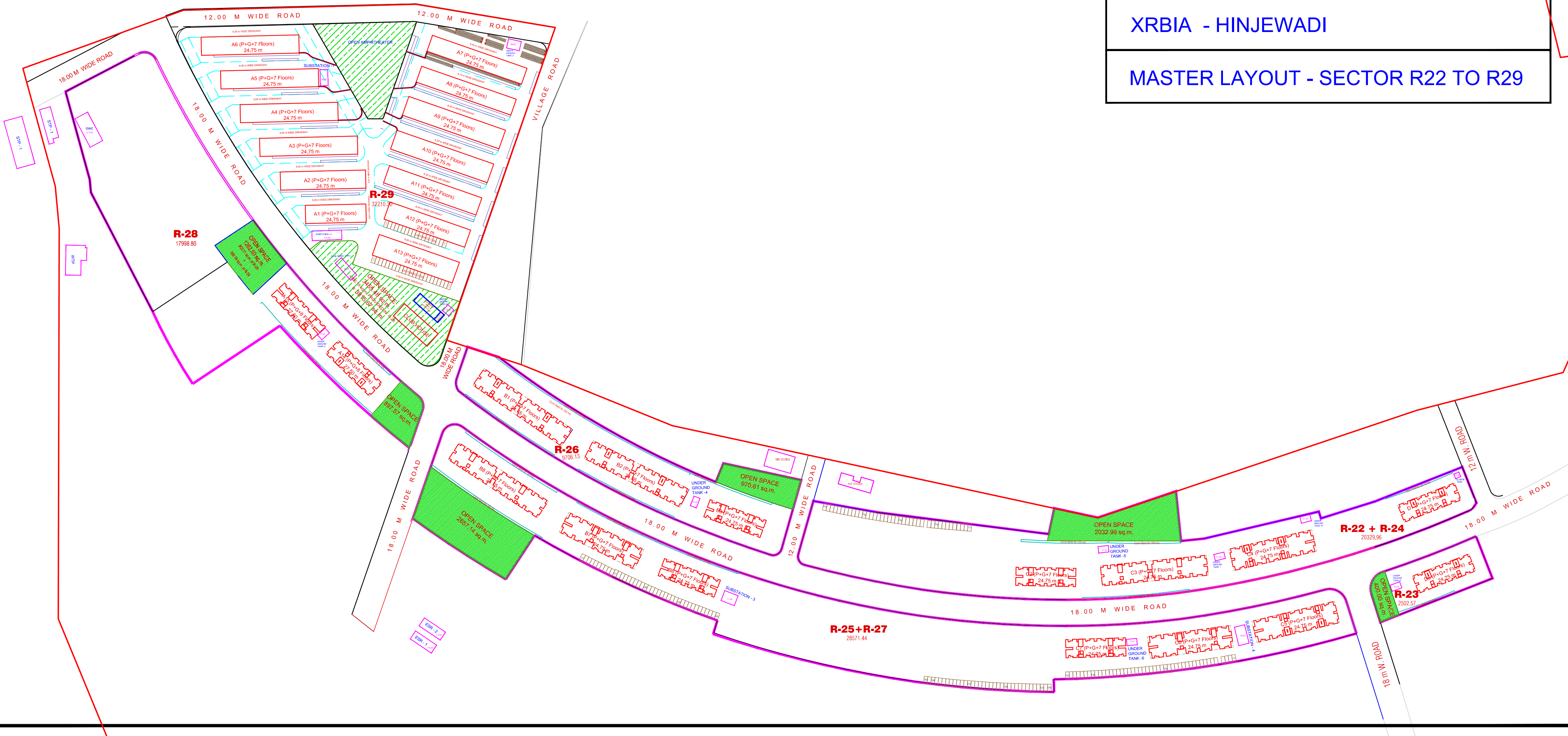
	Particular	Details										
1.	Name of Project	Residential project – “Xrbia Hinjewadi Special Township” - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune M/s. Xrbia Hinjewadi Developers Private Limited. (hereafter called as Project Proponent (PP) as Developers – Applicant)										
2.	Type of institution	Private										
3.	Company Name	M/s. Xrbia Hinjewadi Developers Private Limited. (hereafter called as Project Proponent (PP) as Developers – Applicant)										
4.	Name, Contact Number & address of Proponent	<table><tr><td>Name</td><td>Mr. Veer Bharti Kouls Authorized Person</td></tr><tr><td>Address</td><td>First Floor, Mantri House, 929, Fergusson College Rd, near Dnyaneshwar Paduka Chowk, Pune, Maharashtra 411004</td></tr><tr><td>Tel</td><td>02066858659</td></tr><tr><td>Mobile</td><td>99604 00259</td></tr><tr><td>Email ID</td><td>veerkouls@xrbia.com</td></tr></table>	Name	Mr. Veer Bharti Kouls Authorized Person	Address	First Floor, Mantri House, 929, Fergusson College Rd, near Dnyaneshwar Paduka Chowk, Pune, Maharashtra 411004	Tel	02066858659	Mobile	99604 00259	Email ID	veerkouls@xrbia.com
Name	Mr. Veer Bharti Kouls Authorized Person											
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Tel	02066858659											
Mobile	99604 00259											
Email ID	veerkouls@xrbia.com											
5.	Type of project	Special Township										
6.	New project / expansion in existing project / modernization / diversification in existing project	Fresh Case										
7.	Location of the project	Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune										
8.	Total Plot Area (sq. mtrs)	Sector Area – R 22-28 : 79,109 m ² Sector Area – R 29 : 38,123 m ² Total Sector Area – (R-29, R22-28) : 1,17,232 m ²										
9.	Net plot area (sq. mtrs)	0										
10.	Proposed FSI area (sq. mtrs)	FSI area – Sector R 22-28 : 75,212 m ² FSI area – Sector R 29 : 68,031 m ² Total FSI area – Sector (R-29, R22-28) : 1,43,242 m ²										
11.	Proposed Non FSI area (sq. mtrs)	Non FSI area – Sector R 22-28 : 17,289 m ² Non FSI area – Sector R 29 : 15,348 m ² Total Non FSI area – Sector (R-29, R22-28) : 32,637 m ²										
12.	Total Built up area (sq. mtrs)	Total BUA area – Sector R 22-28 : 92,501 m ² Total BUA area – Sector R 29 : 83,378 m ² Total BUA area – Sector (R-29, R22-28) : 1,75,879 m ²										

13.	Estimated cost of the project	Rs 347 Crores			
14.	No. of Buildings & its configurations				
	Sr.	Building Name	Number of floors	Total No of Flats (no.)	Population
		Sector R-29			
	1	A1	P+G+7	64	320
	2	A2	P+G+7	96	480
	3	A3	P+G+7	112	560
	4	A4	P+G+7	112	560
	5	A5	P+G+7	112	560
	6	A6	P+G+7	112	560
	7	A7	P+G+7	176	704
	8	A8	P+G+7	176	704
	9	A9	P+G+7	160	640
	10	A10	P+G+7	160	640
	11	A11	P+G+7	112	560
	12	A12	P+G+7	96	480
	13	A13	P+G+7	80	480
		Total		1568	7248
		Club house	G		
		Sector R-22-28			
	14	A14	P+G+8	72	360
	15	A15	P+G+8	72	360
	16	B1	P+G+7	176	704
	17	B2	P+G+7	176	704
	18	B3	P+G+7	64	320
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	23	C3	P+G+7	176	704
	24	C4	P+G+7	80	480
	25	C5	P+G+7	80	480
	26	C6	P+G+7	80	480
	27	C7	P+G+7	64	320
	28	D1	P+G+7	64	320
	29	D6	P+G+7	64	320
	Total		1552	7376	
15.	Green Belt (sq. mtrs)	Sector R-22-28 : 8,421 m ² Sector R-29 : 3,455 m ² Total RG area = 11,876 m ²			

16.	No of Building	Residential building - 29 No. Open Amphitheatre, Club house and Swimming pool																											
17.	Total tenements	3,120 nos.																											
18.	Number of expected residents / users	Total population : 14,624 nos.																											
19.	Total water requirement	1,974 m³/day																											
20.	Sewage and waste water	Sewage generation-1,579 m³/day STP Capacity-1,600 m³/day																											
21.	Solid waste management	<table><tr><th>Sr.</th><th>Details</th><th>Quantity</th><th>Unit</th></tr><tr><td>1.</td><td>Dry Waste</td><td>1,754</td><td>kg/day</td></tr><tr><td>2.</td><td>Wet Waste</td><td>2,632</td><td>kg/day</td></tr></table>				Sr.	Details	Quantity	Unit	1.	Dry Waste	1,754	kg/day	2.	Wet Waste	2,632	kg/day												
		Sr.	Details	Quantity	Unit																								
		1.	Dry Waste	1,754	kg/day																								
2.	Wet Waste	2,632	kg/day																										
22.	Energy Power supply	Source of Power Supply: MSEDCL																											
		<table><tr><th>Sr.</th><th>Description</th><th>Power</th><th>Unit</th></tr><tr><td>1.</td><td>During Operation phase</td><td></td><td></td></tr><tr><td></td><td>i) Max. Demand Load</td><td>4,973</td><td>kW</td></tr><tr><td></td><td>ii) Connected Load</td><td>6,604</td><td>kW</td></tr><tr><td>2.</td><td>DG Sets</td><td>1 no. 500 & 1 no. 125</td><td>kVA</td></tr><tr><td></td><td>Transformer</td><td>630 x 9 500 x 1</td><td>kVA</td></tr></table>				Sr.	Description	Power	Unit	1.	During Operation phase				i) Max. Demand Load	4,973	kW		ii) Connected Load	6,604	kW	2.	DG Sets	1 no. 500 & 1 no. 125	kVA		Transformer	630 x 9 500 x 1	kVA
		Sr.	Description	Power	Unit																								
		1.	During Operation phase																										
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2.	DG Sets	1 no. 500 & 1 no. 125	kVA																										
	Transformer	630 x 9 500 x 1	kVA																										
23.	Parking	<table><tr><th>Sr.</th><th>Description</th><th>Sector R-29</th><th>Sector R-22-28</th><th>Total</th><th>Unit</th></tr><tr><td>1.</td><td>4W</td><td>41</td><td>287</td><td>328</td><td>No</td></tr><tr><td>2.</td><td>2W</td><td>3071</td><td>4005</td><td>7076</td><td>No</td></tr><tr><td>3.</td><td>Cycle</td><td>3071</td><td>4005</td><td>7076</td><td>No</td></tr></table>				Sr.	Description	Sector R-29	Sector R-22-28	Total	Unit	1.	4W	41	287	328	No	2.	2W	3071	4005	7076	No	3.	Cycle	3071	4005	7076	No
		Sr.	Description	Sector R-29	Sector R-22-28	Total	Unit																						
		1.	4W	41	287	328	No																						
		2.	2W	3071	4005	7076	No																						
3.	Cycle	3071	4005	7076	No																								

XR BIA - HINJEWADI

MASTER LAYOUT - SECTOR R22 TO R29



STANDARD TERMS OF REFERENCE (TOR) FOR EIA/EMP REPORT FOR
PROJECTS/ACTIVITIES REQUIRING ENVIRONMENT CLEARANCE

**8(b):STANDARD TERMS OF REFERENCE FOR CONDUCTING
ENVIRONMENT IMPACT ASSESSMENT STUDY FOR TOWNSHIP/
AREA DEVELOPMENT PROJECTS AND INFORMATION TO BE
INCLUDED IN EIA/EMP REPORT**

- 1) Examine details of land use as per Master Plan and land use around 10 km radius of the project site. Analysis should be made based on latest satellite imagery for land use with raw images. Check on flood plain of any river.
- 2) Submit details of environmentally sensitive places, land acquisition status, rehabilitation of communities/ villages and present status of such activities.
- 3) Examine baseline environmental quality along with projected incremental load due to the project.
- 4) Environmental data to be considered in relation to the project development would be (a) land, (b) groundwater, (c) surface water, (d) air, (e) bio-diversity, (f) noise and vibrations, (g) socio economic and health.
- 5) Submit a copy of the contour plan with slopes, drainage pattern of the site and surrounding area. Any obstruction of the same by the project
- 6) Submit the details of the trees to be felled for the project.
- 7) Submit the present land use and permission required for any conversion such as forest, agriculture etc.
- 8) Submit Roles and responsibility of the developer etc for compliance of environmental regulations under the provisions of EP Act.
- 9) Ground water classification as per the Central Ground Water Authority.
- 10) Examine the details of Source of water, water requirement, use of treated waste water and prepare a water balance chart.
- 11) Rain water harvesting proposals should be made with due safeguards for ground water quality. Maximize recycling of water and utilization of rain water. Examine details.
- 12) Examine soil characteristics and depth of ground water table for rainwater harvesting.
- 13) Examine details of solid waste generation treatment and its disposal.
- 14) Examine and submit details of use of solar energy and alternative source of energy to reduce the fossil energy consumption. Energy conservation and energy efficiency.
- 15) DG sets are likely to be used during construction and operational phase of the project. Emissions from DG sets must be taken into consideration while estimating the impacts on air environment. Examine and submit details.
- 16) Examine road/rail connectivity to the project site and impact on the traffic due to the proposed project. Present and future traffic and transport facilities for the region should be analysed with measures for preventing traffic congestion and providing faster trouble free system to reach different destinations in the city.

STANDARD TERMS OF REFERENCE (TOR) FOR EIA/EMP REPORT FOR PROJECTS/ ACTIVITIES REQUIRING ENVIRONMENT CLEARANCE

- 17) A detailed traffic and transportation study should be made for existing and projected passenger and cargo traffic.
- 18) Examine the details of transport of materials for construction which should include source and availability.
- 19) Examine separately the details for construction and operation phases both for Environmental Management Plan and Environmental Monitoring Plan with cost and parameters.
- 20) Submit details of a comprehensive Disaster Management Plan including emergency evacuation during natural and man-made disaster.
- 21) Details of litigation pending against the project, if any, with direction /order passed by any Court of Law against the Project should be given.
- 22) The cost of the Project (capital cost and recurring cost) as well as the cost towards implementation of EMP should be clearly spelt out.
- 23) Any further clarification on carrying out the above studies including anticipated impacts due to the project and mitigative measure, project proponent can refer to the model ToR available on Ministry website "<http://moef.nic.in/Manual/Townships>".

addition / variation in total covered built-up construction area, on 16.02.2022. The case was discussed on the basis of the documents submitted and presentation made by the proponent. All issues relating to environment, including air, water, land, soil, ecology, biodiversity and social aspects were examined. The proposal is appraised as category 8(b) B1.

The office memorandum dated 28.01.2022 mentions SOP in clause no 10 and sub clause no (i) mentions that “ ***without prejudice to any other consequences, action to be initiated under section 15 read with section 19 of the Environment (Protection) Act, 1986 against all Violations.***

It is not clear that who will initiate the action under section 15 read with section 19 of Environment (Protection) act 1986. In violation cases the committee feels that proper procedure shall be laid down based on the of OM issued by MoEFCC. However Step 3 mentions about appraisal under EIA notification, 2006, the sub clause B (i) mentions about procedure of TOR to be issued in Violation cases.

Decision-

Considering above the application is submitted for further guidance in violation cases

23.	P-23	SIA/MH/MIS/72296/2022	Residential project – “Xrbia Hinjewadi Special Township” - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune M/s. Xrbia Hinjewadi Developers Private Limited. (hereafter called as Project Proponent (PP) as Developers – Applicant).

Representative of PP Mr. Veer Bharti Kouls was present during the meeting along with environmental consultant M/s. Mahabal Enviro Engineers Pvt. Ltd.

It is noted that, the PP has submitted the application for prior Environmental clearance for total plot area of 1,17,232 m², FSI area of 1,43,242 m², Non FSI area of 32,637 m² and total BUA of 1,75,879 m².

Secretary, SEAC-3

Page 117 of 175

Chairman, SEAC-3

TRUE COPY

Bgmbrisa

Brief information of the proposal is as below:

1.	Proposal No.	SIA/MH/MIS/72296/2022	
2.	Name of Project	Residential project – “Xrbia Hinjewadi Special Township” - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune by Xrbia Hinjewadi Developers Private Limited	
3.	Project Category	8(b) B1	
4.	Type of institution	Private	
5.	Project Proponent	Name	Mr. Veer Bharti Kouls Authorized Person
		Address	First Floor, Mantri House, 929, Fergusson College Rd, near Dnyaneshwar Paduka Chowk, Pune- 411004, Maharashtra
		Tel	02066858659
		Mobile	99604 00259
		Email ID	veerkouls@xrbia.com
6.	Consultant	Name	Mahabal Enviro Engineers Pvt. Ltd.
		Address	Plot F-7, Road 21, MIDC Wagle Estate, Thane West - 400604
		Tel	022 25823154
		Mobile	98211 27972
		Email ID	mahabal.thane@gmail.com
		Accreditation no.	QCI/NABET/ENV/ACO/21/1967
7.	Applied for	Environmental Clearance (Violation)	
8.	Details of previous EC	EC letter vide File no. 21-153/2008-IA-III dated 27.12.2006 granted by Government of India, MoEF	
9.	Location of the project	Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune	
10.	Latitude and Longitude	18°60'38.58" N 73°69'01.53" E	
11.	Total Plot Area (m ²)	Sector Area – R 22-28: 79,109 m ² Sector Area – R 29: 38,123 m ² Total Plot Area: (R-29, R22-28): 1,17,232 m ²	
12.	Deductions (m ²)	Nil	

13.	Net plot area (m ²)	Sector Area – R 22-28: 79,109 m ² Sector Area – R 29: 38,123 m ² Total Plot Area: (R-29, R22-28): 1,17,232 m ²				
14.	Proposed FSI area (m ²)	FSI area – Sector R 22-28: 75,212 m ² FSI area – Sector R 29: 68,031 m ² Total FSI area: 1,43,242 m ²				
15.	Proposed Non FSI area (m ²)	Non FSI area – Sector R 22-28: 17,289 m ² Non FSI area – Sector R 29: 15,348 m ² Total Non FSI area: 32,637 m ²				
16.	Proposed TBUA (m ²)	Total BUA area – Sector R 22-28: 92,501 m ² Total BUA area – Sector R 29: 83,378 m ² Total BUA area – Sector (R-29, R22-28): 1,75,879 m ²				
17.	Total Built up area (m ²) approved by Planning Authority till date	Total BUA area – Sector R 22-28: 92,501 m ² Total BUA area – Sector R 29: 83,378 m ² Total BUA area – Sector (R-29, R22-28): 1,75,879 m ²				
18.	Ground coverage (m ²) & %	17,987.63				
19.	Total Project Cost (Rs.)	Rs.347 Crore				
20.	CER as per MoEF&CC circular dated 01/05/2018	-				
21.	Details of Building Configuration:					
	Sr.	Building Name	Configuration	Total No of Flats (no.)	Population	Height (m)
		Sector R-29				
	1	A1	P+G+7	64	320	24.75
	2	A2	P+G+7	96	480	24.75
	3	A3	P+G+7	112	560	24.75
	4	A4	P+G+7	112	560	24.75
	5	A5	P+G+7	112	560	24.75
	6	A6	P+G+7	112	560	24.75
	7	A7	P+G+7	176	704	24.75
	8	A8	P+G+7	176	704	24.75
	9	A9	P+G+7	160	640	24.75
	10	A10	P+G+7	160	640	24.75
	11	A11	P+G+7	112	560	24.75
	12	A12	P+G+7	96	480	24.75

	13	A13	P+G+7	80	480	24.75																								
		Total		1,568	7,248																									
		Club house	G+1			8.70																								
		Sector R-22-28																												
	14	A14	P+G+8	72	360	27.5																								
	15	A15	P+G+8	72	360	27.5																								
	16	B1	P+G+7	176	704	24.75																								
	17	B2	P+G+7	176	704	24.75																								
	18	B3	P+G+7	64	320	24.75																								
	19	B6	P+G+7	64	320	24.75																								
	20	B7	P+G+7	80	480	24.75																								
	21	B8	P+G+7	176	704	24.75																								
	22	C2	P+G+7	64	320	24.75																								
	23	C3	P+G+7	176	704	24.75																								
	24	C4	P+G+7	80	480	24.75																								
	25	C5	P+G+7	80	480	24.75																								
	26	C6	P+G+7	80	480	24.75																								
	27	C7	P+G+7	64	320	24.75																								
	28	D1	P+G+7	64	320	24.75																								
	29	D6	P+G+7	64	320	24.75																								
		Total		1,552	7,376																									
22.		Total tenements		3,120 nos.																										
23.	Water Budget		<table><tr><td>Dry Season</td><td>(in m³/day)</td><td>Wet Season</td><td>(in m³/day)</td></tr><tr><td>Fresh water</td><td>1,316</td><td>Fresh water</td><td>1,316</td></tr><tr><td>Recycled (Flushing)</td><td>658</td><td>Recycled (Flushing)</td><td>658</td></tr><tr><td>Recycled (Gardening)</td><td>73</td><td>Recycled (Gardening)</td><td>15</td></tr><tr><td>Total Water requirement</td><td>1,974</td><td>Total Water requirement</td><td>1,974</td></tr><tr><td>Waste water generation</td><td>1,579</td><td>Waste water generation</td><td>1,579</td></tr></table>				Dry Season	(in m ³ /day)	Wet Season	(in m ³ /day)	Fresh water	1,316	Fresh water	1,316	Recycled (Flushing)	658	Recycled (Flushing)	658	Recycled (Gardening)	73	Recycled (Gardening)	15	Total Water requirement	1,974	Total Water requirement	1,974	Waste water generation	1,579	Waste water generation	1,579
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24.	Water Storage Capacity for Firefighting / UGT										
25.	Source of Water	Pune Municipal Corporation (PMC)									
26.	Rainwater Harvesting (RWH)	7 no. of Recharge pits Recharge pits size: 2m × 2m × 2m									
27.	Sewage and waste water	Sewage generation: 1,579 m ³ /day STP Capacity: 1,600 m ³ /day									
28.	Solid Waste Management during Construction Phase	Not applicable									
29.	Solid Waste Management during Operation Phase	<table> <tr> <th>Type</th><th>Quantity (kg/day)</th><th>Treatment / disposal</th></tr> <tr> <td>Dry waste</td><td>1,754</td><td>Handed over to Local Body</td></tr> <tr> <td>Wet waste</td><td>2,632</td><td>Treated in OWC</td></tr> </table>	Type	Quantity (kg/day)	Treatment / disposal	Dry waste	1,754	Handed over to Local Body	Wet waste	2,632	Treated in OWC
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30.	Green Belt (m ²)	Total RG area (m ²) : 11,876 m ²									
31.	Power requirement:	Source of Power Supply: MSEDCL									
32.	Details of Energy saving	-									
33.	Environmental Management plan budget during Construction phase	Not applicable									
34.	Environmental Management plan Budget during Operation phase	-									

35.	Parking	
36.	Details of Court cases / litigations w.r.t. the project and project location if any.	Yes

Deliberations:-

PP informed that “Xrbia Hinjewadi Special Township” (formerly known as Silicon City) is a residential project at Sector R 22 to R 28 and Sector R 29 located at S. No. 38/2 and others. The project has received an Environment Clearance from Government of India, on 27.12.2006 for the Plot area of 97.28 ha (9,72,800 m²) and Total Construction Area of 48.64 ha (4,86,400 m²) in the name of “Silicon city” by Eiffel Infocity Pvt. Ltd. Application for Environment Clearance was submitted to SEIAA through SEAC, Maharashtra on 02.12.2011. An agreement was done with Xrbia Hinjewadi Developers Private Limited for development of sectors R-22 to R-28 and Sector R-29 on 20.07.2012. A separate application for Environmental Clearance was submitted to SEIAA through SEAC, Maharashtra for development of sectors R-22 to R-28 and Sector R-29 on 12.06.2013. The total construction of around 17.5 ha (1,75,879 m²) was completed for residential sectors (R -22 to R-28 and R-29) in the year 2016-2017 against the 48.64 ha (4,86,400 m²). The part occupancy certificate was obtained on 07.11.2016 and 27.01.2017 and complete occupancy certificate was received on 01.02.2017. • The project was handed over to the society and registration was done on 11.09.2017. PP accepted the violation has applied for Terms of Reference and Environment Clearance (Fresh Case) for the changes/ addition/ variation in total covered builtup construction area that occurred and executed in the project under violation as per Office Memorandum (OM) for identification and handling of violation cases under EIA Notification 2006 a Standard Operating Procedure (SOP) on 07.07.2021 and Office Memorandum dated 28.01.2022. Since there was no provision of regularisation of violation cases the application was not submitted. However MoEFCC came out with office memorandum dated

28.01.2022 mentioning the procedure to be followed in case of violation already done. Accordingly PP applied for Terms of Reference for the changes/ addition / variation in total covered built-up construction area. The case was discussed on the basis of the documents submitted and presentation made by the proponent. All issues relating to environment, including air, water, land, soil, ecology, biodiversity and social aspects were examined. The proposal is appraised .

The office memorandum dated 28.01.2022 mentions SOP in clause no 10 and sub clause no (i) mentions that “ ***without prejudice to any other consequences, action to be initiated under section 15 read with section 19 of the Environment (Protection) Act, 1986 against all Violations.***

It is not clear that who will initiate the action under section 15 read with section 19 of Environment (Protection) act 1986. In violation cases the committee feels that proper procedure shall be laid down based on the of OM issued by MoEFCC. However Step 3 mentions about appraisal under EIA notification, 2006, the sub clause B (i) mentions about procedure of TOR to be issued in Violation cases.

Decision-

Considering above the application is submitted for further guidance in violation cases

31 st March, 2022			
24.	P-24	SIA/MH/MIS/70950/2018	Proposed Expansion in Environment Clearance of "Centre for Perfect Health" at Village Wahangaon, Taluka Mawal, District Pune, Maharashtra. By Maharishi Vedoddharak Foundation and Maharishi Vedic Healt.

Representative of PP Mr. Giridhari Kale was present during the meeting along with environmental consultant M/s. Mahabal Enviro Engineers Pvt. Ltd.

It is noted that, the PP has submitted the application for prior Environmental clearance for total plot area of 8,43,415 m², FSI area of 1,62,577 m², Non FSI area of 4,066 m² and total BUA of 1,67,048 m².

Secretary, SEAC-3

Chairman, SEAC-3

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Minutes of 242th (Day-2) meeting of SEIAA held on 21.04.2022**Item no. 37****Proposal No.:-** SIA/MH/MIS/72296/2022**Type of Project: TOR****Subject-** Environment Clearance for Residential project – “Xrbia Hinjewadi Special Township” - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District- Pune by Xrbia Hinjewadi Developers Private Limited**Project Details-**

Representative of PP Mr. Veer Bharti Kouls was present during the meeting along with environmental consultant M/s. Mahabal Enviro Engineers Pvt. Ltd.

It is noted that, the PP has submitted the application for prior Environmental clearance for total plot area of 1,17,232 m², FSI area of 1,43,242 m², Non FSI area of 32,637 m² and total BUA of 1,75,879 m².

Brief information of the proposal is as below:

1.	Proposal No.	SIA/MH/MIS/72296/2022	
2.	Name of Project	Residential project – “Xrbia Hinjewadi Special Township” - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune by Xrbia Hinjewadi Developers Private Limited	
3.	Project Category	8(b) B1	
4.	Type of institution	Private	
5.	Project Proponent	Name	Mr. Veer Bharti Kouls Authorized Person
		Address	First Floor, Mantri House, 929, Fergusson College Rd, near Dnyaneshwar Paduka Chowk, Pune- 411004, Maharashtra
		Tel	02066858659
		Mobile	99604 00259
		Email ID	veerkouls@xrbia.com
6.	Consultant	Name	Mahabal Enviro Engineers Pvt. Ltd.
		Address	Plot F-7, Road 21, MIDC Wagle Estate, Thane West - 400604
		Tel	022 25823154
		Mobile	98211 27972
		Email ID	mahabal.thane@gmail.com
		Accreditation no.	QCI/NABET/ENV/ACO/21/1967
7.	Applied for	Environmental Clearance (Violation)	
8.	Details of previous EC	EC letter vide File no. 21-153/2008-IA-III dated 27.12.2006 granted by Government of India, MoEF	
9.	Location of the project	Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune	
10.	Latitude and Longitude	18°60'38.58" N 73°69'01.53" E	

Member Secretary

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Chairman

Bombrise

11.	Total Plot Area (m ²)	Sector Area – R 22-28: 79,109 m ² Sector Area – R 29: 38,123 m ² Total Plot Area: (R-29, R22-28): 1,17,232 m ²				
12.	Deductions (m ²)	Nil				
13.	Net plot area (m ²)	Sector Area – R 22-28: 79,109 m ² Sector Area – R 29: 38,123 m ² Total Plot Area: (R-29, R22-28): 1,17,232 m ²				
14.	Proposed FSI area (m ²)	FSI area – Sector R 22-28: 75,212 m ² FSI area – Sector R 29: 68,031 m ² Total FSI area: 1,43,242 m ²				
15.	Proposed Non FSI area (m ²)	Non FSI area – Sector R 22-28: 17,289 m ² Non FSI area – Sector R 29: 15,348 m ² Total Non FSI area: 32,637 m ²				
16.	Proposed TBUA (m ²)	Total BUA area – Sector R 22-28: 92,501 m ² Total BUA area – Sector R 29: 83,378 m ² Total BUA area – Sector (R-29, R22-28): 1,75,879 m ²				
17.	Total Built up area (m ²) approved by Planning Authority till date	Total BUA area – Sector R 22-28: 92,501 m ² Total BUA area – Sector R 29: 83,378 m ² Total BUA area – Sector (R-29, R22-28): 1,75,879 m ²				
18.	Ground coverage (m ²) & %	17,987.63				
19.	Total Project Cost (Rs.)	Rs.347 Crore				
20.	CER as per MoEF&CC circular dated 01/05/2018	-				
21.	Details of Building Configuration:					
	Sr.	Building Name	Configuration	Total No of Flats (no.)	Population	Height (m)
		Sector R-29				
	1	A1	P+G+7	64	320	24.75
	2	A2	P+G+7	96	480	24.75
	3	A3	P+G+7	112	560	24.75
	4	A4	P+G+7	112	560	24.75
	5	A5	P+G+7	112	560	24.75
	6	A6	P+G+7	112	560	24.75
	7	A7	P+G+7	176	704	24.75
	8	A8	P+G+7	176	704	24.75
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	11	A11	P+G+7	112	560	24.75
12	A12	P+G+7	96	480	24.75	


Member Secretary


Chairman

	13	A13	P+G+7	80	480	24.75	
		Total		1,568	7,248		
		Club house	G+1			8.70	
		Sector R-22-28					
	14	A14	P+G+8	72	360	27.5	
	15	A15	P+G+8	72	360	27.5	
	16	B1	P+G+7	176	704	24.75	
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	19	B6	P+G+7	64	320	24.75	
	20	B7	P+G+7	80	480	24.75	
	21	B8	P+G+7	176	704	24.75	
	22	C2	P+G+7	64	320	24.75	
	23	C3	P+G+7	176	704	24.75	
	24	C4	P+G+7	80	480	24.75	
	25	C5	P+G+7	80	480	24.75	
	26	C6	P+G+7	80	480	24.75	
	27	C7	P+G+7	64	320	24.75	
	28	D1	P+G+7	64	320	24.75	
	29	D6	P+G+7	64	320	24.75	
		Total		1,552	7,376		
22.		Total tenements		3,120 nos.			
23.	Water Budget			Dry Season	(in m ³ /day)	Wet Season	(in m ³ /day)
Fresh water				1,316	Fresh water	1,316	
Recycled (Flushing)				658	Recycled (Flushing)	658	
Recycled (Gardening)				73	Recycled (Gardening)	15	
Total Water requirement				1,974	Total Water requirement	1,974	
Waste water generation				1,579	Waste water generation	1,579	
24.				Water Storage Capacity for Firefighting / UGT			
25.	Source of Water		Pune Municipal Corporation (PMC)				
26.	Rainwater Harvesting (RWH)		7 no. of Recharge pits Recharge pits size: 2m × 2m × 2m				
27.	Sewage and waste water		Sewage generation: 1,579 m ³ /day STP Capacity: 1,600 m ³ /day				

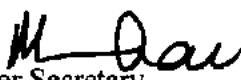

Member Secretary

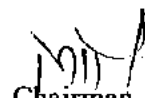

Chairman

28.	Solid Waste Management during Construction Phase	Not applicable									
29.	Solid Waste Management during Operation Phase	<table> <tr> <th>Type</th><th>Quantity (kg/day)</th><th>Treatment / disposal</th></tr> <tr> <td>Dry waste</td><td>1,754</td><td>Handed over to Local Body</td></tr> <tr> <td>Wet waste</td><td>2,632</td><td>Treated in OWC</td></tr> </table>	Type	Quantity (kg/day)	Treatment / disposal	Dry waste	1,754	Handed over to Local Body	Wet waste	2,632	Treated in OWC
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30.	Green Belt (m ²)	Total RG area (m ²) : 11,876 m ²									
31.	Power requirement:	Source of Power Supply: MSEDCCL									
32.	Details of Energy saving	-									
33.	Environmental Management plan budget during Construction phase	Not applicable									
34.	Environmental Management plan Budget during Operation phase	-									
35.	Parking										
36.	Details of Court cases / litigations w.r.t. the project and project location if any.	Yes									

SEAC Deliberation –

PP informed that “Xrbia Hinjewadi Special Township” (formerly known as Silicon City) is a residential project at Sector R 22 to R 28 and Sector R 29 located at S. No. 38/2 and others. The project has received an Environment Clearance from Government of India, on 27.12.2006 for the Plot area of 97.28 ha (9,72,800 m²) and Total Construction Area of 48.64 ha (4,86,400 m²) in the name of “Silicon city” by Eiffel Infocity Pvt. Ltd. Application for Environment Clearance was submitted to SEIAA through SEAC, Maharashtra on 02.12.2011. An agreement was done with Xrbia Hinjewadi Developers Private Limited for development of sectors R-22 to R-28 and Sector R-29 on 20.07.2012. A separate application for Environmental Clearance was submitted to SEIAA through SEAC, Maharashtra for development of sectors R-22 to R-28 and Sector R-29 on 12.06.2013. The total construction of around 17.5 ha (1,75,879 m²) was completed for residential sectors (R -22 to R-28 and R-29) in the year 2016-2017 against the 48.64 ha (4,86,400 m²). The part occupancy certificate was obtained on 07.11.2016 and 27.01.2017 and complete occupancy certificate was received on 01.02.2017. • The project was handed over to the society and registration was done on 11.09.2017. PP accepted the violation has applied for Terms of Reference and Environment Clearance (Fresh Case) for the changes/ addition/ variation in total covered builtup construction area that occurred and executed in the project under violation as per Office Memorandum (OM) for identification and handling of violation cases under EIA Notification 2006 a Standard Operating Procedure (SOP) on 07.07.2021 and Office Memorandum dated 28.01.2022. Since there was no provision of regularisation of violation cases the application was not submitted. However MoEFCC came


Member Secretary


Chairman

out with office memorandum dated 28.01.2022 mentioning the procedure to be followed in case of violation already done. Accordingly PP applied for Terms of Reference for the changes/ addition / variation in total covered built-up construction area. The case was discussed on the basis of the documents submitted and presentation made by the proponent. All issues relating to environment, including air, water, land, soil, ecology, biodiversity and social aspects were examined. The proposal is appraised .

The office memorandum dated 28.01.2022 mentions SOP in clause no 10 and sub clause no (i) mentions that “ without prejudice to any other consequences, action to be initiated under section 15 read with section 19 of the Environment (Protection) Act, 1986 against all Violations. It is not clear that who will initiate the action under section 15 read with section 19 of Environment (Protection) act 1986. In violation cases the committee feels that proper procedure shall be laid down based on the of OM issued by MoEFCC. However Step 3 mentions about appraisal under EIA notification, 2006, the sub clause B (i) mentions about procedure of TOR to be issued in Violation cases.

Recommendations of SEAC-

Considering above the application is submitted for further guidance in violation cases

Deliberation in SEIAA-

PP made application under violation SOP. SEAC-3 in its 137th meeting pointed out that, the office memorandum dated 28.01.2022 mentions SOP in clause no 10 and sub clause no (i) mentions that “without prejudice to any other consequences, action to be initiated under section 15 read with section 19 of the Environment (Protection) Act, 1986 against all Violations.”

SEAC further pointed out that, it is not clear that who will initiate the action under section 15 read with section 19 of Environment (Protection) act 1986. In violation cases the committee feels that proper procedure shall be laid down based on the of OM issued by MoEFCC. However Step 3 mentions about appraisal under EIA notification, 2006, the sub clause B (i) mentions about procedure of TOR to be issued in Violation cases.

Hence SEAC forwarded the proposal for further guidance in the matter.

During the meeting SEIAA observed that, there is a matter pending in Hon'ble High Court. SEIAA decided to defer the proposal till the matter in NGT is decided.

SEIAA Decision-

SEIAA decided to defer the proposal.



Member Secretary



Chairman

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14/03/2022

To,

The Member Secretary,
**State Environmental Impact Assessment
Authority (SEIAA) - Maharashtra**

Member Secretary
**State Expert Appraisal Committee-III
(SEAC-III) Maharashtra**
Environment Department, Govt. of Maharashtra
15th floor, New Administrative Building,
Mantralaya, Mumbai-400032

Subject : Relist proposal on PARIVESH portal
Application for 'Environmental Clearance': Terms of
Reference (ToR) and Environment Clearance (Fresh case
under violation): **EIA Violation Notification 14.03.2017
AND Office Memorandum dated 28.01.2022**

Project : **Xrbia Hinjewadi Developers Pvt. Ltd.** (hereafter called
as Project Proponent (PP) as Developers – Applicant)
**Residential project – “Xrbia Hinjewadi Special
Township” - Sector R-22 to R-28 and Sector R-29
at S. Nos. 38/2 and others, Village Nere - Dattawadi,
Taluka - Mulshi, District - Pune**

Reference : 1. Proposal SIA/MH/MIS/72296/2022 on 16/02/2022
2. 137th SEAC-III meeting, Sr. no. 23 on 30/03/2022
3. 242nd SEIAA meeting, Sr. no.37 on 21/04/2022
4. Environmental Clearance form GoI, MoEF file No. 21-
153/2008-IA-III on 27/12/2006 (Plot area 97.28 ha)
5. MoEF&CC Notification on 14/03/2017
6. MoEF&CC OM on 09/09/2019
7. Standard Operating Procedure (SOP) published by
MoEF&CC on 07/07/2021

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8. MoEF&CC OM on 28/01/2022

9. NGT order Serene Developers & Ors on 20/02/2023.

Dear Sir,

We, **Xrbia Hinjewadi Developers Pvt Ltd. (hereafter called as Project Proponent (PP) as Developers – as Applicant)** had constructed a Residential project “**Xrbia Hinjewadi Special Township**” – Sector R-29 and Sector R-22 to R-28 at S.Nos.38/2 and others, Village Nere, Dattawadi, Taluka Mulshi, District Pune.

We had made Terms of Reference and Environmental Clearance application (Violation) on the PARIVESH portal as per EIA Violation Notification dated 14/03/2017 and Office Memorandum dated 28/01/2022 on 16/02/2022.

Our project was considered in the 137th SEAC-III meeting on dated 30/03/2022, In that meeting, SEAC forwarded the proposal for further guidance in that matter.

In the 242nd SEIAA meeting on dated 21/04/2022. SEIAA observed that there is a matter pending in Hon'ble High Court, SEIAA decided to defer the proposal till the matter in NGT is decided. SEIAA decided to defer the proposal.

In the Serene Developers & Ors NGT case on dated 20/02/2023, NGT has given discussion, ***we make it further clear that the proceeding for grant of ex post facto EC, which is pending before SEIAA, shall not be treated to have been stayed by us, rather the same would be expedited. The Committee is further directed to make inspection after giving notice to the parties concerned.***

Our project was delisted from the Parivesh portal on dated 19/08/2022.

Kindly relist our project in the next SEAC-III meeting. And grant us the additional terms of Reference (ToR).

Thanking you,

Yours faithfully,

**For M/s Xrbia North Hinjawadi Developers Pvt. Ltd
(Formerly known as Lily Floriculture Pvt Ltd.)**

Authorized Signatory



Enclosures:

1. Copy of NGT Order
2. Delist letter
3. Acknowledgement of PARIVESH application

2633

Item No.5

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

ORIGINAL APPLICATION NO.94 OF 2016 (WZ)

Dinbandhu Singh & Ors.

.... Applicants

Versus

M/s Serene Developers & Ors.

....Respondents

Date of hearing : 20.02.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicants : Mr. Sitesh Sharma, Advocate holding for Mr. Harshal
Nanaware, Advocate

Respondents : Mr. Sachin Gore, Advocate for R-1
Mr. R.B. Mahabal, Advocate for R-3 and R-7
Ms. Manasi Joshi, Advocate for R-6

ORDER

1. From the side of the applicant, learned counsel Mr. Sitesh Sharma has appeared and states that he has filed today additional compilation of documents (pages 3088 to 3111 of the paper-book) which contains the Minutes of SEAC-3 meeting dated 28.12.2019 and Standard Operating Procedure (SoP) issued by the Ministry of Environment, Forest and Climate Change dated 07.07.2021.

2. From the side of respondent No.1 – M/s Serene Developers/Project Proponent, learned counsel Mr. Sachin Gore has appeared and states that he has filed additional submissions alongwith compilation of documents (pages 2537 to 3084 of the paper-book). The learned counsel for the applicant states that he has received the copy of the same on last Friday and therefore, he needs some time to go through the same, to verify the truthfulness thereof and rebut the same, if required.

3. The present application deals with the project by name 'Air Castles' located on Survey Nos.12/6, 12/7, 47/2, 47/3, 47/4, 47/18, 47/19, 47/5/1, 50/1/1A/1, 55/15 and 82 situated in village Marunji, Taluka Mulshi, District Pune, which has been prayed to be demolished and status quo ante be granted because it is alleged by the applicants that the said project has been constructed without prior Environmental Clearance (EC), which was mandatory because right from beginning, the area of construction was beyond 20,000 sq.mtrs. Besides that, there are several other violations alleged to have been committed by the Project Proponent based on which the damages are also prayed to be awarded. The applicants herein are flat owners and have alleged that they have been cheated by the Project Proponent by not disclosing that the said project has been constructed in violation of mandatory provisions of EIA Notification, 2006 as well as other necessary conditions.

4. From the side of the respondent No.1/Project Proponent, it has been admitted that they had not been granted prior EC before they started construction work and that they have initiated the process for obtaining *ex post facto* EC under 'violation window', which was provided under Notification dated 14.03.2017, time period of which was extended by Madras High Court for one month and that they have moved an application before SEIAA for grant of *ex post facto* EC on 13.04.2018 which was the last date on which the extended time was to expire and the said application is still under consideration. Mr. Sachin Gore, the learned counsel for respondent No.1 has shown several documents that TOR was granted to respondent No.1 on 26.12.2019 and since thereafter the matter is still under consideration of SEIAA. He did admit before us that the Consent to Establish is obtained on 10.09.2014 while the construction work had started in the year 2010. Therefore, the violation of not obtaining Consent to Establish has been admitted. The said Consent expired on 09.09.2019. The construction had

already been completed by the Project Proponent in 2014 and possession of the flats was also handed over to the purchasers/flat owners. He has also admitted that he has not obtained Consent to Operate. Therefore, the fact of two violations regarding Consent to Establish and Consent to Operate has been admitted candidly.

5. From the side of respondent No.7 – SEIAA, learned counsel Mr. R.B. Mahabal states that he has filed reply-affidavit and has clarified that in case the TOR had been issued to respondent No.1/Project Proponent in the year 2019, respondent No.1 has not provided to them the EIA report which could be submitted in December, 2022 which is apparently submitted after considerable delay, which is under consideration now. Therefore, the current status is that *ex post facto* EC is under consideration.

6. During argument, learned counsel for the applicants has vehemently tried to establish that there was a nalla which was flowing through the project property, the stream of which has now been diverted because of the said construction, which is disputed by the learned counsel for respondent No.1/Project Proponent stating that it is still flowing. We find that in the present case, no Joint Committee was constituted in order to submit a report before us regarding the position of the spot in the light of the allegations made by the applicants in the application. Therefore, we now constitute a Joint Committee consisting of one member each of SEIAA, MPCB and MoEF&CC. MPCB shall be the nodal agency thereof. We direct the Committee to visit the spot and submit the report with regard to spot position as on date within a period of 30 days positively.

7. We have already heard the arguments of the learned counsel for the applicants and partly arguments of the learned counsel for respondent No.1/Project Proponent.

8. We are of the view that MPCB also needs to be directed in this case to quantify the environmental damages on account of non-obtaining of Consent to Establish and Consent to Operate and a report in that regard shall also be

filed within a period of one month, a copy of which shall be served on the other parties.

9. We make it further clear that the proceeding for grant of *ex post facto* EC, which is pending before SEIAA, shall not be treated to have been stayed by us, rather the same would be expedited. The Committee is further directed to make inspection after giving notice to the parties concerned.

10. Put up this case on 17.04.2023 for further consideration.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

February 20, 2023
O.A. No.94 OF 2016 (WZ)
npj

2637



Veer Kouls <mahabal.thane150@gmail.com>

Auto Delisted Proposal Alert(TOR)

1 message

monitoring-ec@nic.in <monitoring-ec@nic.in>

Fri, Aug 19, 2022 at 1:24 AM

To: mahabal.thane150@gmail.com

Cc: monitoring-ec@nic.in

Your proposal has been de-listed due to non-reply of ADS (sought by EAC/Ministry) within prescribed time limit of 90 days.

1. Proposal No.	: SIA/MH/MIS/72296/2022
2. MoEFCC File No.	: SIA/MH/MIS/72296/2022
3. Category of the Proposal	: INFRA-2
4. Name of the proposal	: XRBIA HINJEWADI DEVELOPERS PRIVATE LIMITED
5. Date of submission TOR	: 16 Feb 2022

Note: ***This is an automatically generated email, please do not reply***

2638



Veer Kouls <mahabal.thane150@gmail.com>

Acknowledgement Slip for TOR application

1 message

monitoring-ec@nic.in <monitoring-ec@nic.in>

Wed, Feb 16, 2022 at 3:07 PM

To: mahabal.thane150@gmail.com

Cc: monitoring-ec@nic.in

Acknowledgement Slip for TOR

This is to acknowledge that the proposal has been successfully uploaded on the portal. The proposal shall be examined by MS of SEIAA to ensure that required information has been submitted. An email will be sent for seeking additional information, if any, within 5 working days. Once verified, an acceptance letter shall be issued to the project proponent.

Following should be mentioned in further correspondence

1. **Proposal No.** : SIA/MH/MIS/72296/2022
2. **Category of the Proposal** : INFRA-2
3. **Project/Activity applied for** : 8(b) Townships and Area Development projects.
Residential project – “Xrbia Hinjewadi Special Township” - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere -
4. **Name of the proposal** : Dattawadi, Taluka - Mulshi, District – Pune M/s. Xrbia Hinjewadi Developers Private Limited.
(hereafter called as Project Proponent (PP) as Developers – Applicant)
5. **Date of submission for TOR** : 16 Feb 2022
6. **Name of the Project proponent along with contact details**
 - a) **Name of the proponent** : XRBIA HINJEWADI DEVELOPERS PRIVATE LIMITED
 - b) **Mobile No.** : 9960400259
 - c) **State** : Maharashtra
 - d) **District** : Pune
 - e) **Pincode** : 411004

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Bombhise

Minutes of 258th Day 1 (Part D) meeting of SEIAA held on 03rd April, 2023

Item no. 54

Proposal No.:- SIA/MH/MIS/72296/2022

Type of Project: TOR

Subject- Environment Clearance for Residential project – “Xrbia Hinjewadi Special Township” - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District- Pune by Xrbia Hinjewadi Developers Private Limited (Compliance)

Project Details-

Representative of PP Mr. Veer Bharti Kouls was present during the meeting along with environmental consultant M/s. Mahabal Enviro Engineers Pvt. Ltd.

It is noted that, the PP has submitted the application for prior Environmental clearance for total plot area of 1,17,232 m², FSI area of 1,43,242 m², Non FSI area of 32,637 m² and total BUA of 1,75,879 m².

Brief information of the proposal is as below:

1.	Proposal No.	SIA/MH/MIS/72296/2022	
2.	Name of Project	Residential project – “Xrbia Hinjewadi Special Township” - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune by Xrbia Hinjewadi Developers Private Limited	
3.	Project Category	8(b) B1	
4.	Type of institution	Private	
5.	Project Proponent	Name	Mr. Veer Bharti Kouls Authorized Person
		Address	First Floor, Mantri House, 929, Fergusson College Rd, near Dnyaneshwar Paduka Chowk, Pune- 411004, Maharashtra
		Tel	02066858659
		Mobile	99604 00259
		Email ID	veerkouls@xrbia.com
6.	Consultant	Name	Mahabal Enviro Engineers Pvt. Ltd.
		Address	Plot F-7, Road 21, MIDC Wagle Estate, Thane West - 400604
		Tel	022 25823154
		Mobile	98211 27972
		Email ID	mahabal.thane@gmail.com
		Accreditation no.	QCI/NABET/ENV/ACO/21/1967
7.	Applied for	Environmental Clearance (Violation)	
8.	Details of previous EC	EC letter vide File no. 21-153/2008-IA-III dated 27.12.2006 granted by Government of India, MoEF	
9.	Location of the project	Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune	

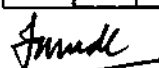

Member Secretary

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Chairman

Minutes of 258th Day 1 (Part D) meeting of SEIAA held on 03rd April, 2023

10.	Latitude and Longitude	18°60'38.58" N 73°69'01.53" E				
11.	Total Plot Area (m ²)	Sector Area – R 22-28: 79,109 m ² Sector Area – R 29: 38,123 m ² Total Plot Area: (R-29, R22-28): 1,17,232 m ²				
12.	Deductions (m ²)	Nil				
13.	Net plot area (m ²)	Sector Area – R 22-28: 79,109 m ² Sector Area – R 29: 38,123 m ² Total Plot Area: (R-29, R22-28): 1,17,232 m ²				
14.	Proposed FSI area (m ²)	FSI area – Sector R 22-28: 75,212 m ² FSI area – Sector R 29: 68,031 m ² Total FSI area: 1,43,242 m ²				
15.	Proposed Non FSI area (m ²)	Non FSI area – Sector R 22-28: 17,289 m ² Non FSI area – Sector R 29: 15,348 m ² Total Non FSI area: 32,637 m ²				
16.	Proposed TBUA (m ²)	Total BUA area – Sector R 22-28: 92,501 m ² Total BUA area – Sector R 29: 83,378 m ² Total BUA area – Sector (R-29, R22-28): 1,75,879 m ²				
17.	Total Built up area (m ²) approved by Planning Authority till date	Total BUA area – Sector R 22-28: 92,501 m ² Total BUA area – Sector R 29: 83,378 m ² Total BUA area – Sector (R-29, R22-28): 1,75,879 m ²				
18.	Ground coverage (m ²) & %	17,987.63				
19.	Total Project Cost (Rs.)	Rs.347 Crore				
20.	CER as per MoEF&CC circular dated 01/05/2018	-				
21.	Details of Building Configuration:					
	Sr.	Building Name	Configuration	Total No of Flats (no.)	Population	Height (m)
		Sector R-29				
	1	A1	P+G+7	64	320	24.75
	2	A2	P+G+7	96	480	24.75
	3	A3	P+G+7	112	560	24.75
	4	A4	P+G+7	112	560	24.75
	5	A5	P+G+7	112	560	24.75
	6	A6	P+G+7	112	560	24.75
	7	A7	P+G+7	176	704	24.75
	8	A8	P+G+7	176	704	24.75
	9	A9	P+G+7	160	640	24.75
	10	A10	P+G+7	160	640	24.75


Member Secretary


Chairman

Minutes of 258th Day 1 (Part D) meeting of SEIAA held on 03rd April, 2023

	11	A11	P+G+7	112	560	24.75																								
	12	A12	P+G+7	96	480	24.75																								
	13	A13	P+G+7	80	480	24.75																								
		Total		1,568	7,248																									
		Club house	G+1			8.70																								
		Sector R-22-28																												
	14	A14	P+G+8	72	360	27.5																								
	15	A15	P+G+8	72	360	27.5																								
	16	B1	P+G+7	176	704	24.75																								
	17	B2	P+G+7	176	704	24.75																								
	18	B3	P+G+7	64	320	24.75																								
	19	B6	P+G+7	64	320	24.75																								
	20	B7	P+G+7	80	480	24.75																								
	21	B8	P+G+7	176	704	24.75																								
	22	C2	P+G+7	64	320	24.75																								
	23	C3	P+G+7	176	704	24.75																								
	24	C4	P+G+7	80	480	24.75																								
	25	C5	P+G+7	80	480	24.75																								
	26	C6	P+G+7	80	480	24.75																								
	27	C7	P+G+7	64	320	24.75																								
	28	D1	P+G+7	64	320	24.75																								
	29	D6	P+G+7	64	320	24.75																								
		Total		1,552	7,376																									
22.		Total tenements		3,120 nos.																										
23.	Water Budget		<table><tr><td>Dry Season</td><td>(in m³/day)</td><td>Wet Season</td><td>(in m³/day)</td></tr><tr><td>Fresh water</td><td>1,316</td><td>Fresh water</td><td>1,316</td></tr><tr><td>Recycled (Flushing)</td><td>658</td><td>Recycled (Flushing)</td><td>658</td></tr><tr><td>Recycled (Gardening)</td><td>73</td><td>Recycled (Gardening)</td><td>15</td></tr><tr><td>Total Water requirement</td><td>1,974</td><td>Total Water requirement</td><td>1,974</td></tr><tr><td>Waste water generation</td><td>1,579</td><td>Waste water generation</td><td>1,579</td></tr></table>				Dry Season	(in m ³ /day)	Wet Season	(in m ³ /day)	Fresh water	1,316	Fresh water	1,316	Recycled (Flushing)	658	Recycled (Flushing)	658	Recycled (Gardening)	73	Recycled (Gardening)	15	Total Water requirement	1,974	Total Water requirement	1,974	Waste water generation	1,579	Waste water generation	1,579
Dry Season			(in m ³ /day)	Wet Season	(in m ³ /day)																									
Fresh water			1,316	Fresh water	1,316																									
Recycled (Flushing)			658	Recycled (Flushing)	658																									
Recycled (Gardening)			73	Recycled (Gardening)	15																									
Total Water requirement			1,974	Total Water requirement	1,974																									
Waste water generation			1,579	Waste water generation	1,579																									
24.	Water Storage Capacity for Firefighting / UGT																													
25.	Source of Water		Pune Municipal Corporation (PMC)																											
26.	Rainwater Harvesting (RWH)		7 no. of Recharge pits Recharge pits size: 2m × 2m × 2m																											


Member Secretary


Chairman

Minutes of 258th Day 1 (Part D) meeting of SEIAA held on 03rd April, 2023

27.	Sewage and waste water	Sewage generation: 1,579 m ³ /day STP Capacity: 1,600 m ³ /day									
28.	Solid Waste Management during Construction Phase	Not applicable									
29.	Solid Waste Management during Operation Phase	<table> <tr> <th>Type</th><th>Quantity (kg/day)</th><th>Treatment / disposal</th></tr> <tr> <td>Dry waste</td><td>1,754</td><td>Handed over to Local Body</td></tr> <tr> <td>Wet waste</td><td>2,632</td><td>Treated in OWC</td></tr> </table>	Type	Quantity (kg/day)	Treatment / disposal	Dry waste	1,754	Handed over to Local Body	Wet waste	2,632	Treated in OWC
Type	Quantity (kg/day)	Treatment / disposal									
Dry waste	1,754	Handed over to Local Body									
Wet waste	2,632	Treated in OWC									
30.	Green Belt (m ²)	Total RG area (m ²) : 11,876 m ²									
31.	Power requirement:	Source of Power Supply: MSEDCL									
32.	Details of Energy saving	-									
33.	Environmental Management plan budget during Construction phase	Not applicable									
34.	Environmental Management plan Budget during Operation phase	-									
35.	Parking										
36.	Details of Court cases / litigations w.r.t. the project and project location if any.	Yes									

SEAC Deliberation –

PP informed that “Xrbia Hinjewadi Special Township” (formerly known as Silicon City) is a residential project at Sector R 22 to R 28 and Sector R 29 located at S. No. 38/2 and others. The project has received an Environment Clearance from Government of India, on 27.12.2006 for the Plot area of 97.28 ha (9,72,800 m²) and Total Construction Area of 48.64 ha (4,86,400 m²) in the name of “Silicon city” by Eiffel Infocity Pvt. Ltd. Application for Environment Clearance was submitted to SEIAA through SEAC, Maharashtra on 02.12.2011. An agreement was done with Xrbia Hinjewadi Developers Private Limited for development of sectors R-22 to R-28 and Sector R-29 on 20.07.2012. A separate application for Environmental Clearance was submitted to SEIAA through SEAC, Maharashtra for development of sectors R-22 to R-28 and Sector R-29 on 12.06.2013. The total construction of around 17.5 ha (1,75,879 m²) was completed for residential sectors (R -22 to R-28 and R-29) in the year 2016-2017 against the 48.64 ha (4,86,400 m²). The part occupancy certificate was obtained on 07.11.2016 and 27.01.2017 and complete occupancy certificate was received on 01.02.2017. • The project was handed over to the society and registration was done on 11.09.2017. PP accepted the violation has applied for Terms of Reference and Environment Clearance (Fresh Case) for the changes/ addition/ variation in total covered builtup construction area that occurred and executed in the project under violation as per Office Memorandum (OM) for identification and handling of violation cases under EIA


Member Secretary


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Notification 2006 a Standard Operating Procedure (SOP) on 07.07.2021 and Office Memorandum dated 28.01.2022. Since there was no provision of regularisation of violation cases the application was not submitted. However, MoEF&CC came out with office memorandum dated 28.01.2022 mentioning the procedure to be followed in case of violation already done. Accordingly, PP applied for Terms of Reference for the changes/ addition / variation in total covered built-up construction area. The case was discussed on the basis of the documents submitted and presentation made by the proponent. All issues relating to environment, including air, water, land, soil, ecology, biodiversity and social aspects were examined. The proposal is appraised.

The office memorandum dated 28.01.2022 mentions SOP in clause no 10 and sub clause no (i) mentions that "without prejudice to any other consequences, action to be initiated under section 15 read with section 19 of the Environment (Protection) Act, 1986 against all Violations.

It is not clear that who will initiate the action under section 15 read with section 19 of Environment (Protection) act 1986. In violation cases the committee feels that proper procedure shall be laid down based on the of OM issued by MoEF&CC. However, Step 3 mentions about appraisal under EIA notification, 2006, the sub clause B (i) mentions about procedure of TOR to be issued in Violation cases.

Recommendations of SEAC-

Considering above the application is submitted for further guidance in violation cases

Deliberation in SEIAA-

PP made application under violation SOP. SEAC-3 in its 137th meeting pointed out that, the office memorandum dated 28.01.2022 mentions SOP in clause no 10 and sub clause no (i) mentions that "without prejudice to any other consequences, action to be initiated under section 15 read with section 19 of the Environment (Protection) Act, 1986 against all Violations."

SEAC further pointed out that, it is not clear that who will initiate the action under section 15 read with section 19 of Environment (Protection) act 1986. In violation cases the committee feels that proper procedure shall be laid down based on the of OM issued by MoEF&CC. However Step 3 mentions about appraisal under EIA notification, 2006, the sub clause B (i) mentions about procedure of TOR to be issued in Violation cases. Hence SEAC forwarded the proposal for further guidance in the matter.

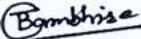
Proposal was then considered by SEIAA in its 242nd meeting and deferred the proposal till the matter in NGT is decided. Now, PP submitted that, in some cases before Hon'ble NGT, Hon'ble NGT has cleared that, proceeding for grant of ex post facto EC, which is pending before SEIAA, shall not be treated to have been stayed by Hon'ble NGT, rather the same would be expedited. PP further requested that, their case shall be considered on similar basis. SEIAA noted the same.

SEIAA further deliberated upon the fact that, SEIAA has issued instructions to SEACs regarding appraising the proposals of violations as per MoEF&CC Office Memorandum dated 07.07.2021 and 28.01.2022. SEIAA decided to refer back the proposal to SEAC for appraisal for Terms of Reference (TOR)

SEIAA Decision-

SEIAA decided to refer back the proposal to SEAC.


Member Secretary

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		of environmental norms to the Board of Directors of the Company and/or shareholders or stakeholders at large, may also be detailed in the proposed safeguard measures in each case should also be provided.
G	10	Besides the above, the below mentioned general points are also to be followed: a) All documents to be properly referenced with index and continuous page numbering. b) Where data are presented in the Report especially in Tables, the period in which the data were collected and the sources should be indicated. c) Project Proponent shall enclose all the analysis/testing reports of water, air, soil, noise etc. using the MoEF&CC/NABL accredited laboratories. All the original analysis/testing reports should be available during appraisal of the Project. d) Where the documents provided are in a language other than English, an English translation should be provided.
G	11	In case of continued violation after issue of TOR, the ToR/Environmental Clearance shall be terminated forthwith.
H	Other points:	
H	1	PP to submit the DP Plan.
H	2	PP to submit the detail Architect Certificate stating current status of the construction along with building wise construction done (FSI, NoN- FSI & Total built up area) on site along with the chronology.
H	3	PP to submit the all-approvals details (CC, OC etc) regarding project under consideration.
H	4	PP to submit the details of Court cases / litigations w.r.t. the project and project location, if any.

Decision: -

After deliberation, Committee decided to recommend the proposal to SEIAA for grant of ToR.

2	SIA/MH/MIS/72296/2022	Residential project of Xrbia Hinjewadi Special Township - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District of Pune M/s. Xrbia Hinjewadi Developers Private Limited. (hereafter called as Project Proponent (PP) as Developers Applicant)

Representative of PP was present during the meeting along with environmental consultant M/s. Mahabal Enviro Engineers Pvt. Ltd.

It is noted that, the PP has submitted the application for ToR under Violation Category for proposed residential project with total plot area of 1,17,232 m², FSI area of 1,43,242 m², Non FSI area of 32,637 m² and total BUA of 1,75,879 m²

Member Secretary

Chairman

Brief information of the proposal is as below:

1.	Proposal No.	SIA/MH/MIS/72296/2022											
2.	Name of Project	Residential project – “Xrbia Hinjewadi Special Township” - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune by Xrbia Hinjewadi Developers Private Limited											
3.	Project Category	8(b) B1 Category											
4.	Type of institution	Private											
5.	Project Proponent	<table><tr><td>Name</td><td>Mr. Veer Bharti Kouls Authorized Person</td></tr><tr><td>Address</td><td>First Floor, Mantri House, 929, Fergusson College Rd, near Dnyaneshwar Paduka Chowk, Pune- 411004, Maharashtra</td></tr><tr><td>Tel</td><td>02066858659</td></tr><tr><td>Mobile</td><td>99604 00259</td></tr><tr><td>Email ID</td><td>veerkouls@xrbia.com</td></tr></table>		Name	Mr. Veer Bharti Kouls Authorized Person	Address	First Floor, Mantri House, 929, Fergusson College Rd, near Dnyaneshwar Paduka Chowk, Pune- 411004, Maharashtra	Tel	02066858659	Mobile	99604 00259	Email ID	veerkouls@xrbia.com
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Tel	02066858659												
Mobile	99604 00259												
Email ID	veerkouls@xrbia.com												
6.	Consultant	Mahabal Enviro Engineers Pvt. Ltd.											
7.	Applied for	Environmental Clearance (Violation)											
8.	Details of previous EC	EC letter vide File no. 21-153/2008-IA-III dated 27.12.2006 granted by Government of India, MoEF											
9.	Location of the project	Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune											
10.	Latitude and Longitude	18°60’38.58” N 73°69’01.53" E											
11.	Total Plot Area (m ²)	Sector Area – R 22-28: 79,109 m ² Sector Area – R 29: 38,123 m ² Total plot Area: (R-29, R22-28): 1,17,232 m ²											
12.	Deductions (m ²)	Nil											
13.	Net plot area (m ²)	Sector area – R 22-28: 79,109 m ² Sector area – R 29: 38,123 m ² Total plot area: (R-29, R22-28): 1,17,232 m ²											
14.	Proposed FSI area (m ²)	FSI area – Sector R 22-28: 75,212 m ² FSI area – Sector R 29: 68,031 m ² Total FSI area: 1,43,242 m ²											
15.	Proposed Non FSI area (m ²)	Non FSI area – Sector R 22-28: 17,289 m ² Non FSI area – Sector R 29: 15,348 m ² Total Non FSI area: 32,637 m ²											

Member Secretary**Chairman**

16.	Proposed TBUA (m ²)	Total BUA area – Sector R 22-28: 92,501 m ² Total BUA area – Sector R 29: 83,378 m ² Total BUA area – Sector (R-29, R22-28): 1,75,879 m ²																																																																																																																																																																
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20.	CER as per MoEF&CC circular dated 01/05/2018	Not Applicable																																																																																																																																																																
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Member Secretary

Chairman

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		Total		1,552	7,376																			
	22.	Total tenements		3,120 nos.																				
23.	Water Budget		<table><tr><td></td><td>Dry Season</td><td>Wet Season</td></tr><tr><td>Fresh water</td><td>1,316 m³/day</td><td>1,316 m³/day</td></tr><tr><td>Recycled (Flushing)</td><td>658 m³/day</td><td>658 m³/day</td></tr><tr><td>Recycled (Gardening)</td><td>73 m³/day</td><td>15 m³/day</td></tr><tr><td>Total water requirement</td><td>1,974 m³/day</td><td>1,974 m³/day</td></tr><tr><td>Waste water generation</td><td>1,579 m³/day</td><td>1,579 m³/day</td></tr></table>					Dry Season	Wet Season	Fresh water	1,316 m ³ /day	1,316 m ³ /day	Recycled (Flushing)	658 m ³ /day	658 m ³ /day	Recycled (Gardening)	73 m ³ /day	15 m ³ /day	Total water requirement	1,974 m ³ /day	1,974 m ³ /day	Waste water generation	1,579 m ³ /day	1,579 m ³ /day
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24.	Water Storage Capacity for Firefighting / UGT		<table><tr><td>UGT details</td><td>Quantity</td><td>Unit</td></tr><tr><td>Domestic water UG tank</td><td>3,297</td><td>m³</td></tr><tr><td>Flushing Water UG tank</td><td>658</td><td>m³</td></tr><tr><td>Fire water UG tank</td><td>As per NOC</td><td>m³</td></tr></table>				UGT details	Quantity	Unit	Domestic water UG tank	3,297	m ³	Flushing Water UG tank	658	m ³	Fire water UG tank	As per NOC	m ³						
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25.	Source of Water		Irrigation Department, Pune																					
26.	Rainwater Harvesting (RWH)		7 no. of Recharge pits Recharge pits size: 2m × 2m × 2m																					
27.	Sewage and waste water		Sewage generation: 1,579 m ³ /day STP capacity : 1,600 m ³ /day																					
28.	Solid Waste Management during Construction Phase		Not applicable																					
29.	Solid Waste Management during Operation Phase		<table><tr><td>Type</td><td>Quantity (kg/day)</td><td>Treatment / disposal</td></tr><tr><td>Dry waste</td><td>1,754</td><td>Handed over to Local Body</td></tr><tr><td>Wet waste</td><td>2,632</td><td>Treated in OWC</td></tr></table>				Type	Quantity (kg/day)	Treatment / disposal	Dry waste	1,754	Handed over to Local Body	Wet waste	2,632	Treated in OWC									
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30.	Green Belt (m ²)		Total RG area (m ²) : 11,876 m ²																					
31.	Power requirement:		Source of Power Supply: MSEDCL																					
			Sr.	Description	Power	Unit																		

Member Secretary

Chairman

		<table><tr><td>1.</td><td>During Operation phase</td><td></td><td></td></tr><tr><td></td><td>i) Max. Demand Load</td><td>4,973</td><td>kW</td></tr><tr><td></td><td>ii) Connected Load</td><td>6,604</td><td>kW</td></tr><tr><td>2.</td><td>DG Sets</td><td>1 no. x 500 & 1 no. x 125</td><td>kVA</td></tr><tr><td>3.</td><td>Transformer</td><td>9x630 1x500</td><td>kVA</td></tr><tr><td>4.</td><td>Fuel Used</td><td>Diesel</td><td></td></tr></table>	1.	During Operation phase				i) Max. Demand Load	4,973	kW		ii) Connected Load	6,604	kW	2.	DG Sets	1 no. x 500 & 1 no. x 125	kVA	3.	Transformer	9x630 1x500	kVA	4.	Fuel Used	Diesel																							
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35.	Parking																																															

Member Secretary

Chairman

		Sr.	Type	Required as per DCR	Actual Provided (nos.)	Area per parking (m ²)
		1.	4W	328	328	4,100
		2.	2W	7076	7076	14,152
		3.	Cycle	7076	7076	14,152
			Total			32,404
36.	Details of Court cases / litigations w.r.t. the project and project location if any.	Yes				

Deliberations:

PP stated that, “Xrbia Hinjewadi Special Township” (formerly known as Silicon City) is a residential project at Sector R 22 to R 28 and Sector R 29 located at S. No. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District-Pune by Xrbia Hinjewadi Developers Private Limited (XHDPL).

PP further stated that, they have received an Environment Clearance from Government of India, MoEF vide letter no. 21-153/2008-IA-III dated 27.12.2006 for the Plot area of 97.28 ha (9,72,800 m²) and Total Construction Area of 48.64 ha (4,86,400 m²) in the name of “Silicon city” by Eiffel Infocity Pvt. Ltd. PP inform that, the Consent to Establish was obtained from MPCB vide Consent No. BO/RO/(P&P)/364 dated 10.04.2006. PP inform that, location clearance was received from Govt. of Maharashtra on 08.06.2009 and NA order was also received the from District Collector, Pune for Township on 07.09.2010 for the plot area 81.20 ha (8,12,000 m²).

PP stated that, the separate application for Environmental Clearance was submitted to SEIAA through SEAC, Maharashtra for development of sectors R22 to R-28 and Sector R-29 on 12.06.2013. PP further stated that, the construction activities were initiated after obtaining the Development Permission (DP) from the Collector Office on 10.09.2012 (for Sector R-22 to Sector R-28 and R-29) and the total construction of around 17.5 ha (1,75,879 m²) was completed for residential sectors (R-22 to R-28 and R-29) in the year 2016- 2017 against the 48.64 ha (4,86,400 m²). PP informed that, the part occupancy certificate was obtained on 07.11.2016 and 27.01.2017 and the complete occupancy certificate was received on 01.02.2017. PP further informed that, the project was handed over to the society and registration was done on 11.09.2017.

Member Secretary**Chairman**

PP stated that, they are applying for Terms of Reference and Environment Clearance (Fresh Case) for the changes/ addition/ variation in total covered built-up construction area that occurred and executed in the project under violation as per the MoEF&CC Notification 14.03.2017 and MoEF&CC published Office Memorandum (OM) for identification and handling of violation cases under EIA Notification 2006 a Standard Operating Procedure (SOP) on 07.07.2021 and Office Memorandum dated 28.01.2022.

PP further stated that, they have applied to ToR for total plot area 1,17,232 m² , proposed total built-up area 1,75,879 m² having proposed FSI area of 1,43,242 m² and proposed Non FSI area of 32,637 m² .

PP further stated that, they have calculated violation days from the date of a Commencement Certificate dated 10.09.2012 to the date of the EC application dated 16.02.2022 i.e.3,446 days. PP further stated that, the project was considered in the 137th SEAC-III meeting held on 30.03.2022 and the application was forwarded to SEIAA by SEAC for further guidance. PP informed that, the project was considered in the 242nd SEIAA meeting held on 21.04.2022 and SEIAA observed that there is a matter pending in Hon'ble High Court, SEIAA decided to defer the proposal till the matter in NGT is decided. PP informed that, the proposal again our project was considered in the 258th SEIAA meeting on 03.04.2023 and the esteemed committee of SEIAA did decided to refer back the proposal once again to SEAC-III for appraisal vide Terms of Reference (ToR) in this regard.

PP stated that, they have calculated penalty provision for violation application as per approach paper for assessment for environmental damage and estimation of remediation costs for building construction projects initiated with obtaining mandatory environmental clearance on the PARIVESH portal.

SEAC-3 appraised the proposal as per Circular issued by SEIAA vide dated 22.08.2022. The case was discussed on the basis of the documents submitted and presentation made by the proponent. All issues relating to environment, including air, water, land, soil, ecology, biodiversity and social aspects were examined.

After detailed deliberations on the proposal committee confirmed the case to be of violation of the EIA Notification, 2006 and as per Office Memorandum- F. No. 22-21/2020-IA.III dated 07.07.2021 issued by the Ministry of Environment, Forest & Climate Change,

Member Secretary

Chairman

decided to issuing following Term of Reference for undertaking EIA and preparation of Environment Management Plan (EMP):

Terms of Reference for EIA and preparation of Environment Management Plan (EMP) for Violation Cases		
The following Terms of Reference (TOR) for violation cases shall be read along with Ministry of Environment Forest and Climate Change orders no F.No.22-21/2020-IA.III Dated 7th July 2021 and F No. 22-21/2020-IA.III (E 138949) dated 28 th January 2022 and Approach for Assessment for Environment Damage and Estimation of Remediation Costs for Building Construction Projects Initiated Without Mandatory Environment Clearance” 2018.		
The following TOR are drafted with reference to Ministry of Environment Forest and Climate Change impact assessment division TORs for Violation Case a) For Construction Sector vide Notification S.O.804 (E) dated 14 th March 2017 in the matter of IA/HR/NCP/63612/2017 and b) For Mining Sector dated 12 th November 2018 in the proposal No IA/MH/MIN/68113/2017.		
A	Project Description	
A 1	Project description, its importance and benefits.	
A 2	Project site details (location, topo-sheet of the study area of 10 Km, Coordinates, google map, layout map, land use, geological features and geo-hydrological status of the study area, drainage). hydro geological survey report with graphs & data.	
A 3	Land use as per the approved Master Plan of the area, Permission/approvals required from the land owning agencies, Planning / Development Authorities, Local Body, Water supply & Sewerage Board, etc.	
A 4	Land acquisition status, R & R details.	
A 5	Forest and Wildlife and eco-sensitive zones, if any in the study area of 10 km. Any sensitive areas in impact zone such as archaeological structures, reserved forest, noise sensitive zones etc. Clearances required under the Forest (Conservation) Act, 1980, the Wildlife (Protection) Act, 1972 and/or the Environment (Protection) Act, 1986.	
A 6	High Tension lines or Hazard lines if any on the plot.	
A 7	Plan showing HFL/CRZ lines.	
A 8	Permissions granted by State Government in tabular and chronological form. Comparative statement of components approved and components constructed including tis configuration as per earlier EC (if applicable) and proposed development.	
A 9	PP to submit the detailed master plan indicating already completed construction and proposed construction. PP to submit the certificate from registered architect for completed work, built up area and configuration.	
A 10	Project cost shall be based on government notified stamp duty ready reckoner at time of application including cost of land and construction including civil, MEP works, environment services, site/land development, horticulture/landscape works etc complete	
B	Base Line Data	
B 1	Baseline environmental study for ambient air (PM ₁₀ , PM _{2.5} , SO ₂ , NO _x & CO), water (both surface and ground), noise and soil for one month (except monsoon period) as per MoEF&CC/CPCB guidelines at minimum 5 locations in the study area of 10 km, The collection and analysis of data shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or an environmental	

Member Secretary

Chairman

		laboratory duly notified under the Environment (Protection) Act, 1986, or an environmental laboratory accredited by NABL, or a laboratory of a Council of Scientific and Industrial Research (CSIR) institution working in the field of environment.
B	2	Detail on flora and fauna and socio-economic aspects in the study area. Details of tree cutting, tree transplantation and survival report of existing trees including conformity to prevailing Tree Act.
B	3	Likely impact of the project on the environmental parameters (ambient air surface and ground water, land, flora and fauna and socio-economic, etc.)
B	4	Source of water for different identified purposes with the permissions required from the concerned authorities, both for surface water and the ground water (by CGWA) as the case may be, Rain water harvesting, etc.
B	5	Socio-economic infrastructure details including public transport arrangements on the site; PP to mention details of socio-economic in EIA.
B	6	PP to submit contour map with slopes, drainage pattern of the site and surrounding area. Layout showing natural water courses on site; total runoff calculation before and after development.
B	7	PP to submit details of existing trees, proposed to be cut, proposed to be transplanted along with tree survival report conforming to prevailing Tree Act.
B	8	Land use of the study area delineating forest area, agricultural land, grazing land, wildlife sanctuary, national park, migratory routes of fauna, water bodies, human settlements and other ecological features should be indicated.
B	9	Proximity to Areas declared as 'Critically Polluted' should also be indicated and where so required, clearance certifications from the prescribed Authorities, such as the SPCB should be secured and furnished to the effect that the proposed Activities could be considered.
B	10	Similarly, for Coastal Projects, A CRZ map duly authenticated by one of the authorized agencies demarcating LTL, HTL, CRZ area, location of the mine lease w.r.t. CRZ, coastal features such as mangroves, if any, should be furnished. (Note: The Projects falling under CRZ would also need to obtain Approval of the concerned Coastal Zone Management Authority).
B	11	The water requirement for the Project, its availability and source should be furnished. A detailed water balance should also be provided. Fresh water requirement for the Project should be indicated.
B	12	Necessary clearance from the Competent Authority for drawl of requisite quantity of water for the Project should be provided.
B	13	Description of water conservation measures proposed to be adopted in the Project should be given. Details of rainwater harvesting proposed in the Project, if any, should be provided.
B	14	Impact of the Project on the water quality, both surface and groundwater, should be assessed and necessary safeguard measures, if any required, should be provided.
B	15	Based on actual monitored data, it may clearly be shown whether working will intersect groundwater. Necessary data and documentation in this regard may be provided. In case the working will intersect groundwater table, a detailed Hydro Geological Study should be undertaken and Report furnished. The Report inter-alia, shall include details of the aquifers present and impact of mining activities on these

Member Secretary

Chairman

		aquifers. Necessary permission from Central Ground Water Authority for working below ground water and for pumping of ground water should also be obtained and copy furnished.
B	16	Details of any stream, seasonal or otherwise, passing through the lease area and modification / diversion proposed, if any, and the impact of the same on the hydrology should be examined.
B	17	Information on site elevation, working depth, groundwater table etc. should be provided both in AMSL and BGL. A schematic diagram may also be provided for the same.
C	Traffic Impact Study	
C	1	Traffic Management Plan for the development – Internal circulation indicating road width and turning radius. Cross section of roads at four places showing clear road width, distance left from building line, spaces left for plantation, footpath, service lines etc.
C	2	Traffic Volume Counts and Turning Movement Counts on all the external surrounding roads of the proposed project showing the time period taken.
C	3	Topographic details of roads and intersection of the surrounding roads where counts are taken, actual geometry on ground to be shown with dimensions.
C	4	Traffic generation values of similar development to be given by actual count by actual count as support data for assumption made to the particular project.
C	5	Impact on local transport infrastructure due to the Project should be indicated. Projected increase in truck traffic as a result of the Project in the present road network (including those outside the Project area) should be worked out, indicating whether it is capable of handling the incremental load. Arrangement for improving the infrastructure, if contemplated (including action to be taken by other agencies such as State Government) should be covered. Project Proponent shall conduct Impact of Transportation study as per Indian Road Congress Guidelines.
C	6	Parking statement mentioning parking as per DCR & parking provided actually.
C	7	Basement ventilation plan: Fire Tender Movement Plan showing clear road and turning radius. Cross section of roads at four places including UGT, OWC and DG set location showing clear road width and distance left from building line & spaces left for plantation, parking, service lines, foot paths, etc.
D	Environmental Impact and Management Plan	
D	1	Identify sources of air pollution, indicate mitigation measures to reduce Air pollution/Noise pollution.
D	2	Debris management plan including (a) debris required for refilling, (b) contour plan, (c) details of site where excess debris will be disposed, capacity of the site and NOC of plot owner. PP shall also ensure that debris disposed on other plot shall not be disposed on another plot. If to be disposed on another plot, the same shall be carried out as per prevailing environmental laws.
D	3	Management of solid waste and the construction & demolition waste for the project vis-a-vis the Solid Waste Management Rules 2016 and the Construction & Demolition Rules, 2016. Transport, collection, storage and disposal for all types of wastes like hazardous waste, non-hazardous waste, solid waste, E– waste, and debris/excess earth etc. PP to provide the detailed solid waste management plan along with marked locations on the master plan. Design details of waste processing

Member Secretary

Chairman

		equipment such as OWC/biogas plants confirming to the technical requirements to meet the quality products.
D	4	Waste water management (treatment, reuse and disposal) for the project and also the study area. Design of all STP's along with BOD load, oxygen requirement calculations and sizing of the tanks with respect to the design criteria. PP to submit detailed calculation for the disinfection of the treated STP water; PP to submit cross sectional drawing of STP's showing dimensions and ground level; PP to provide ozonation for tertiary treatment. PP to mark the area required for all STP's on master layout with dimensions
D	6	PP to show internal storm water drain and sewer line arrangements up to final disposal point.
D	7	Provision of mandatory RG area on virgin land and submit the drawing with calculations, ensuring entire mandatory RG is provided on the plot where residential buildings are proposed.
D	8	A detailed phase wise development plan with safety planning where occupancy has been given.
D	9	If any site specific structures such as creation of water body, alteration of natural storm water, large alteration of slopes, creation of green areas abutting to water bodies / natural storm water drain / river etc, is involved, detailed environmental protection approach for the same shall be provided.
D	10	Separate chapter on Renewable energy in EIA report. PP to submit terrace plan for installing solar panels& calculations of energy saving; Energy efficient measures (LED lights, solar power, etc.) during construction as well as during operational phase of the project. Report on ECBC compliance.
D	11	Provide details of Solar PV and Solar water heater in the specific format. PP to carryout shadow analysis for identifying the roof-top area for providing solar panels Minimum 5% of the total demand load shall be provided with Solar PV.
D	12	Environmental status report including analysis reports of all environmental pollution reduction facilities if any commissioned.
D	13	PP to submit Disaster management plan.
D	14	Preparation of site specific, executable and auditable environment management plan (EMP)
D	15	A time bound Progressive Greenbelt Development Plan shall be prepared in a tabular form (indicating the linear and quantitative coverage, plant species and time frame) and submitted, keeping in mind, the same will have to be executed up front on commencement of the Project. Phase-wise plan of plantation and compensatory afforestation should be charted clearly indicating the area to be covered under plantation and the species to be planted. The details of plantation already done should be given. The plant species selected for green belt should have greater ecological value and should be of good utility value to the local population with emphasis on local and native species and the species which are tolerant to pollution.
D	16	Benefits of the Project if the Project is implemented should be spelt out. The benefits of the Project shall clearly indicate environmental, social, economic, employment potential, etc
E	Environmental Modelling and additional Studies	
E	1	Fugitive dust modelling by using local meteorological data.

Member Secretary

Chairman

E	2	Ecological footprint calculation using LCA approach.
E	3	Estimation of Carbon footprint of the project and its analysis to be included.
E	4	Assessment of ecological damage with respect to air, water, land and other environmental attributes. The collection of data and sample analysis shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986 or Environmental Laboratory accredited by NABL, or a laboratory of council of Scientific and Industrial Research (CSIR) institution working in the field of environment.
E	6	Gate mass balance analysis for environmental parameters related to solid/liquid waste material coming to site, waste generated and its treatment and disposal from site.
E	7	Public health implications of the Project and related activities for the population in the impact zone should be systematically evaluated and the proposed remedial measures should be detailed along with budgetary allocations.
E	8	Measures of socio economic significance and influence to the local community proposed to be provided by the Project Proponent should be indicated. As far as possible, quantitative dimensions may be given with time frames for implementation.
E	9	Detailed environmental management plan (EMP) to mitigate the environmental impacts which, should inter-alia include the impacts of change of land use, loss of agricultural and grazing land, if any, occupational health impacts besides other impacts specific to the proposed Project.
E	10	Public Hearing points raised and commitment of the Project Proponent on the same along with time bound Action Plan with budgetary provisions to implement the same should be provided and also incorporated in the final EIA/EMP Report of the Project.
E	11	PP to refer “approach paper for assessment for environmental damage and estimation of remediation costs for building construction projects initiated with obtaining mandatory environmental clearance” available on the portal : “ecmpcb.in”.
F	NOCs, Undertakings, CER and Litigations	
F	1	NOC’s required: a) CFO, b) Water supply with quantity, c) Drainage, d) Non-biodegradable waste disposal, e) Aviation f) HRC, G) PESO , H) Defence/NAD etc
F	2	Undertaking to provide DG set backup to all Pollution Control Devices, Water Supply, Emergency Services including emergency lifts, etc.
F	3	Include condition of “maintenance of all Pollution Control Equipment’s and functioning of Environment Monitoring Cell in PP’s MoU with society /maintenance agencies /vendors.
F	4	PP to submit details of CER activities in consultation with the affected people in the project area as per MoEF&CC circular dt. 01.05.2018, along with details of fund utilization & agreement or consent of executor.
F	5	PP to submit Roles and Responsibilities of developer etc for compliance of environmental regulations under the provisions of EP act.
F	6	Details of litigation pending against the project, if any, with direction /order passed by any Court of Law against the Project should be given.
G	Specific Term of Reference	
G	1	The State Government/SPCB shall take action against the project proponent under the provisions of section 15 read in conjunction with Section 19 of the Environment (Protection) Act, 1986, and further no consent to operate to be issued till the project is granted EC.

Member Secretary

Chairman

G	2	As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete impact assessment studies and submit Environment Impact Assessment (EIA) report and Environment Management Plan (EMP) in a time bound manner.
G	3	Such cases shall be subject to appropriate (a) Damage Assessment, (b) Remedial Plan and (c) Community Augmentation Plan.
G	4	Assessment of ecological damage with respect to air, water, land and other environmental attributes shall be done before arriving at quantum environment remediation and natural and community resource augmentation.
G	5	The methodology of calculating this quantum shall be as specified in format for Assessment of Environmental damages in the paper titled “Approach for Assessment for Environment Damage and Estimation of Remediation Costs for Building Construction Projects Initiated Without Mandatory Environment Clearance” 2018
G	6	Preparation of EMP comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefits derived, which shall be based on cost of project derived from prevailing rates of construction and land of government approved ready reckoner, due to violation. The cost of the Project (capital cost and recurring cost) as prevailing in Annual Statement of Rates / District Schedule of Rates/ Government Ready Reckoner Rates as well as the cost towards implementation of EMP should be clearly spelt out.
G	7	The collection and analysis of data shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or an environmental laboratory accredited by NABL, or a laboratory of a Council of Scientific and Industrial Research (CSIR) institution working in the field of environment.
G	8	The remediation plan and the natural and community resource augmentation plan shall be prepared as an independent chapter in the EIA report by the accredited consultants.
G	9	It should be clearly stated whether the proponent if it is a Company has a well laid down Environment Policy approved by its Board of Directors? If so, it may be spelt out in the EIA Report with description of the prescribed operating process/procedures to bring into focus any infringement/deviation/violation of the environmental or forest norms/ conditions? The hierarchical system or administrative order of the Company to deal with the environmental issues and for ensuring compliance with the EC conditions may also be given. The system of reporting of non-compliances / violations of environmental norms to the Board of Directors of the Company and/or shareholders or stakeholders at large, may also be detailed in the proposed safeguard measures in each case should also be provided.
G	10	Besides the above, the below mentioned general points are also to be followed: a) All documents to be properly referenced with index and continuous page numbering. b) Where data are presented in the Report especially in Tables, the period in which the data were collected and the sources should be indicated. c) Project Proponent shall enclose all the analysis/testing reports of water, air, soil, noise etc. using the MoEF&CC/NABL accredited laboratories. All the original analysis/testing reports should be available during appraisal of the Project. d) Where the documents provided are in a language other than English, an English translation should be provided.

Member Secretary**Chairman**

G	11	In case of continued violation after issue of TOR, the ToR/Environmental Clearance shall be terminated forthwith.
H	Other points:	
H	1	PP to submit the DP Plan.
H	2	PP to submit the detail Architect Certificate stating current status of the construction along with building wise construction done (FSI, NoN- FSI & Total built up area) on site along with the chronology.
H	3	PP to submit the all-approvals details (CC, OC etc) regarding project under consideration.
H	4	PP to submit the details of Court cases / litigations w.r.t. the project and project location, if any.

Decision: -

After deliberation, Committee decided to recommend the proposal to SEIAA for grant of ToR.

3	SIA/MH/INFRA2/417564/2023	Proposed Residential and Commercial development at Bhugaon by Kakade Estate Developers Pvt. Ltd.

Representative of PP was present during the meeting along with environmental consultant M/s. Mahabal Enviro Engineers Pvt Ltd.

It is noted that, the PP has submitted the application for prior Environmental Clearance for proposed Residential and Commercial development Project with total plot area of 5,12,989.00m², FSI area of 5,27,038.44m² (As per IOD sanctioned), Non FSI area of 4,56,537.24m² (As per IOD sanctioned) and total BUA of 9,83,575.68m².

Brief information of the proposal is as below:

1.	PARIVESH Proposal number	SIA/MH/INFRA2/417564/2023
2.	Name of Project	Proposed Residential and Commercial development Project At S. No. 7/1, 7/3, 7/4, 8/1, 8/2, 8/3, 8/4, 8/5, 8/6, 105/1, 105/2, 105/3, 105/4, 105/5, 105/6, 105/7, 105/8, 105/9, 105/11/1, 105/12/1, 106/1A, 106/1B, 106/1C, 106/2A, 107, 108, 109, 110, 111, 113/2, 114, 115/1, 115/2, 115/3, 115/4, 115/5, 115/6, 115/7, 115/8, 115/10, 115/11, 115/12, 115/13, 116, 118/1, 118/2, 119/1, 119/2, 122/2, 123/1, 124, 125/1, 125/3, 125/4, 130/2A, 130/2B, 143, 202, 203 At Village Bhugaon, Taluka - Mulshi, Pune, Maharashtra by M/s. Kakade Estate Developers Pvt. Ltd.

Member Secretary

Chairman

Minutes of 264th Day – 1 (Part D) meeting of SEIAA held on 08th August, 2023

Item no. 41**Proposal No.:-** SIA/MH/MIS/72296/2022**Type of Project:** ToR

Subject- Environmental Clearance for Residential project Xrbia Hinjewadi Special Township - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District - Pune M/s.Xrbia Hinjewadi Developers Private Limited

Project Details-

Representative of PP was present during the meeting along with environmental consultant M/s. Mahabal Enviro Engineers Pvt. Ltd.

Brief information of the proposal is as below:

1.	Proposal No.	SIA/MH/MIS/72296/2022	
2.	Name of Project	Residential project – “Xrbia Hinjewadi Special Township” - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune by Xrbia Hinjewadi Developers Private Limited	
3.	Project Category	8(b) B1 Category	
4.	Type of institution	Private	
5.	Project Proponent	Name	Mr. Veer Bharti Kouls Authorized Person
		Address	First Floor, Mantri House, 929, Fergusson College Rd, near Dnyaneshwar Paduka Chowk, Pune- 411004, Maharashtra
		Tel	02066858659
		Mobile	99604 00259
		Email ID	veerkouls@xrbia.com
6.	Consultant	Mahabal Enviro Engineers Pvt. Ltd.	
7.	Applied for	Environmental Clearance (Violation)	
8.	Details of previous EC	EC letter vide File no. 21-153/2008-IA-III dated 27.12.2006 granted by Government of India, MoEF	
9.	Location of the project	Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District – Pune	
10.	Latitude and Longitude	18°60'38.58" N 73°69'01.53" E	
11.	Total Plot Area (m ²)	Sector Area – R 22-28: 79,109 m ² Sector Area – R 29: 38,123 m ² Total plot Area: (R-29, R22-28): 1,17,232 m ²	
12.	Deductions (m ²)	Nil	
13.	Net plot area (m ²)	Sector area – R 22-28: 79,109 m ² Sector area – R 29: 38,123 m ² Total plot area: (R-29, R22-28): 1,17,232 m ²	


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Minutes of 264th Day – I (Part D) meeting of SEIAA held on 08th August, 2023

14.	Proposed FSI area (m ²)	FSI area – Sector R 22-28: 75,212 m ² FSI area – Sector R 29: 68,031 m ² Total FSI area: 1,43,242 m ²				
15.	Proposed Non FSI area (m ²)	Non FSI area – Sector R 22-28: 17,289 m ² Non FSI area – Sector R 29: 15,348 m ² Total Non FSI area: 32,637 m ²				
16.	Proposed TBUA (m ²)	Total BUA area – Sector R 22-28: 92,501 m ² Total BUA area – Sector R 29: 83,378 m ² Total BUA area – Sector (R-29, R22-28): 1,75,879 m ²				
17.	Total Built up area (m ²) approved by Planning Authority till date	Total BUA area – Sector R 22-28: 92,501 m ² Total BUA area – Sector R 29: 83,378 m ² Total BUA area – Sector (R-29, R22-28): 1,75,879 m ²				
18.	Ground coverage (m ²)& %	17,987.63				
19.	Total Project Cost (Rs.)	Rs.347 Crore				
20.	CER as per MoEF&CC circular dated 01/05/2018	Not Applicable				
21.	Details of Building Configuration:					
	Sr.	Building Name	Configuration	Total No of Flats (no.)	Population	Height (m)
		Sector R-29				
	1	A1	P+G+7	64	320	24.75
	2	A2	P+G+7	96	480	24.75
	3	A3	P+G+7	112	560	24.75
	4	A4	P+G+7	112	560	24.75
	5	A5	P+G+7	112	560	24.75
	6	A6	P+G+7	112	560	24.75
	7	A7	P+G+7	176	704	24.75
	8	A8	P+G+7	176	704	24.75
	9	A9	P+G+7	160	640	24.75
	10	A10	P+G+7	160	640	24.75
	11	A11	P+G+7	112	560	24.75
	12	A12	P+G+7	96	480	24.75
	13	A13	P+G+7	80	480	24.75
		Total		1,568	7,248	
		Club house	G+1			8.70
		Sector R-22-28				
	14	A14	P+G+8	72	360	27.5
	15	A15	P+G+8	72	360	27.5
	16	B1	P+G+7	176	704	24.75
	17	B2	P+G+7	176	704	24.75


Member Secretary


Chairman

Minutes of 264th Day – 1 (Part D) meeting of SEIAA held on 08th August, 2023

18	B3	P+G+7	64	320	24.75
19	B6	P+G+7	64	320	24.75
20	B7	P+G+7	80	480	24.75
21	B8	P+G+7	176	704	24.75
22	C2	P+G+7	64	320	24.75
23	C3	P+G+7	176	704	24.75
24	C4	P+G+7	80	480	24.75
25	C5	P+G+7	80	480	24.75
26	C6	P+G+7	80	480	24.75
27	C7	P+G+7	64	320	24.75
28	D1	P+G+7	64	320	24.75
29	D6	P+G+7	64	320	24.75
	Total		1,552	7,376	

22. Total tenements 3,120 nos.

23. Water Budget

	Dry Season	Wet Season
Fresh water	1,316 m ³ /day	1,316 m ³ /day
Recycled (Flushing)	658 m ³ /day	658 m ³ /day
Recycled (Gardening)	73 m ³ /day	15 m ³ /day
Total water requirement	1,974 m ³ /day	1,974 m ³ /day
Waste water generation	1,579 m ³ /day	1,579 m ³ /day

24. Water Storage Capacity for Firefighting / UGT

UGT details	Quantity	Unit
Domestic water UG tank	3,297	m ³
Flushing Water UG tank	658	m ³
Fire water UG tank	As per NOC	m ³

25. Source of Water Irrigation Department, Pune

26. Rainwater Harvesting (RWH) 7 no. of Recharge pits
Recharge pits size: 2m × 2m × 2m

27. Sewage and waste water Sewage generation: 1,579 m3/day STP capacity : 1,600 m3/day

28. Solid Waste Management during Construction Phase Not applicable

29. Solid Waste Management during Operation Phase

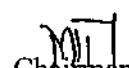
Type	Quantity (kg/day)	Treatment / disposal
Dry waste	1,754	Handed over to Local Body
Wet waste	2,632	Treated in OWC

30. Green Belt (m2) Total RG area (m2) : 11,876 m2

31. Power requirement: Source of Power Supply: MSEDCL

Sr.	Description	Power	Unit


Member Secretary


Chairman

Minutes of 264th Day – 1 (Part D) meeting of SEIAA held on 08th August, 2023

		1.	During Operation phase			
			i) Max. Demand Load	4,973	kW	
			ii) Connected Load	6,604	kW	
		2.	DG Sets	1 no. x 500 & 1 no. x 125	kVA	
		3.	Transformer	9x630 1x500	kVA	
4.	Fuel Used	Diesel				
32.	Details of Energy saving	-				
33.	Environmental Management plan budget during Construction phase	Not applicable				
34.	Environmental Management plan Budget during Operation phase					
	Sr.	Component	Details	Capital cost (Rs. In Lakh)	O&M cost (Rs. In Lacs/year)	
	1.	Stormwater management	Laying of storm & Sewer line up to final disposal point	92	9.2	
	2.	Sewage Treatment Plant	STP having total capacity 1,600 m ³ /day	125	25	
	3.	Rain Water Harvesting	7 nos. of recharge pits having size 2 m x 2 m x 2 m	3.6	0.2	
	4.	Solid Waste Management	Cost for Treatment of biodegradable garbage in OWC	20	2	
	5.	Landscape development	Tree Plantation	55	5	
	6.	Environmental Monitoring	Monitoring and analysis of Air, Water, Noise, Soil, surface water, STP treated water etc.	MoEF Approved Lab	2	
	7.	Firefighting system	Installation and operation of Fire Fighting system	287	28.7	
		Total		582.6	72.1	
35.	Parking	Sr.	Type	Required as per DCR	Actual Provided (nos.)	Area per parking (m ²)
		1.	4W	328	328	4,100


Member Secretary


Chairman

Minutes of 264th Day – 1 (Part D) meeting of SEIAA held on 08th August, 2023

		2.	2W	7076	7076	14,152
		3.	Cycle	7076	7076	14,152
			Total			32,404
36.	Details of Court cases / litigations w.r.t. the project and project location if any.	Yes				

SEAC Deliberation –

PP stated that, “Xrbia Hinjewadi Special Township” (formerly known as Silicon City) is a residential project at Sector R 22 to R 28 and Sector R 29 located at S. No. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District-Pune by Xrbia Hinjewadi Developers Private Limited (XHDPL).

PP further stated that, they have received an Environment Clearance from Government of India, MoEF vide letter no. 21-153/2008-IA-III dated 27.12.2006 for the Plot area of 97.28 ha (9,72,800 m²) and Total Construction Area of 48.64 ha (4,86,400 m²) in the name of “Silicon city” by Eiffel Infocity Pvt. Ltd. PP inform that, the Consent to Establish was obtained from MPCB vide Consent No. BO/RO/(P&P)/364 dated 10.04.2006. PP inform that, location clearance was received from Govt. of Maharashtra on 08.06.2009 and NA order was also received from District Collector, Pune for Township on 07.09.2010 for the plot area 81.20 ha (8,12,000 m²).

PP stated that, the separate application for Environmental Clearance was submitted to SEIAA through SEAC, Maharashtra for development of sectors R22 to R-28 and Sector R-29 on 12.06.2013. PP further stated that, the construction activities were initiated after obtaining the Development Permission (DP) from the Collector Office on 10.09.2012 (for Sector R-22 to Sector R-28 and R-29) and the total construction of around 17.5 ha (1,75,879 m²) was completed for residential sectors (R-22 to R-28 and R-29) in the year 2016- 2017 against the 48.64 ha (4,86,400 m²). PP informed that, the part occupancy certificate was obtained on 07.11.2016 and 27.01.2017 and the complete occupancy certificate was received on 01.02.2017. PP further informed that, the project was handed over to the society and registration was done on 11.09.2017.

PP stated that, they are applying for Terms of Reference and Environment Clearance (Fresh Case) for the changes/ addition/ variation in total covered built-up construction area that occurred and executed in the project under violation as per the MoEF&CC Notification 14.03.2017 and MoEF&CC published Office Memorandum (OM) for identification and handling of violation cases under EIA Notification 2006 a Standard Operating Procedure (SOP) on 07.07.2021 and Office Memorandum dated 28.01.2022.

PP further stated that, they have applied to ToR for total plot area 1,17,232 m², proposed total built-up area 1,75,879 m² having proposed FSI area of 1,43,242 m² and proposed Non FSI area of 32,637 m².

PP further stated that, they have calculated violation days from the date of a Commencement Certificate dated 10.09.2012 to the date of the EC application dated 16.02.2022 i.e. 3,446 days.


Member Secretary


Chairman

Minutes of 264th Day – 1 (Part D) meeting of SEIAA held on 08th August, 2023

PP further stated that, the project was considered in the 137th SEAC-III meeting held on 30.03.2022 and the application was forwarded to SEIAA by SEAC for further guidance. PP informed that, the project was considered in the 242nd SEIAA meeting held on 21.04.2022 and SEIAA observed that there is a matter pending in Hon'ble High Court, SEIAA decided to defer the proposal till the matter in NGT is decided. PP informed that, the proposal again our project was considered in the 258th SEIAA meeting on 03.04.2023 and the esteemed committee of SEIAA did decided to refer back the proposal once again to SEAC-III for appraisal vide Terms of Reference (ToR) in this regard.

PP stated that, they have calculated penalty provision for violation application as per approach paper for assessment for environmental damage and estimation of remediation costs for building construction projects initiated with obtaining mandatory environmental clearance on the PARIVESH portal.

SEAC-3 appraised the proposal as per Circular issued by SEIAA vide dated 22.08.2022. The case was discussed on the basis of the documents submitted and presentation made by the proponent. All issues relating to environment, including air, water, land, soil, ecology, biodiversity and social aspects were examined.

After detailed deliberations on the proposal committee confirmed the case to be of violation of the EIA Notification, 2006 and as per Office Memorandum- F. No. 22-21/2020- IA.III dated 07.07.2021 issued by the Ministry of Environment, Forest & Climate Change, decided to issuing following Term of Reference for undertaking EIA and preparation of Environment Management Plan (EMP):

Terms of Reference for EIA and preparation of Environment Management Plan (EMP) for Violation Cases

The following Terms of Reference (TOR) for violation cases shall be read along with Ministry of Environment Forest and Climate Change orders no F.No.22-21/2020-IA.III Dated 7th July 2021 and F No. 22-21/2020-IA.III (E 138949) dated 28th January 2022 and Approach for Assessment for Environment Damage and Estimation of Remediation Costs for Building Construction Projects Initiated Without Mandatory Environment Clearance" 2018.

The following TOR are drafted with reference to Ministry of Environment Forest and Climate Change impact assessment division TORs for Violation Case a) For Construction Sector vide Notification S.O.804 (E) dated 14th March 2017 in the matter of IA/HR/NCP/63612/2017 and b) For Mining Sector dated 12th November 2018 in the proposal No IA/MH/MIN/68113/2017.

A	Project Description	
A	1	
A	2	Project site details (location, topo-sheet of the study area of 10 Km, Coordinates, google map, layout map, land use, geological features and geo-hydrological status of the study area, drainage). hydro geological survey report with graphs & data.
A	3	Land use as per the approved Master Plan of the area, Permission/approvals required from the land owning agencies, Planning / Development Authorities, Local Body, Water supply & Sewerage Board, etc.
A	4	Land acquisition status, R & R details.


Member Secretary


Chairman

Minutes of 264th Day – I (Part D) meeting of SEIAA held on 08th August, 2023

A	5	Forest and Wildlife and eco-sensitive zones, if any in the study area of 10 km. Any sensitive areas in impact zone such as archaeological structures, reserved forest, noise sensitive zones etc. Clearances required under the Forest (Conservation) Act, 1980, the Wildlife (Protection) Act, 1972 and/or the Environment (Protection) Act, 1986.
A	6	High Tension lines or Hazard lines if any on the plot.
A	7	Plan showing HFL/CRZ lines.
A	8	Permissions granted by State Government in tabular and chronological form. Comparative statement of components approved and components constructed including its configuration as per earlier EC (if applicable) and proposed development.
A	9	PP to submit the detailed master plan indicating already completed construction and proposed construction. PP to submit the certificate from registered architect for completed work, built up area and configuration.
A	10	Project cost shall be based on government notified stamp duty ready reckoner at time of application including cost of land and construction including civil, MEP works, environment services, site/land development, horticulture/landscape works etc complete
B	Base Line Data	
B	1	Baseline environmental study for ambient air (PM ₁₀ , PM _{2.5} , SO ₂ , NO _x & CO), water (both surface and ground), noise and soil for one month (except monsoon period) as per MoEF&CC/CPCB guidelines at minimum 5 locations in the study area of 10 km. The collection and analysis of data shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or an environmental laboratory accredited by NABL, or a laboratory of a Council of Scientific and Industrial Research (CSIR) institution working in the field of environment.
B	2	Detail on flora and fauna and socio-economic aspects in the study area. Details of tree cutting, tree transplantation and survival report of existing trees including conformity to prevailing Tree Act.
B	3	Likely impact of the project on the environmental parameters (ambient air surface and ground water, land, flora and fauna and socio-economic, etc.)
B	4	Source of water for different identified purposes with the permissions required from the concerned authorities, both for surface water and the ground water (by CGWA) as the case may be, Rain water harvesting, etc.
B	5	Socio-economic infrastructure details including public transport arrangements on the site; PP to mention details of socio-economic in EIA.
B	6	PP to submit contour map with slopes, drainage pattern of the site and surrounding area. Layout showing natural water courses on site; total runoff calculation before and after development.
B	7	PP to submit details of existing trees, proposed to be cut, proposed to be transplanted along with tree survival report conforming to prevailing Tree Act.
B	8	Land use of the study area delineating forest area, agricultural land, grazing land, wildlife sanctuary, national park, migratory routes of fauna, water bodies, human settlements and other ecological features should be indicated.
B	9	Proximity to Areas declared as 'Critically Polluted' should also be indicated and where so required, clearance certifications from the prescribed Authorities, such as the SPCB should be secured and furnished to the effect that the proposed Activities


Member Secretary


Chairman

Minutes of 264th Day – 1 (Part D) meeting of SEIAA held on 08th August, 2023

		could be considered.
B	10	Similarly, for Coastal Projects, A CRZ map duly authenticated by one of the authorized agencies demarcating LTL, HTL, CRZ area, location of the mine lease w.r.t. CRZ, coastal features such as mangroves, if any, should be furnished. (Note: The Projects falling under CRZ would also need to obtain Approval of the concerned Coastal Zone Management Authority).
B	11	The water requirement for the Project, its availability and source should be furnished. A detailed water balance should also be provided. Fresh water requirement for the Project should be indicated.
B	12	Necessary clearance from the Competent Authority for drawl of requisite quantity of water for the Project should be provided.
B	13	Description of water conservation measures proposed to be adopted in the Project should be given. Details of rainwater harvesting proposed in the Project, if any, should be provided.
B	14	Impact of the Project on the water quality, both surface and groundwater, should be assessed and necessary safeguard measures, if any required, should be provided.
B	15	Based on actual monitored data, it may clearly be shown whether working will intersect groundwater. Necessary data and documentation in this regard may be provided. In case the working will intersect groundwater table, a detailed Hydro Geological Study should be undertaken and Report furnished. The Report inter-alia, shall include details of the aquifers present and impact of mining activities on these aquifers. Necessary permission from Central Ground Water Authority for working below ground water and for pumping of ground water should also be obtained and copy furnished.
B	16	Details of any stream, seasonal or otherwise, passing through the lease area and modification / diversion proposed, if any, and the impact of the same on the hydrology should be examined.
B	17	Information on site elevation, working depth, groundwater table etc. should be provided both in AMSL and BGL. A schematic diagram may also be provided for the same.
C	Traffic Impact Study	
C	1	Traffic Management Plan for the development – Internal circulation indicating road width and turning radius. Cross section of roads at four places showing clear road width, distance left from building line, spaces left for plantation, footpath, service lines etc.
C	2	Traffic Volume Counts and Turning Movement Counts on all the external surrounding roads of the proposed project showing the time period taken.
C	3	Topographic details of roads and intersection of the surrounding roads where counts are taken, actual geometry on ground to be shown with dimensions.
C	4	Traffic generation values of similar development to be given by actual count by actual count as support data for assumption made to the particular project.



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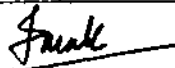
C	5	Impact on local transport infrastructure due to the Project should be indicated. Projected increase in truck traffic as a result of the Project in the present road network (including those outside the Project area) should be worked out, indicating whether it is capable of handling the incremental load. Arrangement for improving the infrastructure, if contemplated (including action to be taken by other agencies such as State Government) should be covered. Project Proponent shall conduct Impact of Transportation study as per Indian Road Congress Guidelines.
C	6	Parking statement mentioning parking as per DCR & parking provided actually.
C	7	Basement ventilation plan: Fire Tender Movement Plan showing clear road and turning radius. Cross section of roads at four places including UGT, OWC and DG set location showing clear road width and distance left from building line & spaces left for plantation, parking, service lines, foot paths, etc.
D	Environmental Impact and Management Plan	
D	1	Identify sources of air pollution, indicate mitigation measures to reduce Air pollution/Noise pollution.
D	2	Debris management plan including (a) debris required for refilling, (b) contour plan, (c) details of site where excess debris will be disposed, capacity of the site and NOC of plot owner. PP shall also ensure that debris disposed on other plot shall not be disposed on another plot. If to be disposed on another plot, the same shall be carried out as per prevailing environmental laws.
D	3	Management of solid waste and the construction & demolition waste for the project vis-a-vis the Solid Waste Management Rules 2016 and the Construction & Demolition Rules, 2016. Transport, collection, storage and disposal for all types of wastes like hazardous waste, non-hazardous waste, solid waste, E- waste, and debris/excess earth etc. PP to provide the detailed solid waste management plan along with marked locations on the master plan. Design details of waste processing equipment such as OWC/biogas plants confirming to the technical requirements to meet the quality products.
D	4	Waste water management (treatment, reuse and disposal) for the project and also the study area. Design of all STP's along with BOD load, oxygen requirement calculations and sizing of the tanks with respect to the design criteria. PP to submit detailed calculation for the disinfection of the treated STP water; PP to submit cross sectional drawing of STP's showing dimensions and ground level; PP to provide ozonation for tertiary treatment. PP to mark the area required for all STP's on master layout with dimensions
D	6	PP to show internal storm water drain and sewer line arrangements up to final disposal point.
D	7	Provision of mandatory RG area on virgin land and submit the drawing with calculations, ensuring entire mandatory RG is provided on the plot where residential buildings are proposed.
D	8	A detailed phase wise development plan with safety planning where occupancy has been given.
D	9	If any site specific structures such as creation of water body, alteration of natural storm water, large alteration of slopes, creation of green areas abutting to water bodies / natural storm water drain / river etc, is involved, detailed environmental protection approach for the same shall be provided.

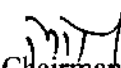

Member Secretary


Chairman

Minutes of 264th Day – 1 (Part D) meeting of SEIAA held on 08th August, 2023

D	10	Separate chapter on Renewable energy in EIA report. PP to submit terrace plan for installing solar panels& calculations of energy saving; Energy efficient measures (LED lights, solar power, etc.) during construction as well as during operational phase of the project. Report on ECBC compliance.
D	11	Provide details of Solar PV and Solar water heater in the specific format. PP to carryout shadow analysis for identifying the roof-top area for providing solar panels Minimum 5% of the total demand load shall be provided with Solar PV.
D	12	Environmental status report including analysis reports of all environmental pollution reduction facilities if any commissioned.
D	13	PP to submit Disaster management plan.
D	14	Preparation of site specific, executable and auditable environment management plan (EMP)
D	15	A time bound Progressive Greenbelt Development Plan shall be prepared in a tabular form (indicating the linear and quantitative coverage, plant species and time frame) and submitted, keeping in mind, the same will have to be executed up front on commencement of the Project. Phase-wise plan of plantation and compensatory afforestation should be charted clearly indicating the area to be covered under plantation and the species to be planted. The details of plantation already done should be given. The plant species selected for green belt should have greater ecological value and should be of good utility value to the local population with emphasis on local and native species and the species which are tolerant to pollution.
D	16	Benefits of the Project if the Project is implemented should be spelt out. The benefits of the Project shall clearly indicate environmental, social, economic, employment potential, etc
E	Environmental Modelling and additional Studies	
E	1	Fugitive dust modelling by using local meteorological data.
E	2	Ecological footprint calculation using LCA approach.
E	3	Estimation of Carbon footprint of the project and its analysis to be included.
E	4	Assessment of ecological damage with respect to air, water, land and other environmental attributes. The collection of data and sample analysis shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986 or Environmental Laboratory accredited by NABL, or a laboratory of council of Scientific and Industrial Research (CSIR) institution working in the field of environment.
E	6	Gate mass balance analysis for environmental parameters related to solid/liquid waste material coming to site, waste generated and its treatment and disposal from site.
E	7	Public health implications of the Project and related activities for the population in the impact zone should be systematically evaluated and the proposed remedial measures should be detailed along with budgetary allocations.
E	8	Measures of socio economic significance and influence to the local community proposed to be provided by the Project Proponent should be indicated. As far as possible, quantitative dimensions may be given with time frames for implementation.
E	9	Detailed environmental management plan (EMP) to mitigate the environmental impacts which, should inter-alia include the impacts of change of land use, loss of agricultural and grazing land, if any, occupational health impacts besides other impacts specific to the proposed Project.
E	10	Public Hearing points raised and commitment of the Project Proponent on the same along with time bound Action Plan with budgetary provisions to implement the same should be provided and also incorporated in the final EIA/EMP Report of the Project.
E	11	PP to refer "approach paper for assessment for environmental damage and estimation


Member Secretary


Chairman

Minutes of 264th Day – I (Part D) meeting of SEIAA held on 08th August, 2023

		of remediation costs for building construction projects initiated with obtaining mandatory environmental clearance" available on the portal : "ecmpcb.in".
F	NOCs, Undertakings, CER and Litigations	
F	1	NOC's required: a) CFO, b) Water supply with quantity, c) Drainage, d) Non-biodegradable waste disposal, e) Aviation f) HRC, G) PESO , H) Defence/NAD etc
F	2	Undertaking to provide DG set backup to all Pollution Control Devices, Water Supply, Emergency Services including emergency lifts, etc.
F	3	Include condition of "maintenance of all Pollution Control Equipment's and functioning of Environment Monitoring Cell in PP's MoU with society /maintenance agencies /vendors.
F	4	PP to submit details of CER activities in consultation with the affected people in the project area as per MoEF&CC circular dt. 01.05.2018, along with details of fund utilization & agreement or consent of executor.
F	5	PP to submit Roles and Responsibilities of developer etc for compliance of environmental regulations under the provisions of EP act.
F	6	Details of litigation pending against the project, if any, with direction /order passed by any Court of Law against the Project should be given.
G	Specific Term of Reference	
G	1	The State Government/SPCB shall take action against the project proponent under the provisions of section 15 read in conjunction with Section 19 of the Environment (Protection) Act, 1986, and further no consent to operate to be issued till the project is granted EC.
G	2	As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete impact assessment studies and submit Environment Impact Assessment (EIA) report and Environment Management Plan (EMP) in a time bound manner.
G	3	Such cases shall be subject to appropriate (a) Damage Assessment, (b) Remedial Plan and (c) Community Augmentation Plan.
G	4	Assessment of ecological damage with respect to air, water, land and other environmental attributes shall be done before arriving at quantum environment remediation and natural and community resource augmentation.
G	5	The methodology of calculating this quantum shall be as specified in format for Assessment of Environmental damages in the paper titled "Approach for Assessment for Environment Damage and Estimation of Remediation Costs for Building Construction Projects Initiated Without Mandatory Environment Clearance" 2018
G	6	Preparation of EMP comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefits derived, which shall be based on cost of project derived from prevailing rates of construction and land of government approved ready reckoner, due to violation. The cost of the Project (capital cost and recurring cost) as prevailing in Annual Statement of Rates / District Schedule of Rates/ Government Ready Reckoner Rates as well as the cost towards implementation of EMP should be clearly spelt out.
G	7	The collection and analysis of data shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or an environmental laboratory accredited by NABL, or a laboratory of a Council of Scientific and Industrial Research (CSIR) institution working in the field of environment.
G	8	The remediation plan and the natural and community resource augmentation plan shall be prepared as an independent chapter in the EIA report by the accredited consultants.


Member Secretary

 
Chairman

G	9	It should be clearly stated whether the proponent if it is a Company has a well laid down Environment Policy approved by its Board of Directors? If so, it may be spelt out in the EIA Report with description of the prescribed operating process/procedures to bring into focus any infringement/deviation/violation of the environmental or forest norms/ conditions? The hierarchical system or administrative order of the Company to deal with the environmental issues and for ensuring compliance with the EC conditions may also be given. The system of reporting of non-compliances / violations of environmental norms to the Board of Directors of the Company and/or shareholders or stakeholders at large, may also be detailed in the proposed safeguard measures in each case should also be provided.
G	10	Besides the above, the below mentioned general points are also to be followed: a) All documents to be properly referenced with index and continuous page numbering. b) Where data are presented in the Report especially in Tables, the period in which the data were collected and the sources should be indicated. c) Project Proponent shall enclose all the analysis/testing reports of water, air, soil, noise etc. using the MoEF&CC/NABL accredited laboratories. All the original analysis/testing reports should be available during appraisal of the Project. d) Where the documents provided are in a language other than English, an English translation should be provided.
G	11	In case of continued violation after issue of TOR, the ToR/Environmental Clearance shall be terminated forthwith.
H	Other points:	
H	1	PP to submit the DP Plan.
H	2	PP to submit the detail Architect Certificate stating current status of the construction along with building wise construction done (FSI, NoN- FSI & Total built up area) on site along with the chronology.
H	3	PP to submit the all-approvals details (CC, OC etc) regarding project under consideration.
H	4	PP to submit the details of Court cases / litigations w.r.t. the project and project location, if any.

Recommendations of SEAC-

After deliberation, Committee decided to recommend the proposal to SEIAA for grant of ToR.

Deliberation in SEIAA-

Proposal is recommended in 174th meeting of SEAC-3 for grant of Terms of References (ToR) under violation category.

SEIAA further directed SEIAA cell to communicate with MPCB to confirm whether action has been initiated against the Project Proponent under section 15 of Environment (Protection) Act, 1986 for violating provisions of EIA Notification, 2006.

SEIAA after deliberation decided to grant of Terms of References (ToR) as per recommendation of SEAC.

SEIAA Decision-

SEIAA after deliberation decided to grant of Terms of References (ToR) as per recommendation of SEAC.


Member Secretary

ANNEXURE-A-14**State Environment Impact Assessment Authority**

No. SIA/MH/MIS/72296/2022
 Environment & Climate Change
 Department, 217(Annex), Mantralaya,
 Mumbai- 400032.

Date : 25/09/2023

To,
 M/s.Xrbia Hinjewadi Developers Private Limited,
 S. Nos. 38/2 and others, Village Nere - Dattawadi,
 Taluka - Mulshi, District - Pune.

Subject: Environmental Clearance for Residential project Xrbia Hinjewadi Special Township - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District - Pune M/s.Xrbia Hinjewadi Developers Private Limited-Terms of Reference (ToR) regarding (Violation Category)

Ref. : Your application no. SIA/MH/MIS/72296/2022

This has reference to your proposal submitted to State Environment Impact Assessment Authority (SEIAA) for seeking Terms of Reference (ToR) in terms of the provisions of the Environment Impact Assessment (EIA) Notification, 2006 under the Environment (Protection) Act, 1986 under violation category as per MoEF&CC OM dated 07.07.2021.

- The proposal for grant of Terms of Reference (ToR) which was considered by the State Expert Appraisal Committee (SEAC-3) in its 174th meeting and by SEIAA in its 264st (Day-1) meeting held on 08.08.2023.
- ToR for the said project is issued as per details of the project, which are as given below:-

1.	Proposal No.	SIA/MH/MIS/72296/2022	
2.	Name of Project	Residential project - "Xrbia Hinjewadi Special Township" - Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District - Pune by Xrbia Hinjewadi Developers Private Limited	
3.	Project Category	8(b) B1 Category	
4.	Type of institution	Private	
5.	Project Proponent	Name	Mr. Veer Bharti Kouls Authorized Person
		Address	First Floor, Mantri House, 929, Fergusson College Rd, near Dnyaneshwar Paduka Chowk, Pune- 411004, Maharashtra
		Tel	02066858659
		Mobile	99604 00259
		Email ID	veerkouls@xrbia.com
6.	Consultant	Mahabal Enviro Engineers Pvt. Ltd.	
7.	Applied for	Environmental Clearance (Violation)	
8.	Details of previous EC	EC letter vide File no. 21-153/2008-IA-III dated 27.12.2006 granted by Government of India, MoEF	

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9.	Location of the project	Sector R 22 to R28 and Sector R 29 at S. Nos. 38/2 and others, Village Nere - Dattawadi, Taluka - Mulshi, District - Pune
10.	Latitude and Longitude	18°60'38.58" N 73°69'01.53" E
11.	Total Plot Area (m ²)	Sector Area – R 22-28: 79,109 m ² Sector Area – R 29: 38,123 m ² Total plot Area: (R-29, R22-28): 1,17,232 m ²
12.	Deductions (m ²)	Nil
13.	Net plot area (m ²)	Sector area – R 22-28: 79,109 m ² Sector area – R 29: 38,123 m ² Total plot area: (R-29, R22-28): 1,17,232 m ²
14.	Proposed FSI area (m ²)	FSI area – Sector R 22-28: 75,212 m ² FSI area – Sector R 29: 68,031 m ² Total FSI area: 1,43,242 m ²
15.	Proposed Non FSI area (m ²)	Non FSI area – Sector R 22-28: 17,289 m ² Non FSI area – Sector R 29: 15,348 m ² Total Non FSI area: 32,637 m ²
16.	Proposed TBUA (m ²)	Total BUA area – Sector R 22-28: 92,501 m ² Total BUA area – Sector R 29: 83,378 m ² Total BUA area – Sector (R-29, R22-28): 1,75,879 m ²
17.	Total Built up area (m ²) approved by Planning Authority till date	Total BUA area – Sector R 22-28: 92,501 m ² Total BUA area – Sector R 29: 83,378 m ² Total BUA area – Sector (R-29, R22-28): 1,75,879 m ²
18.	Ground coverage (m ²)& %	17,987.63
19.	Total Project Cost (Rs.)	Rs.347 Crore
20.	CER as per MoEF&CC circular dated 01/05/2018	Not Applicable
21.	Details of Building Configuration:	

Sr.	Building Name	Configuration	Total No of Flats (no.)	Population	Height (m)																		
	Sector R-29																						
1	A1	P+G+7	64	320	24.75																		
2	A2	P+G+7	96	480	24.75																		
3	A3	P+G+7	112	560	24.75																		
4	A4	P+G+7	112	560	24.75																		
5	A5	P+G+7	112	560	24.75																		
6	A6	P+G+7	112	560	24.75																		
7	A7	P+G+7	176	704	24.75																		
8	A8	P+G+7	176	704	24.75																		
9	A9	P+G+7	160	640	24.75																		
10	A10	P+G+7	160	640	24.75																		
11	A11	P+G+7	112	560	24.75																		
12	A12	P+G+7	96	480	24.75																		
13	A13	P+G+7	80	480	24.75																		
	Total		1,568	7,248																			
	Club house	G+1			8.70																		
	Sector R-22-28																						
14	A14	P+G+8	72	360	27.5																		
15	A15	P+G+8	72	360	27.5																		
16	B1	P+G+7	176	704	24.75																		
17	B2	P+G+7	176	704	24.75																		
18	B3	P+G+7	64	320	24.75																		
19	B6	P+G+7	64	320	24.75																		
20	B7	P+G+7	80	480	24.75																		
21	B8	P+G+7	176	704	24.75																		
22	C2	P+G+7	64	320	24.75																		
23	C3	P+G+7	176	704	24.75																		
24	C4	P+G+7	80	480	24.75																		
25	C5	P+G+7	80	480	24.75																		
26	C6	P+G+7	80	480	24.75																		
27	C7	P+G+7	64	320	24.75																		
28	D1	P+G+7	64	320	24.75																		
29	D6	P+G+7	64	320	24.75																		
	Total		1,552	7,376																			
22.	Total tenements		3,120 nos.																				
23.	Water Budget		<table><tr><td></td><td>Dry Season</td><td>Wet Season</td></tr><tr><td>Fresh water</td><td>1,316 m³/day</td><td>1,316 m³/day</td></tr><tr><td>Recycled (Flushing)</td><td>658 m³/day</td><td>658 m³/day</td></tr><tr><td>Recycled (Gardening)</td><td>73 m³/day</td><td>15 m³/day</td></tr><tr><td>Total water requirement</td><td>1,974 m³/day</td><td>1,974 m³/day</td></tr><tr><td>Waste water generation</td><td>1,579 m³/day</td><td>1,579 m³/day</td></tr></table>				Dry Season	Wet Season	Fresh water	1,316 m ³ /day	1,316 m ³ /day	Recycled (Flushing)	658 m ³ /day	658 m ³ /day	Recycled (Gardening)	73 m ³ /day	15 m ³ /day	Total water requirement	1,974 m ³ /day	1,974 m ³ /day	Waste water generation	1,579 m ³ /day	1,579 m ³ /day
	Dry Season	Wet Season																					
Fresh water	1,316 m ³ /day	1,316 m ³ /day																					
Recycled (Flushing)	658 m ³ /day	658 m ³ /day																					
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Total water requirement	1,974 m ³ /day	1,974 m ³ /day																					
Waste water generation	1,579 m ³ /day	1,579 m ³ /day																					

24. Water Storage Capacity for Firefighting / UGT	UGT details		Quantity	Unit									
	Domestic water UG tank		3,297	m ³									
	Flushing Water UG tank		658	m ³									
	Fire water UG tank		As per NOC	m ³									
25. Source of Water	Irrigation Department, Pune												
26. Rainwater Harvesting (RWH)	7 no. of Recharge pits Recharge pits size: 2m × 2m × 2m												
27. Sewage and waste water capacity : 1,600 m3/day	Sewage generation: 1,579 m3/day STP												
28. Solid Waste Management during Construction Phase	Not applicable												
29. Solid Waste Management during Operation Phase	<table><tr><td>Type</td><td>Quantity (kg/day)</td><td>Treatment / disposal</td></tr><tr><td>Dry waste</td><td>1,754</td><td>Handed over to Local Body</td></tr><tr><td>Wet waste</td><td>2,632</td><td>Treated in OWC</td></tr></table>				Type	Quantity (kg/day)	Treatment / disposal	Dry waste	1,754	Handed over to Local Body	Wet waste	2,632	Treated in OWC
Type	Quantity (kg/day)	Treatment / disposal											
Dry waste	1,754	Handed over to Local Body											
Wet waste	2,632	Treated in OWC											
30. Green Belt (m2)	Total RG area (m2) : 11,876 m2												
31. Power requirement:	Source of Power Supply: MSEDCL												
	Sr.	Description	Power	Unit									
	1.	During Operation phase											
		i) Max. Demand Load	4,973	kW									
		ii) Connected Load	6,604	kW									
	2.	DG Sets	1 no. x 500 & 1 no. x 125	kVA									
	3.	Transformer	9x630 1x500	kVA									
	4.	Fuel Used	Diesel										
32. Details of Energy saving	-												
33. Environmental Management plan budget during Construction phase	Not applicable												
34. Environmental Management plan Budget during Operation phase													
	Sr.	Component	Details	Capital cost (Rs. In Lakh)	O&M cost (Rs.In Lacs/year)								
	1.	Stormwater management	Laying of storm & Sewer line up to final disposal point	92	9.2								
	2.	Sewage Treatment Plant	STP having total capacity 1,600 m ³ /day	125	25								
	3.	Rain Water Harvesting	7 nos. of recharge pits having size 2m x 2 m x 2 m	3.6	0.2								
	4.	Solid Waste Management	Cost for Treatment of biodegradable garbage in OWC	20	2								

	5.	Landscape development	Tree Plantation	55	5		
	6.	Environmental Monitoring	Monitoring and analysis of Air, Water, Noise, Soil, surface water, STP treated water etc.	MoEF Approved Lab	2		
	7.	Firefighting system	Installation and operation of Fire Fighting system	287	28.7		
		Total		582.6	72.1		
35.	Parking		Sr.	Type	Required as per DCR	Actual Provided (nos.)	Area per parking (m ²)
			1.	4W	328	328	4,100
			2.	2W	7076	7076	14,152
			3.	Cycle	7076	7076	14,152
				Total			32,404
36.	Details of Court cases / litigations w.r.t. the project and project location if any.		Yes				

4. The project/ activity is covered under item 8(b) 'Townships and Area Development Projects' of the Schedule to the EIA Notification, 2006 under violation category.
5. SEAC-3 in its 174th meeting after detailed deliberation recommended the project for grant of ToR. As per the recommendations of the SEAC, the SEIAA hereby accords ToR for preparation of the Environment Impact Assessment (EIA) Report and Environment Management Plan (EMP) the following specific and general conditions:-
Specific Conditions-

Terms of Reference for EIA and preparation of Environment Management Plan (EMP) for Violation Cases		
The following Terms of Reference (TOR) for violation cases shall be read along with Ministry of Environment Forest and Climate Change orders no F.No.22-21/2020-IA.III Dated 7th July 2021 and F No. 22-21/2020-IA.III (E 138949) dated 28 th January 2022 and Approach for Assessment for Environment Damage and Estimation of Remediation Costs for Building Construction Projects Initiated Without Mandatory Environment Clearance" 2018.		
The following TOR are drafted with reference to Ministry of Environment Forest and Climate Change impact assessment division TORs for Violation Case a) For Construction Sector vide Notification S.O.804 (E) dated 14 th March 2017 in the matter of IA/HR/NCP/63612/2017 and b) For Mining Sector dated 12 th November 2018 in the proposal No IA/MH/MIN/68113/2017.		
A	Project Description	
A	1	
A	2	Project site details (location, topo-sheet of the study area of 10 Km, Coordinates, google map, layout map, land use, geological features and geo-hydrological status of the study area, drainage). hydro geological survey report with graphs & data.
A	3	Land use as per the approved Master Plan of the area, Permission/approvals required from the land owning agencies, Planning / Development Authorities, Local Body, Water supply & Sewerage Board, etc.
A	4	Land acquisition status, R & R details.

A	5	Forest and Wildlife and eco-sensitive zones, if any in the study area of 10 km. Any sensitive areas in impact zone such as archaeological structures, reserved forest, noise sensitive zones etc. Clearances required under the Forest (Conservation) Act, 1980, the Wildlife (Protection) Act, 1972 and/or the Environment (Protection) Act, 1986.
A	6	High Tension lines or Hazard lines if any on the plot.
A	7	Plan showing HFL/CRZ lines.
A	8	Permissions granted by State Government in tabular and chronological form. Comparative statement of components approved and components constructed including its configuration as per earlier EC (if applicable) and proposed development.
A	9	PP to submit the detailed master plan indicating already completed construction and proposed construction. PP to submit the certificate from registered architect for completed work, built up area and configuration.
A	10	Project cost shall be based on government notified stamp duty ready reckoner at time of application including cost of land and construction including civil, MEP works, environment services, site/land development, horticulture/landscape works etc complete
B	Base Line Data	
B	1	Baseline environmental study for ambient air (PM ₁₀ , PM _{2.5} , SO ₂ , NO _x & CO), water (both surface and ground), noise and soil for one month (except monsoon period) as per MoEF&CC/CPCB guidelines at minimum 5 locations in the study area of 10 km, The collection and analysis of data shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or an environmental laboratory accredited by NABL, or a laboratory of a Council of Scientific and Industrial Research (CSIR) institution working in the field of environment.
B	2	Detail on flora and fauna and socio-economic aspects in the study area. Details of tree cutting, tree transplantation and survival report of existing trees including conformity to prevailing Tree Act.
B	3	Likely impact of the project on the environmental parameters (ambient air surface and ground water, land, flora and fauna and socio-economic, etc.)
B	4	Source of water for different identified purposes with the permissions required from the concerned authorities, both for surface water and the ground water (by CGWA) as the case may be, Rain water harvesting, etc.
B	5	Socio-economic infrastructure details including public transport arrangements on the site; PP to mention details of socio-economic in EIA.
B	6	PP to submit contour map with slopes, drainage pattern of the site and surrounding area. Layout showing natural water courses on site; total runoff calculation before and after development.
B	7	PP to submit details of existing trees, proposed to be cut, proposed to be transplanted along with tree survival report conforming to prevailing Tree Act.
B	8	Land use of the study area delineating forest area, agricultural land, grazing land, wildlife sanctuary, national park, migratory routes of fauna, water bodies, human settlements and other ecological features should be indicated.
B	9	Proximity to Areas declared as 'Critically Polluted' should also be indicated and where so required, clearance certifications from the prescribed Authorities, such as the SPCB should be secured and furnished to the effect that the proposed Activities could be considered.

B	10	Similarly, for Coastal Projects, A CRZ map duly authenticated by one of the authorized agencies demarcating LTL, HTL, CRZ area, location of the mine lease w.r.t. CRZ, coastal features such as mangroves, if any, should be furnished. (Note: The Projects falling under CRZ would also need to obtain Approval of the concerned Coastal Zone Management Authority).
B	11	The water requirement for the Project, its availability and source should be furnished. A detailed water balance should also be provided. Fresh water requirement for the Project should be indicated.
B	12	Necessary clearance from the Competent Authority for drawl of requisite quantity of water for the Project should be provided.
B	13	Description of water conservation measures proposed to be adopted in the Project should be given. Details of rainwater harvesting proposed in the Project, if any, should be provided.
B	14	Impact of the Project on the water quality, both surface and groundwater, should be assessed and necessary safeguard measures, if any required, should be provided.
B	15	Based on actual monitored data, it may clearly be shown whether working will intersect groundwater. Necessary data and documentation in this regard may be provided. In case the working will intersect groundwater table, a detailed Hydro Geological Study should be undertaken and Report furnished. The Report inter-alia, shall include details of the aquifers present and impact of mining activities on these aquifers. Necessary permission from Central Ground Water Authority for working below ground water and for pumping of ground water should also be obtained and copy furnished.
B	16	Details of any stream, seasonal or otherwise, passing through the lease area and modification / diversion proposed, if any, and the impact of the same on the hydrology should be examined.
B	17	Information on site elevation, working depth, groundwater table etc. should be provided both in AMSL and BGL. A schematic diagram may also be provided for the same.
C	Traffic Impact Study	
C	1	Traffic Management Plan for the development – Internal circulation indicating road width and turning radius. Cross section of roads at four places showing clear road width, distance left from building line, spaces left for plantation, footpath, service lines etc.
C	2	Traffic Volume Counts and Turning Movement Counts on all the external surrounding roads of the proposed project showing the time period taken.
C	3	Topographic details of roads and intersection of the surrounding roads where counts are taken, actual geometry on ground to be shown with dimensions.
C	4	Traffic generation values of similar development to be given by actual count by actual count as support data for assumption made to the particular project.
C	5	Impact on local transport infrastructure due to the Project should be indicated. Projected increase in truck traffic as a result of the Project in the present road network (including those outside the Project area) should be worked out, indicating whether it is capable of handling the incremental load. Arrangement for improving the infrastructure, if contemplated (including action to be taken by other agencies such as State Government) should be covered. Project Proponent shall conduct Impact of Transportation study as per Indian Road Congress Guidelines.
C	6	Parking statement mentioning parking as per DCR & parking provided actually.

C	7	Basement ventilation plan: Fire Tender Movement Plan showing clear road and turning radius. Cross section of roads at four places including UGT, OWC and DG set location showing clear road width and distance left from building line & spaces left for plantation, parking, service lines, foot paths, etc.
D	Environmental Impact and Management Plan	
D	1	Identify sources of air pollution, indicate mitigation measures to reduce Air pollution/Noise pollution.
D	2	Debris management plan including (a) debris required for refilling, (b) contour plan, (c) details of site where excess debris will be disposed, capacity of the site and NOC of plot owner. PP shall also ensure that debris disposed on other plot shall not be disposed on another plot. If to be disposed on another plot, the same shall be carried out as per prevailing environmental laws.
D	3	Management of solid waste and the construction & demolition waste for the project vis-a-vis the Solid Waste Management Rules 2016 and the Construction & Demolition Rules, 2016. Transport, collection, storage and disposal for all types of wastes like hazardous waste, non-hazardous waste, solid waste, E- waste, and debris/excess earth etc. PP to provide the detailed solid waste management plan along with marked locations on the master plan. Design details of waste processing equipment such as OWC/biogas plants confirming to the technical requirements to meet the quality products.
D	4	Waste water management (treatment, reuse and disposal) for the project and also the study area. Design of all STP's along with BOD load, oxygen requirement calculations and sizing of the tanks with respect to the design criteria. PP to submit detailed calculation for the disinfection of the treated STP water; PP to submit cross sectional drawing of STP's showing dimensions and ground level; PP to provide ozonation for tertiary treatment. PP to mark the area required for all STP's on master layout with dimensions
D	6	PP to show internal storm water drain and sewer line arrangements up to final disposal point.
D	7	Provision of mandatory RG area on virgin land and submit the drawing with calculations, ensuring entire mandatory RG is provided on the plot where residential buildings are proposed.
D	8	A detailed phase wise development plan with safety planning where occupancy has been given.
D	9	If any site specific structures such as creation of water body, alteration of natural storm water, large alteration of slopes, creation of green areas abutting to water bodies / natural storm water drain / river etc, is involved, detailed environmental protection approach for the same shall be provided.
D	10	Separate chapter on Renewable energy in EIA report. PP to submit terrace plan for installing solar panels& calculations of energy saving; Energy efficient measures (LED lights, solar power, etc.) during construction as well as during operational phase of the project. Report on ECBC compliance.
D	11	Provide details of Solar PV and Solar water heater in the specific format. PP to carryout shadow analysis for identifying the roof-top area for providing solar panels Minimum 5% of the total demand load shall be provided with Solar PV.
D	12	Environmental status report including analysis reports of all environmental pollution reduction facilities if any commissioned.
D	13	PP to submit Disaster management plan.
D	14	Preparation of site specific, executable and auditable environment management plan (EMP)

D	15	A time bound Progressive Greenbelt Development Plan shall be prepared in a tabular form (indicating the linear and quantitative coverage, plant species and time frame) and submitted, keeping in mind, the same will have to be executed up front on commencement of the Project. Phase-wise plan of plantation and compensatory afforestation should be charted clearly indicating the area to be covered under plantation and the species to be planted. The details of plantation already done should be given. The plant species selected for green belt should have greater ecological value and should be of good utility value to the local population with emphasis on local and native species and the species which are tolerant to pollution.
D	16	Benefits of the Project if the Project is implemented should be spelt out. The benefits of the Project shall clearly indicate environmental, social, economic, employment potential, etc
E	Environmental Modelling and additional Studies	
E	1	Fugitive dust modelling by using local meteorological data.
E	2	Ecological footprint calculation using LCA approach.
E	3	Estimation of Carbon footprint of the project and its analysis to be included.
E	4	Assessment of ecological damage with respect to air, water, land and other environmental attributes. The collection of data and sample analysis shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986 or Environmental Laboratory accredited by NABL, or a laboratory of council of Scientific and Industrial Research (CSIR) institution working in the field of environment.
E	6	Gate mass balance analysis for environmental parameters related to solid/liquid waste material coming to site, waste generated and its treatment and disposal from site.
E	7	Public health implications of the Project and related activities for the population in the impact zone should be systematically evaluated and the proposed remedial measures should be detailed along with budgetary allocations.
E	8	Measures of socio economic significance and influence to the local community proposed to be provided by the Project Proponent should be indicated. As far as possible, quantitative dimensions may be given with time frames for implementation.
E	9	Detailed environmental management plan (EMP) to mitigate the environmental impacts which, should inter-alia include the impacts of change of land use, loss of agricultural and grazing land, if any, occupational health impacts besides other impacts specific to the proposed Project.
E	10	Public Hearing points raised and commitment of the Project Proponent on the same along with time bound Action Plan with budgetary provisions to implement the same should be provided and also incorporated in the final EIA/EMP Report of the Project.
E	11	PP to refer "approach paper for assessment for environmental damage and estimation of remediation costs for building construction projects initiated with obtaining mandatory environmental clearance" available on the portal : "ecmpcb.in".
F	NOCs, Undertakings, CER and Litigations	
F	1	NOC's required: a) CFO, b) Water supply with quantity, c) Drainage, d) Non-biodegradable waste disposal, e) Aviation f) HRC, G) PESO , H) Defence/NAD etc
F	2	Undertaking to provide DG set backup to all Pollution Control Devices, Water Supply, Emergency Services including emergency lifts, etc.
F	3	Include condition of "maintenance of all Pollution Control Equipment's and functioning of Environment Monitoring Cell in PP's MoU with society /maintenance agencies /vendors.
F	4	PP to submit details of CER activities in consultation with the affected people in the project area as per MoEF&CC circular dt. 01.05.2018, along with details of fund utilization & agreement or consent of executor.
F	5	PP to submit Roles and Responsibilities of developer etc for compliance of environmental regulations under the provisions of EP act.

F	6	Details of litigation pending against the project, if any, with direction /order passed by any Court of Law against the Project should be given.
G	Specific Term of Reference	
G	1	The State Government/SPCB shall take action against the project proponent under the provisions of section 15 read in conjunction with Section 19 of the Environment (Protection) Act, 1986, and further no consent to operate to be issued till the project is granted EC.
G	2	As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete impact assessment studies and submit Environment Impact Assessment (EIA) report and Environment Management Plan (EMP) in a time bound manner.
G	3	Such cases shall be subject to appropriate (a) Damage Assessment, (b) Remedial Plan and (c) Community Augmentation Plan.
G	4	Assessment of ecological damage with respect to air, water, land and other environmental attributes shall be done before arriving at quantum environment remediation and natural and community resource augmentation.
G	5	The methodology of calculating this quantum shall be as specified in format for Assessment of Environmental damages in the paper titled "Approach for Assessment for Environment Damage and Estimation of Remediation Costs for Building Construction Projects Initiated Without Mandatory Environment Clearance" 2018
G	6	Preparation of EMP comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefits derived, which shall be based on cost of project derived from prevailing rates of construction and land of government approved ready reckoner, due to violation. The cost of the Project (capital cost and recurring cost) as prevailing in Annual Statement of Rates / District Schedule of Rates/ Government Ready Reckoner Rates as well as the cost towards implementation of EMP should be clearly spelt out.
G	7	The collection and analysis of data shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or an environmental laboratory accredited by NABL, or a laboratory of a Council of Scientific and Industrial Research (CSIR) institution working in the field of environment.
G	8	The remediation plan and the natural and community resource augmentation plan shall be prepared as an independent chapter in the EIA report by the accredited consultants.
G	9	It should be clearly stated whether the proponent if it is a Company has a well laid down Environment Policy approved by its Board of Directors? If so, it may be spelt out in the EIA Report with description of the prescribed operating process/procedures to bring into focus any infringement/deviation/violation of the environmental or forest norms/ conditions? The hierarchical system or administrative order of the Company to deal with the environmental issues and for ensuring compliance with the EC conditions may also be given. The system of reporting of non-compliances / violations of environmental norms to the Board of Directors of the Company and/or shareholders or stakeholders at large, may also be detailed in the proposed safeguard measures in each case should also be provided.
G	10	Besides the above, the below mentioned general points are also to be followed: a) All documents to be properly referenced with index and continuous page numbering. b) Where data are presented in the Report especially in Tables, the period in which the data were collected and the sources should be indicated. c) Project Proponent shall enclose all the analysis/testing reports of water, air, soil, noise etc. using the MoEF&CC/NABL accredited laboratories. All the original

		analysis/testing reports should be available during appraisal of the Project. d) Where the documents provided are in a language other than English, an English translation should be provided.
G	11	In case of continued violation after issue of TOR, the ToR/Environmental Clearance shall be terminated forthwith.
H	Other points:	
H	1	PP to submit the DP Plan.
H	2	PP to submit the detail Architect Certificate stating current status of the construction along with building wise construction done (FSI, NoN- FSI & Total built up area) on site along with the chronology.
H	3	PP to submit the all-approvals details (CC, OC etc) regarding project under consideration.
H	4	PP to submit the details of Court cases / litigations w.r.t. the project and project location, if any.

General Guidelines

- i. The EIA document shall be printed on both sides, as far as possible.
 - ii. All documents should be properly indexed, page numbered.
 - iii. Period/date of data collection should be clearly indicated.
 - iv. The letter/application for EC should quote the Proposal No. and also attach a copy of the letter prescribing the ToR.
 - v. The copy of the letter received from the SEIAA on the ToR prescribed for the project should be attached as an annexure to the final EIA-EMP Report.
 - vi. The final EIA-EMP report submitted to the SEIAA must incorporate the issues mentioned in ToR. The index of the final EIA-EMP report, must indicate the specific chapter and page no. of the EIA-EMP Report where the specific ToR prescribed by Ministry. Questionnaire related to the project (posted on MoEF & CC website) with all sections duly filled in shall also be submitted at the time of applying for EC.
 - vii. Grant of ToR does not mean grant of EC.
 - viii. The status of accreditation of the EIA consultant with NABET/QCI shall be specifically mentioned. The consultant shall certify that his accreditation is for the sector for which this EIA is prepared.
 - ix. On the front page of EIA/EMP reports, the name of the consultant/consultancy firm along with their complete details including their accreditation, if any shall be indicated. The consultant while submitting the EIA/EMP report shall give an undertaking to the effect that the prescribed ToRs (ToR proposed by the project proponent and additional ToR given by the MoEF & CC) have been complied with and the data submitted is factually correct (Refer MoEF & CC Office memorandum dated 4th August, 2009).
 - x. While submitting the EIA/EMP reports, the name of the experts associated with/involved in the preparation of these reports and the laboratories through which the samples have been got analyzed should be stated in the report. It shall clearly be indicated whether these laboratories are approved under the Environment (Protection) Act, 1986 and the rules made there under (Please refer MoEF & CC Office Memorandum dated 4th August, 2009). The project leader of the EIA study shall also be mentioned.
 - xi. All the ToR points as presented before the State Expert Appraisal Committee (SEAC) shall be covered.
6. The above ToR should be considered in addition to all the relevant information as per the 'Generic Structure of EIA' given in Appendix III and IIIA in the EIA Notification, 2006.

7. The project proponent shall submit the detailed final EIA/EMP prepared as per ToR to the SEIAA for considering the proposal for environmental clearance within 3 years as per the MoEF & CC O.M. No. J-11013/41/2006-IA-II (I) (Part) dated 29.08.2017.
8. The consultants involved in preparation of EIA/EMP report after accreditation with Quality Council of India/National Accreditation Board of Education and Training (QCI/NABET) would need to include a certificate in this regard in the EIA/EMP reports prepared by them and data provided by other Organization(s)/ Laboratories including their status of approvals etc. vide Notification of the MoEF&CC dated 19.07.2013.
9. The prescribed ToR would be valid for a period of three years for submission of the EIA/EMP Reports.



(Pravin Darade)
Principal Secretary &
Member Secretary, SEIAA

Copy to:

1. Chairman, SEIAA (Maharashtra), Mumbai.
2. Principal Secretary, Environment, Room no.217, Annex. Bldg., Mantralaya, Mumbai.
3. Member Secretary, SEAC-3, 15th floor, New Administrative Building, Mantralaya, Mumbai.
4. Member Secretary, Maharashtra Pollution Control Board, Kalpataru Point, 3rd and 4th Floor, Opp. Cine Planet, Sion Circle, Mumbai - 400 022.

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

Writ Petition(s)(Civil) No(s). 1394/2023

VANASHAKTI

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(FOR ADMISSION
ORDERS/DIRECTIONS)

and

IA

No.257416/2023-APPROPRIATE

Date : 02-01-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) Mr. Gopal Sankaranarayanan, Sr. Adv.
Mr. Vanshdeep Dalmia, AOR
Ms. Anisha Jian, Adv.
Ms. Tanya Shrivastava, Adv.

For Respondent(s)

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

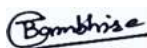
1. Issue notice returnable in four weeks.
2. Until further orders, there shall be stay of operation of the Office Memoranda dated 7th July, 2021 and 28th January, 2022 issued by the Ministry of Environment, Forest and Climate Change.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(BEENA JOLLY)
COURT MASTER (NSH)

Signature Not Verified
Digitally signed by
ASHA SUNDRIYAL
Date: 2024.01.05
16:37:29 IST
Reason: 

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its expiry. The startling facts which we have narrated above clearly show that the executive in Bihar has almost taken over the role of the legislature in making laws, not for a limited period, but for years together in disregard of the constitutional limitations. This is clearly contrary to the constitutional scheme and it must be held to be improper and invalid. We hope and trust that such practice shall not be continued in the future and that whenever an ordinance is made and the government wishes to continue the provisions of the ordinance in force after the assembling of the legislature, a Bill will be brought before the legislature for enacting those provisions into an Act. There must not be Ordinance-Raj in the country.

9. We must accordingly strike down the Bihar Intermediate Education Council Ordinance, 1985 which is still in operation as unconstitutional and void. Petitioner 1 has done enormous research and brought this reprehensible practice of the Government of Bihar to the notice of the court and we would therefore direct that the State of Bihar shall pay to petitioner 1 a sum of Rs 10,000 (rupees ten thousand only) as and by way of cost of the writ petitions.

— —

(1987) 1 Supreme Court Cases 395

(BEFORE P.N. BHAGWATI, C.J. AND RANGANATH MISRA, G.L. OZA,
M.M. DUTT AND K.N. SINGH, JJ.)

M.C. MEHTA AND ANOTHER .. Petitioners ;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (Civil) No. 12739 of 1985†,
decided on December 20, 1986

Tort Law — Rule of strict liability — Liability of industries engaged in hazardous or dangerous activities when deaths or injuries occur on account of accident in operation of such activities — Held, liability to pay compensation to affected persons strict and absolute — Amount of compensation payable — Rule laid down in Rylands v. Fletcher not applicable in India — Constitution of India, Articles 32 and 21

Jurisprudence — Law — Should keep pace with changing socio-economic norms — Where a law of the past does not fit in the present context, Court should evolve new law — Judicial activism

Interpretation of Statutes — External aids — Foreign case-law — Supreme Court of India not bound by foreign court's decisions

Held :

The rule in **Rylands v. Fletcher** laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he

†Under Article 32 of the Constitution of India

396

SUPREME COURT CASES

(1987) 1 SCC

is liable to compensate for the damage caused. This rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is a statutory authority. This rule evolved in the 19th century at a time when all the developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. In a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to be carried on as part of the developmental programme, Court should not feel inhibited by this rule merely because the new law does not recognise the rule of strict and absolute liability in case of an enterprise engaged in hazardous and dangerous activity. (Para 31)

Rylands v. Fletcher, (1868) LR 3 HL 330, distinguished

Law has to grow in order to satisfy the needs of the fast-changing society and keep abreast with the economic developments taking place in the country. Law cannot afford to remain static. The Court cannot allow judicial thinking to be constricted by reference to the law as it prevails in England or in any other foreign country. Though the Court should be prepared to receive light from whatever source it comes but it has to build up its own jurisprudence. It has to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. If it is found that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, the Court should not hesitate to evolve such principle of liability merely because it has not been so done in England. (Para 31)

An enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results to anyone on account of an accident in the operation of such activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident as a part of the social cost for carrying on such activity, regardless of whether it is carried on carefully or not. Such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in *Rylands v. Fletcher*. If the enterprise is permitted to carry on a hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such activity as an appropriate item of its overheads. The enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. (Para 31)

The measure of compensation in these kinds of cases must be correlated

M.C. MEHTA V. UNION OF INDIA

397

to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise. (Para 32)

[Since the Court did not decide the question as to whether Shriram is an authority within the meaning of Article 12 so as to be subjected to Article 21, setting up of a special machinery for investigation of the claims for compensation made by those who alleged that they had been the victims of oleum gas escape was not called for. But the Delhi Legal Aid and Advice Board was directed to take up the cases of all those who claimed to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram, within two months. The Delhi Administration was directed to provide the necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court will nominate one or more Judges as may be necessary for the purpose of trying such actions so that they may be expeditiously disposed of.] (Para 33)

Constitution of India — Article 32 — Scope of Court's power under, to devise appropriate procedures and to issue directions, orders or writs — Court competent to grant remedial assistance by way of compensation in exceptional cases — Court has incidental and ancillary power in exercise of which it can innovate new methods and strategies for securing enforcement of fundamental rights especially in PIL/SAL cases

Held :

Supreme Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the Court has the implicit power to issue whatever direction, order or writ is necessary in a given case. Article 32 lays a constitutional obligation on Supreme Court to protect the fundamental rights of the people and for that purpose Supreme Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning. (Paras 3 and 6)

The power of the Court is not only injunctive in ambit, that is preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed. (Para 6)

Under Article 32 the Court has the power to grant remedial relief which includes the power to award compensation in appropriate cases; it is not that in every case of breach of fundamental rights that compensation can be awarded. But a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of breach of a fundamental right that compensation may be awarded under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale of affecting the fundamental rights of a large number of persons or it should appear

398

SUPREME COURT CASES

(1987) 1 SCC

unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. (Para 6)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389 : (1984) 2 SCR 67, (views of Bhagwati, J., as he then was), and **Rudul Shah v. State of Bihar**, (1983) 4 SCC 141 : AIR 1983 SC 1086 and **Bhim Singh v. State of J & K**, (1985) 4 SCC 677, affirmed

S.P. Gupta v. Union of India, 1981 Supp SCC 87, relied on

Constitution of India — Articles 32 and 21 — Public interest litigation — Nature of — Earlier rulings affirmed

Constitution of India — Articles 32 and 21 — Public interest litigation — Pleadings — Hyper-technical approach should be avoided by Court — Application on behalf of oleum gas victims — Court would consider claim for compensation on their behalf even where the claim is sought for them by a PIL petitioner and not by themselves

Held :

Where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a court of law for justice, it would be open to any public-spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the Court.

(Para 1)

While dealing with such applications, Court should not adopt a hyper-technical approach which would defeat the ends of justice. The applications for compensation had been made in this case for enforcement of right under Article 21 of persons affected by the oleum gas leak. Merely because the petitioner could not apply for amendment of the writ petition so as to include the claim for compensation the applications for compensation cannot be thrown out. The Court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form. (Para 1)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : (1984) 2 SCR 67 ; **S.P. Gupta v. Union of India**, 1981 Supp SCC 87 and **P.U.D.R. v. Union of India**, (1982) 3 SCC 235 : (1983) 1 SCR 456, affirmed

Constitution of India — Article 32 — Public interest litigation — Maintainability — Letters addressed even to an individual Judge entertainable — No preferred form of address applicable — Also letters need not necessarily be supported by affidavits

Held :

Even if a letter is addressed to an individual Judge of the Court, it should be entertained, provided it is by or on behalf of a person in custody or on behalf of a woman or a child or a class of deprived or disadvantaged persons. There is no difficulty in entertaining such letters as the Court now has a PIL Cell and it is only after scrutiny by the staff members attached to this Cell that the letters are placed before the Chief Justice and under his direction, they are listed before the Court. (Para 5)

M.C. MEHTA V. UNION OF INDIA

399

The Court also should not insist on an affidavit as a condition for entertaining the letters as in case of such insistence the entire object and purpose of epistolary jurisdiction would be frustrated because most of the poor and disadvantaged persons will then not be able to have easy access to the Court and even the social action groups will find it difficult to approach the Court.

(Para 5)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : (1984) 2 SCR 67, referred to

Constitution of India — Article 32 — Public interest litigation — Court's power to collect relevant material and to appoint commissions

Held :

So far as the power of the Court under Article 32 to gather relevant material bearing on the issues arising in this kind of litigation, which may be called Social Action Litigation for the sake of convenience, and to appoint commissions for this purpose, are concerned the views expressed by Bhagwati, J., as he then was, in *Bandhua Mukti Morcha*, are endorsed and fully approved.

(Para 6)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : (1984) 2 SCR 67 (views of Bhagwati, J., as he then was), affirmed

Constitution of India — Article 12 — "Other authorities" — Private corporations — Whether and when can fall within the ambit of Article 12 — Applicability of American doctrine of State action — Industries covered by Industrial Policy Resolutions — Scope of Article 12 needs expansion to advance human rights jurisprudence

Constitution of India — Article 21 — Human rights jurisprudence — Cannot be permitted to be thwarted by status quoists on the basis of unfounded apprehensions

Interpretation of the Constitution — Creative and innovative interpretation in consonance with human rights jurisprudence commended

The question was whether Article 21 was available against Shriram which is owned by Delhi Cloth Mills Limited, a public company limited by shares, and which is engaged in an industry vital to public interest and with potential to affect the life and health of the people. It was contended that Article 21 was available, as Shriram was carrying on an industry which, according to the government's own declared industrial policies, was ultimately intended to be carried out by itself, but instead of the government immediately embarking on that industry, Shriram was permitted to carry it on under the active control and regulation of the Government. Since the government intended to ultimately carry on this industry and the mode of carrying on the industry could vitally affect public interest, the control of the government was linked to regulating that aspect of the functioning of the industry which could vitally affect public interest. Special emphasis was laid on the regulatory mechanisms provided under the Industries Development and Regulation Act, 1951 where industries are included in the schedule if they vitally affect public interest, as also under the Bombay Municipal Corporation Act, the Air and Water Pollution Control Acts and the Environment Protection Act, 1986. It was also pointed out that sizeable aid in the form of loans, land and other facilities were granted by the government to Shriram in carrying on the industry. Taking aid of the American State Action doctrine, it was also argued that private activity,

400

SUPREME COURT CASES

(1987) 1 SCC

if supported, controlled or regulated by the State may get so entwined with governmental activity as to be termed State action and it would then be subject to the same constitutional restraints on the exercise of power as the State.

Held :

From the decided cases it appears that Supreme Court has not permitted the corporate device to be utilised as a barrier ousting the constitutional control of the fundamental rights. Prima facie, when the State's power as economic agent, economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private corporation under the functional control of the State engaged in an activity which is hazardous to the health and safety of the community and is imbued with public interest and which the State ultimately proposes to exclusively run under its industrial policy, such as the fertiliser and chemical factory of Shriram, should not be subject to the same limitations. But it is not necessary to decide this question and to make any definite pronouncement upon it. (Paras 18 and 28)

Ramana Dayaram Shetty v. International Airports Authority of India, (1979) 3 SCC 489 : (1979) 3 SCR 1014 : AIR 1979 SC 1628 ; Eurasian Equipment and Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70 : (1975) 2 SCR 674 : AIR 1975 SC 266 ; Rashbihari Panda v. State of Orissa, (1969) 1 SCC 414 : (1969) 3 SCR 374 and Kasturi Lal Reddy v. State of J & K, (1980) 4 SCC 1 : (1980) 3 SCR 1338 : AIR 1980 SC 1992, relied on

The historical context in which the American doctrine of State action evolved in the United States is irrelevant for our purpose. (Para 29)

The Supreme Court of India is not bound by the American exposition of constitutional law. The provisions of the American Constitution cannot always be applied to Indian conditions or to the provisions of our Constitution. Whilst some of the principles adumbrated by the American decisions may provide a useful guide, close adherence to those principles while applying them to the provisions of our Constitution is not to be favoured because the social conditions in our country are different. (Para 29)

Ramana Dayaram Shetty v. International Airports Authority of India, (1979) 3 SCC 489 : (1979) 3 SCR 1014 : AIR 1979 SC 1628 ; Jackson v. Metropolitan Edison Company, 42 L. Ed (2d) 477 : Air India v. Nergesh Meerza, (1981) 4 SCC 335 : (1982) 1 SCR 438 : AIR 1981 SC 1829 and General Electric Company v. Martha V. Gilbert, 50 L. Ed (2d) 343, relied on

However, the principle behind the doctrine of State aid, control and regulation so impregnating a private activity as to give it the colour of State action can be applied to the limited extent to which it can be Indianized and harmoniously blended with our constitutional jurisprudence. (Para 29)

Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in our corporate structure. The purpose of expansion has not been to destroy the *raison d'être* of creating corporations but to advance the human rights jurisprudence. Prima facie it is not possible to accept as well-founded the apprehension that inclusion within the ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial

M.C. MEHTA V. UNION OF INDIA

401

activity. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quoists.

(Para 30)

Ramana Dayaram Shetty v. International Airports Authority of India, (1979) 3 SCC 489 : (1979) 3 SCR 1014, referred to

[In view of paucity of time between the conclusion of the hearing and date for delivery of the judgment, the Court left the above question open for a proper and detailed consideration in future.]

R-M/7673/CL

Advocates who appeared in this case :

Petitioner in-person ;

B. Datta, Additional Solicitor-General, A.B. Divan, F.S. Nariman, B.R.L. Iyengar and Hardev Singh, Senior Advocates (Hemant Sharma, C.V.S. Rao, R.D. Aggarwal, Ms S. Relan, R.S. Sodhi, S. Sukumaran, Ravinder Narain, D.N. Mishra, Aditya Narayan, Ms Lira Goswami, S. Kochwaha, Mohan, Ravinder Bana, K.C. Dua, Mrs K. Kumaramangalam, O.C. Jain, K.R.R. Pillai, Advocates, with them), for the Respondents ;

Raju Ramachandran, Advocate, for the Delhi Legal Aid and Advice Board ;

Soli J. Sorabji, Senior Advocate, for Citizens Action Committee.

[Ed. : The above judgment of a Constitution Bench touches upon several important issues :

(1) Having laid down that in the matter of Public Interest Litigation/SAL even a letter addressed to any individual Justice can be entertained, the Court has mentioned that all such letters will be processed through the Public Interest Litigation Cell in the Supreme Court and after scrutiny placed before the Chief Justice. The future of PIL/SAL then would considerably depend on the functioning of this cell. Attention must therefore be paid to the administrative structure and working of a model PIL Cell with proper setting and inputs so that similar cells could be opened in each High Court and there be uniform working amongst them. Legal aid cells can be encouraged to function as catalytic agents for PIL.

(2) The Bench has ruled for award of compensation under Article 32 in specified appropriate cases and extended it beyond the cases involving wrongful arrest and detention like *Bhim Singh*, (1985) 4 SCC 677 ; *Sebastian M. Hongray*, (1984) 3 SCC 82 and *Rudal Shah*, (1983) 4 SCC 141. It shows the continuing concern of the Court for the socially and economically disadvantaged persons. As a further step the Court has considered, without finally deciding the question, whether a private corporation is covered by Article 32. If the stand point is that as far as the hapless helpless poor and disadvantaged are concerned it matters little if the defendant corporation is private or public, what justification remains for retaining the rule of sovereign immunity where the defendant is the State. The effect of the injury is the same regardless of the status of the person or authority by whose negligence (or their servant's) it was caused. In any case the doctrine of sovereign immunity born of an imperialistic era is little suited for democratic socialist India.

(3) It is interesting to note that when the case was first heard by three judges and judgment given on the question of restarting the caustic

chlorine plant, (1986) 2 SCC 176, no discussion was entered into regarding finding the jurisdictional basis for the Court under Article 32. Violation of Article 21 was apparently assumed or not contested and directions affecting the substantive rights of Shriram Industry were passed. The subsequent petition in (1986) 2 SCC 325 was not a review petition questioning the jurisdictional basis of the earlier order but merely one seeking clarification. Hence as such Article 32 was in fact exercised against a private corporation. It is a moot question whether by ruling that this question is being left open the present five judge bench has overruled the exercise of Article 32 against a private corporation by the three judge bench in (1986) 2 SCC 176.

(4) The Court has stated that the purport to include private corporations in Article 12 and have the matter decided within the original jurisdiction of Article 32 is to subject the activity of such private corporations “to the limitations of fundamental rights” and “to inject respect for human rights and social conscience in our corporate structure” thereby to “advance human rights jurisprudence”. Can one read from this and the rest of the judgment that in “appropriate cases” the entire matter involving complex questions of fact, liability, damages and compensation would be decided by the Supreme Court in its original jurisdiction as a trial Court? While damage to life and liberty would be covered by Article 21 what about connected cases involving damage to property alone for which the right to property is no longer fundamental? Since the number of victims would be large the question of award of compensation to each in relation to the peculiarities of the injury suffered by him will have to be decided. The Supreme Court may set up a special machinery for such claims but eventually it will have to oversee and decide the claims. While for a tribunal there is a mass of case-law Indian and foreign on liability/damages/compensation, there are hardly any precedents of itself for the Supreme Court of India to follow and so detailed principles would have to be innovated and applied in the first major case itself. Despite the well known backlog of cases at the Supreme Court all such cases will have to be given priority and decided immediately.

But the Court must seriously consider the question of logistics. The place of mishap may not be near the seat of the Supreme Court or any of the High Courts. From far flung areas how will the victims effectively reach the superior Courts and consult counsel at such Courts. Already the move is to decentralise justice and take it to the door steps of the victims through Lok Adalats etc. And if as against constitutional remedies, the normal statutory remedies and common law remedies available at district Court level are really found inadequate to deal with such cases, as a long term policy should not the further development of such remedies be informed and inspired by the provisions of the Constitution so that human rights jurisprudence may operate and flourish at grass root level.

In the preceding judgment in this case, (1986) 2 SCC 176, Bhagwati, C.J. had himself appointed the Chief Metropolitan Magistrate before whom claims for compensation may be filed (SCC p. 118); and in future cases the District Judge, Delhi to determine the compensation (SCC p. 200) and he even suggested the setting up of Environment Courts on regional basis with professional judge and experts and the matter to come to the Supreme Court only *by way of appeal* (SCC p. 202).

(5) The Court has taken a bold step in laying down the principle of liability for industries engaged in hazardous or inherently dangerous activities. Two aspects that seem to logically follow this onerous responsibility are:

the freedom to choose the workers to run such an industry and the expectation of an equally responsible functioning of regulatory government agencies.

Necessarily the working of even the most sophisticated and carefully designed industrial plant eventually depends on the vigilance and care of the workers operating it. Therefore a free hand will have to be afforded to the management of such industries in the matters of selection and in exercise of discretion to dispense with services of employees it does not find responsible enough or loses confidence in. What this means is a special labour law jurisprudence in respect of hazardous and inherently dangerous industries.

Moreover all government agencies and inspectorates that carry out routine inspections and certify worthiness and fitness of an industrial plant must necessarily be held liable for criminal negligence for their acts of commission and omission if a mishap occurs. The expenditure of public money on their expert inspections is meaningless and their reports suicidal for the public if they are not reliable enough and lull any management to think all is well. The exception would be where the inherent and possible dangers of the process are kept secret by the management or are not fully disclosed to the licensing or regulatory agencies.

What has been enunciated in this case is truly a rule of accountability and so must extend to its logical conclusion to include others on whom any management would necessarily rely upon to run the industry.

(6) Can the considered opinion of the Court on the above matter of liability be regarded as obiter and therefore not binding.

Going by the past practice and the precedents, the considered opinions of the Supreme Court have been regarded as binding both by the Supreme Court itself and by the High Courts. The above question of liability in this case was "seriously debated" and hence the rule laid down must be considered as binding law within Article 141.

It is interesting to re-read *Marbury v. Madison*, the celebrated case on judicial review, as to what was the question for decision and what the judgment laid down and is considered an authority for. Commenting on it, Jefferson insisted that most of the opinion was "merely an *obiter* dissertation of the Chief Justice" (Dowling and Gunther: *Cases and Materials on Constitutional Law*, 7th Edn., p. 44).]

The Judgment of the Court was delivered by

BHAGWATI, C.J.—This writ petition under Article 32 of the Constitution has come before us on a reference made by a Bench of three Judges. The reference was made because certain questions of seminal importance and high constitutional significance were raised in the course of arguments when the writ petition was originally heard. The facts giving rise to the writ petition and the subsequent events have been set out in some detail in the judgment given by the Bench of three Judges on February 17, 1986¹, and it is therefore not necessary to reiterate the same. Suffice it to state that the Bench of three Judges permitted Shriram Foods and Fertiliser Industries (hereinafter

1. (1986) 2 SCC 176, as amended by order dated March 10, 1986 reported in (1986) 2 SCC 325

referred to as Shriram) to restart its power plant as also plants for manufacture of caustic soda chlorine including its by-products and recovery plants like soap, glycerine and technical hard oil, subject to the conditions set out in the judgment. That would have ordinarily put an end to the main controversy raised in the writ petition which was filed in order to obtain a direction for closure of the various units of Shriram on the ground that they were hazardous to the community and the only point in dispute which would have survived would have been whether the units of Shriram should be directed to be removed from the place where they are presently situate and relocated in another place where there would not be much human habitation so that there would not be any real danger to the health and safety of the people. But while the writ petition was pending there was escape of oleum gas from one of the units of Shriram on December 4 and 6, 1985 and applications were filed by the Delhi Legal Aid and Advice Board and the Delhi Bar Association for award of compensation to the persons who had suffered harm on account of escape of oleum gas. These applications for compensation raised a number of issues of great constitutional importance and the Bench of three Judges therefore formulated these issues and asked the petitioner and those supporting him as also Shriram to file their respective written submissions so that the court could take up the hearing of these applications for compensation. When these applications for compensation came up for hearing it was felt that since the issues raised involved substantial questions of law relating to the interpretation of Articles 21 and 32 of the Constitution, the case should be referred to a larger Bench of five Judges and this is how the case has now come before us.

2. Mr Divan, learned counsel appearing on behalf of Shriram raised a preliminary objection that the court should not proceed to decide these constitutional issues since there was no claim for compensation originally made in the writ petition and these issues could not be said to arise on the writ petition. Mr Divan conceded that the escape of oleum gas took place subsequent to the filing of the writ petition but his argument was that the petitioner could have applied for amendment of the writ petition so as to include a claim for compensation for the victims of oleum gas but no such application for amendment was made and hence on the writ petition as it stood, these constitutional issues did not arise for consideration. We do not think this preliminary objection raised by Mr Divan is sustainable. It is undoubtedly true that the petitioner could have applied for amendment of the writ petition so as to include a claim for compensation but merely because he did not do so, the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association cannot be thrown out. These applications

for compensation are for enforcement of the fundamental right to life enshrined in Article 21 of the Constitution and while dealing with such applications, we cannot adopt a hyper-technical approach which would defeat the ends of justice. This Court has on numerous occasions pointed out that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a court of law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the court. If this Court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the court for justice, there is no reason why these applications for compensation which have been made for enforcement of the fundamental right of the persons affected by the oleum gas leak under Article 21 should not be entertained. The court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form. We cannot therefore sustain the preliminary objection raised by Mr Divan.

3. The first question which requires to be considered is as to what is the scope and ambit of the jurisdiction of this Court under Article 32 since the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association are applications sought to be maintained under that article. We have already had occasion to consider the ambit and coverage of Article 32 in the *Bandhua Mukti Morcha v. Union of India*² and we wholly endorse what has been stated by one of us namely, Bhagwati, J. as he then was in his judgment in that case in regard to the true scope and ambit of that article. It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

2. (1984) 2 SCR 67 : (1984) 3 SCC 161 : 1984 SCC (L&S) 389

4. Thus it was in *S.P. Gupta v. Union of India*³ that this Court held that (SCC p. 210, para 17)

where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability on socially or economically disadvantaged position, unable to approach the court for relief, any member of the public or social action group can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

This Court also held in *S.P. Gupta case*³ as also in the *PUDR v. Union of India*⁴ and in *Bandhua Mukti Morcha case*² that procedure being merely a hand-maiden of justice it should not stand in the way of access to justice to the weaker sections of Indian humanity and therefore where the poor and the disadvantaged are concerned who are barely eking out a miserable existence with their sweat and toil and who are victims of an exploited society without any access to justice, this Court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or a social action group acting *pro bono publico* would suffice to ignite the jurisdiction of this Court. We wholly endorse this statement of the law in regard to the broadening of *locus standi* and what has come to be known as epistolary jurisdiction.

5. We may point out at this stage that in *Bandhua Mukti Morcha case*² some of us apprehending that letters addressed to individual justices may involve the court in frivolous cases and that possibly a view could be taken that such letters do not invoke the jurisdiction of the court as a whole, observed that such letters should not be addressed to individual justices of the court but to the court or to the Chief Justice and his companion judges. We do not think that it would be right to reject a letter addressed to an individual justice of the court merely on the ground that it is not addressed to the court or to the Chief Justice and his companion judges. We must not forget that letters would ordinarily be addressed by poor and

3. 1981 Supp SCC 87

4. (1983) 1 SCR 456 : (1982) 3 SCC 235 : 1982 SCC (L&S) 275

disadvantaged persons or by social action groups who may not know the proper form of address. They may know only a particular judge who comes from their State and they may therefore address the letters to him. If the court were to insist that the letters must be addressed to the court or to the Chief Justice and his companion judges, it would exclude from the judicial ken a large number of letters and in the result, deny access to justice to the deprived and vulnerable sections of the community. We are therefore of the view that even if a letter is addressed to an individual judge of the court, it should be entertained, provided of course it is by or on behalf of a person in custody or on behalf of a woman or a child or a class of deprived or disadvantaged persons. We may point out that now there is no difficulty in entertaining letters addressed to individual justices of the court, because this Court has a Public Interest Litigation Cell to which all letters addressed to the court or to the individual justices are forwarded and the staff attached to this cell examines the letters and it is only after scrutiny by the staff members attached to this cell that the letters are placed before the Chief Justice and under his direction, they are listed before the court. We must therefore hold that letters addressed to individual justices of the court should not be rejected merely because they fail to conform to the preferred form of address. Nor should the court adopt a rigid stance that no letters will be entertained unless they are supported by an affidavit. If the court were to insist on an affidavit as a condition of entertaining the letters the entire object and purpose of epistolary jurisdiction would be frustrated because most of the poor and disadvantaged persons will then not be able to have easy access to the court and even the social action groups will find it difficult to approach the court. We may point out that the court has so far been entertaining letters without an affidavit and it is only in a few rare cases that it has been found that the allegations made in the letters were false. But that might happen also in cases where the jurisdiction of the court is invoked in a regular way.

6. So far as the power of the court under Article 32 to gather relevant material bearing on the issues arising in this kind of litigation, which we may for the sake of convenience call social action litigation, and to appoint Commissions for this purpose is concerned, we endorse what one of us namely, Bhagwati, J. as he then was, has said in his judgment in *Bandhua Mukti Morcha case*². We need not repeat what has been stated in that judgment. It has our full approval.

7. We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including

all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide *Bandhua Mukti Morcha case*². If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can injunct such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and *ex facie* glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in *Rudul Shah v. State of Bihar*⁵. So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was grossly violated by the State of Jammu and Kashmir⁶. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such as

5. AIR 1983 SC 1086 : (1983) 4 SCC 141 : 1983 SCC (Cri) 798

6. Bhim Singh v. State of J & K, (1985) 4 SCC 677 : 1986 SCC (Cri) 47

to shock the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation.

8. The next question which arises for consideration on these applications for compensation is whether Article 21 is available against Shriram which is owned by Delhi Cloth Mills Limited, a public company limited by shares and which is engaged in an industry vital to public interest and with potential to affect the life and health of the people. The issue of availability of Article 21 against a private corporation engaged in an activity which has potential to affect the life and health of the people was vehemently argued by counsel for the applicants and Shriram. It was emphatically contended by counsel for the applicants, with the analogical aid of the American doctrine of State Action and the functional and control test enunciated by this Court in its earlier decisions, that Article 21 was available, as Shriram was carrying on an industry which, according to the government's own declared industrial policies, was ultimately intended to be carried out by itself, but instead of the government immediately embarking on that industry, Shriram was permitted to carry it on under the active control and regulation of the government. Since the government intended to ultimately carry on this industry and the mode of carrying on the industry could vitally affect public interest, the control of the government was linked to regulating that aspect of the functioning of the industry which could vitally affect public interest. Special emphasis was laid by counsel for the applicants on the regulatory mechanism provided under the Industries Development and Regulation Act, 1951 where industries are included in the schedule if they vitally affect public interest. Regulatory measures are also to be found in the Bombay Municipal Corporation Act, the Air and Water Pollution Control Acts and now the recent Environment Protection Act, 1986. Counsel for the applicants also pointed to us the sizeable aid in loans, land and other facilities granted by the government to Shriram in carrying on the industry. Taking aid of the American State Action doctrine, it was also argued before us on behalf of the applicants that private activity, if supported, controlled or regulated by the State may get so entwined with governmental activity as to be termed State action and it would then be subject to the same constitutional restraints on the exercise of power as the State.

9. On the other hand, counsel for Shriram cautioned against expanding Article 12 so as to bring within its ambit private corporations. He contended that control or regulation of a private corporation's functions by the State under general statutory law such as the Industries Development and Regulation Act, 1951 is only in exercise of police power of regulation by the State. Such regulation

does not convert the activity of the private corporation into that of the State. The activity remains that of the private corporation ; the State in its police power only regulates the manner in which it is to be carried on. It was emphasised that control which deems a corporation, an agency of the State, must be of the type where the State controls the management policies of the Corporation, whether by sizeable representation on the board of management or by necessity of prior approval of the government before any new policy of management is adopted, or by any other mechanism. Counsel for Shriram also pointed out the inappositeness of the State action doctrine to the Indian situation. He said that in India the control and function test have been evolved in order to determine whether a particular authority is an instrumentality or agency of the State and hence 'other authority' within the meaning of Article 12. Once an authority is deemed to be 'other authority' under Article 12, it is State for the purpose of all its activities and functions and the American functional dichotomy by which some functions of an authority can be termed State action and others private action, cannot operate here. The learned counsel also pointed out that those rights which are specifically intended by the Constitution makers to be available against private parties are so provided in the Constitution specifically such as Articles 17, 23 and 24. Therefore, to so expand Article 12 as to bring within its ambit even private corporations would be against the scheme of the chapter on fundamental rights.

10. In order to deal with these rival contentions we think it is necessary that we should trace that part of the development of Article 12 where this Court embarked on the path of evolving criteria by which a corporation could be termed 'other authority' under Article 12.

11. In *Rajasthan State Electricity Board v. Mohan Lal*⁷ this Court was called upon to consider whether the Rajasthan Electricity Board was an 'authority' within the meaning of the expression 'other authorities' in Article 12. Bhargava, J. who delivered the judgment of the majority pointed out that the expression 'other authorities' in Article 12 would include all constitutional and statutory authorities on whom powers are conferred by law. The learned Judge also said that if any body of persons has authority to issue directions, the disobedience of which would be punishable as a criminal offence, that would be an indication that the concerned authority is 'State'. Shah, J., who delivered a separate judgment agreeing with the conclusion reached by the majority, preferred to give a slightly different meaning to the expression 'other authorities'. He said that authorities, constitutional or statutory, would fall within the expression "other

7. (1967) 3 SCR 377 : AIR 1967 SC 1857 : (1968) 1 Lab LJ 257

authorities” only if they are invested with the sovereign power of the State, namely, the power to make rules and regulations which have the force of law. The ratio of this decision may thus be stated to be that a constitutional or statutory authority would be within the expression “other authorities” if it has been invested with statutory power to issue binding directions to third parties, the disobedience of which would entail penal consequences or it has the sovereign power to make rules and regulations having the force of law.

12. This test was followed by Ray, C.J., in *Sukhdev Singh v. Bhagatram*⁸. Mathew, J., however, in the same case propounded a broader test. The learned Judge emphasised that the concept of ‘State’ had undergone drastic changes in recent years and today ‘State’ could not be conceived of simply as a coercive machinery wielding the thunderbolt of authority; rather it has to be viewed mainly as a service corporation. He expanded on this dictum by stating that the emerging principle appears to be that a public corporation being an instrumentality or agency of the ‘State’ is subject to the same constitutional limitations as the ‘State’ itself. The preconditions of this are two, namely, that the corporation is the creation of the ‘State’ and that there is existence of power in the corporation to invade the constitutional rights of the individual. This Court in *Ramana Dayaram Shetty v. International Airports Authority of India*⁹ accepted and adopted the rationale of instrumentality or agency of State put forward by Mathew, J., and spelt out certain criteria with whose aid such an inference could be made. However, before we come to these criteria we think it necessary to refer to the concern operating behind the exposition of the broader test by Justice Mathew which is of equal relevance to us today, especially considering the fact that the definition under Article 12 is an inclusive and not an exhaustive definition. That concern is the need to curb arbitrary and unregulated power wherever and howsoever reposed.

13. In *R.D. Shetty v. International Airports Authority*⁹ this Court deliberating on the criteria on the basis of which to determine whether a corporation is acting as instrumentality or agency of government said that it was not possible to formulate an all inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of government and those which are not. The court said whilst formulating the criteria that analogical aid can be taken from the concept of State Action as developed in the United States wherein the US courts have

8. (1975) 1 SCC 421

9. (1979) 3 SCR 1014 : (1979) 3 SCC 489 : AIR 1979 SC 1628

suggested that a private agency if supported by extraordinary assistance given by the State may be subject to the same constitutional limitations as the State. It was pointed out that the State's general common law and statutory structure under which its people carry on their private affairs, own property and enter into contracts, each enjoying equality in terms of legal capacity, is not such assistance as would transform private conduct into State Action. "But if extensive and unusual financial assistance is given and the purpose of the government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of the government." (SCC p. 508, para 15)

14. On the question of State control, the court in *R.D. Shetty case*⁹ clarified that some control by the State would not be determinative of the question, since the State has considerable measure of control under its police power over all types of business organisations. But a finding of State financial support plus an unusual degree of control over the management and policies of the corporation might lead to the characterisation of the operation as State Action.

15. Whilst deliberating on the functional criteria namely, that the corporation is carrying out a governmental function, the court emphasised that classification of a function as governmental should not be done on earlier day perceptions but on what the State today views as an indispensable part of its activities, for the State may deem it as essential to its economy that it own and operate a railroad, a mill or an irrigation system as it does to own and operate bridges, street lights or a sewage disposal plant. The Court also reiterated in *R.D. Shetty case*⁹ what was pointed out by Mathew, J. in *Sukhdev v. Bhagatram*⁸ that "institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions". (1975) 1 SCC 421 at 454 (para 96) quoted in (1979) 3 SCC at 509, para 16

16. The above discussion was rounded off by the Court in *R.D. Shetty case*⁹ by enumerating the following five factors namely, (1) financial assistance given by the State and magnitude of such assistance, (2) any other form of assistance whether of the usual kind or extraordinary, (3) control of management and policies of the corporation by the State — nature and extent of control, (4) State conferred or State protected monopoly status, and (5) functions carried out by the corporation, whether public functions closely related to

governmental functions, as relevant criteria for determining whether a corporation is an instrumentality or agency of the State or not, though the court took care to point out that the enumeration was not exhaustive and that it was the aggregate or cumulative effect of all the relevant factors that must be taken as controlling.

17. The criteria evolved by this Court in *R.D. Shetty case*⁹ were applied by this Court in *Ajay Hasia v. Khalid Mujib*¹⁰ where it was further emphasised that : (SCC pp. 731-32, para 7)

Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. Now it is obvious that the government may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions.... It is really the government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the government...(for), If the government acting through its officers is subject to certain constitutional limitations, it must follow *a fortiori* that the government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations.

On the canon of construction to be adopted for interpreting constitutional guarantees the Court pointed out : (SCC p. 733, para 7)

...constitutional guarantees...should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the government or through the corporate personality of which the government is acting, so as to subject the government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights.

In this case the court also set at rest the controversy as to whether the manner in which a corporation is brought into existence had any relevance to the question whether it is a State instrumentality or agency. The Court said that it is immaterial for the purpose of determining whether a corporation is an instrumentality or agency of the State or

10. (1981) 2 SCR 79 : (1981) 1 SCC 722 : 1981 SCC (L&S) 258

414

SUPREME COURT CASES

(1987) 1 SCC

not whether it is created by a statute or under a statute : (SCC p. 737, para 11)

The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute.

It would come within the ambit of Article 12, if it is found to an instrumentality or agency of the State on a proper assessment of the relevant factors.

18. It will thus be seen that this Court has not permitted the corporate device to be utilised as a barrier ousting the constitutional control of the fundamental rights. Rather the Court has held :¹¹ (SCC p. 480, para 55)

It is dangerous to exonerate corporations from the need to have constitutional conscience ; and so, that interpretation, language permitting, which makes governmental agencies, whatever their mien amenable to constitutional limitations must be adopted by the court as against the alternative of permitting them to flourish as an *imperium in imperio*.

19. Taking the above exposition as our guideline, we must now proceed to examine whether a private corporation such as Shriram comes within the ambit of Article 12 so as to be amenable to the discipline of Article 21.

20. In order to assess the functional role allocated to private corporation engaged in the manufacture of chemicals and fertilisers, we need to examine the Industrial policy of the government and see the public interest importance given by the State to the activity carried on by such private corporation.

21. Under the Industrial Policy Resolution, 1956 industries were classified into three categories having regard to the part which the State would play in each of them. The first category was to be the exclusive responsibility of the State. The second category comprised those industries which would be progressively State owned and in which the State would therefore generally take the initiative in establishing new undertakings but in which private enterprise would also be expected to supplement the effort of the State by promoting and developing undertakings either on its own or with State participation.

11. Som Prakash Rekhi v. Union of India, (1981) 2 SCR 111 : (1981) 2 SCC 449 : 1981 SCC (L&S) 200

The third category would include all the remaining industries and their future development would generally be left to the initiative and enterprise of the private sector. Schedule B to the Resolution enumerated the industries.

22. Appendix I to the Industrial Policy Resolution, 1948 dealing with the problem of State participation in industry and the conditions in which private enterprise should be allowed to operate stated that there can be no doubt that the State must play a progressively active role in the development of industries. However under the present conditions, the mechanism and resources of the State may not permit it to function forthwith in industry as widely as may be desirable. The policy declared that for some time to come, the State could contribute more quickly to the increase of national wealth by expanding its present activities wherever it is already operating and by concentrating on new units of production in other fields.

23. On these considerations the government decided that the manufacture of arms and ammunition, the production and control of atomic energy and the ownership and management of railway transport would be the exclusive monopoly of the Central Government. The establishment of a new undertakings in coal, iron and steel, aircraft manufacture, ship-building, manufacture of telephone, telegraph and wireless apparatus and mineral oils were to be the exclusive responsibility of the State except where in national interest the State itself finds it necessary to secure the co-operation of private enterprise subject to control of the Central Government.

24. The policy resolution also made mention of certain basic industries of importance the planning and regulation of which by the Central Government was found necessary in national interest. Among the eighteen industries so mentioned as requiring such Central control, heavy chemicals and fertilisers stood included.

25. In order to carry out the objective of the Policy Resolution the Industries (Development and Regulation) Act of 1951 was enacted which, according to its objects and reasons, brought under Central control the development and regulation of a number of important industries the activities of which affect the country as a whole and the development of which must be governed by economic factors of all India import. Section 2 of the Act declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. Chemicals and Fertilisers find a place in the First Schedule as items 19 and 18 respectively.

26. If an analysis of the declarations in the Policy Resolutions

and the Act is undertaken, we find that the activity of producing chemicals and fertilisers is deemed by the State to be an industry of vital public interest, whose public import necessitates that the activity should be ultimately carried out by the State itself, though in the interim period with State support and under State control, private corporations may also be permitted to supplement the State effort. The argument of the applicants on the basis of this premise was that in view of this declared industrial policy of the State, even private corporations manufacturing chemicals and fertilisers can be said to be engaged in activities which are so fundamental to the society as to be necessarily considered government functions. (*Sukhdev v. Bhagatram*⁸, *R.D. Shetty*⁹ and *Ajay Hasia*¹⁰.)

27. It was pointed out on behalf of the applicants that as Shriram is registered under the Industries Development and Regulation Act, 1951, its activities are subject to extensive and detailed control and supervision by the government. Under the Act a licence is necessary for the establishment of a new industrial undertaking or expansion of capacity or manufacture of a new article by an existing industrial undertaking carrying on any of the scheduled industries included in the First Schedule of the Act. By refusing licence for a particular unit, the government can prevent over concentration in a particular region or over-investment in a particular industry. Moreover, by its power to specify the capacity in the licence it can also prevent over-development of a particular industry if it has already reached target capacity. Section 18-G of the Act empowers the Government to control the supply, distribution, price etc. of the articles manufactured by a scheduled industry and under Section 18-A government can assume management and control of an industrial undertaking engaged in a scheduled industry if after investigation it is found that the affairs of the undertaking are being managed in a manner detrimental to public interest and under Section 18-AA in certain emergent cases, takeover is allowed even without investigation. Since Shriram is carrying on a scheduled industry, it is subject to this stringent system of registration and licensing. It is also amenable to various directions that may be issued by the government from time to time and it is subject to the exercise of the powers of the government under Sections 18-A, 18-AA and 18-G.

28. Shriram is required to obtain a licence under the Factories Act and is subject to the directions and orders of the authorities under the Act. It is also required to obtain a licence for its manufacturing activities from the Municipal authorities under the Delhi Municipal Act, 1957. It is subject to extensive environment regulation under the Water (Prevention and Control of Pollution) Act, 1974 and as the factory is situated in an air pollution control area, it is also subject

to the regulation of the Air (Prevention and Control of Pollution) Act, 1981. It is true that control is not exercised by the government in relation to the internal management policies of the company. However, the control is exercised on all such activities of Shriram which can jeopardize public interest. This functional control is of special significance as it is the potentiality of the fertilizer industry to adversely affect the health and safety of the community and its being impregnated with public interest which perhaps dictated the policy decision of the government to ultimately operate this industry exclusively and invited functional control. Along with this extensive functional control, we find that Shriram also receives sizeable assistance in the shape of loans and overdrafts running into several crores of rupees from the government through various agencies. Moreover, Shriram is engaged in the manufacture of caustic soda, chlorine etc. Its various units are set up in a single complex surrounded by thickly populated colonies. Chlorine gas is admittedly dangerous to life and health. If the gas escapes either from the storage tank or from the filled cylinders or from any other point in the course of production, the health and well-being of the people living in the vicinity can be seriously affected. Thus Shriram is engaged in an activity which has the potential to invade the right to life of large sections of people. The question is whether these factors are cumulatively sufficient to bring Shriram within the ambit of Article 12. Prima facie it is arguable that when the State's power as economic agent, economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights. (*Vide Eurasian Equipment and Chemicals Ltd. v. State of W.B.*¹²; *Rashbihari Panda v. State of Orissa*¹³; *R.D. Shetty v. International Airports Authority*⁹ and *Kasturi Lal Reddy v. State of J & K*¹⁴), why should a private corporation under the functional control of the State engaged in an activity which is hazardous to the health and safety of the community and is imbued with public interest and which the State ultimately proposes to exclusively run under its industrial policy, not be subject to the same limitations. But we do not propose to decide this question and make any definite pronouncement upon it for reasons which we shall point out later in the course of this judgment.

29. We were, during the course of arguments, addressed at great length by counsel on both sides on the American doctrine of State action. The learned counsel elaborately traced the evolution of this doctrine in its parent country. We are aware that in America since the Fourteenth Amendment is available only against the State, the courts in order to thwart racial discrimination by private parties.

12. (1975) 2 SCR 674 : (1975) 1 SCC 70 : AIR 1975 SC 266

13. (1969) 3 SCR 374 : (1969) 1 SCC 414

14. (1980) 3 SCR 1338 : (1980) 4 SCC 1 : AIR 1980 SC 1992

devised the theory of State action under which it was held that wherever private activity was aided, facilitated or supported by the State in a significant measure, such activity took the colour of State action and was subject to the constitutional limitations of the Fourteenth Amendment. This historical context in which the doctrine of State action evolved in the United States is irrelevant for our purpose especially since we have Article 15(2) in our Constitution. But it is the principle behind the doctrine of State aid, control and regulation so impregnating a private activity as to give it the colour of State action that is of interest to us and that also to the limited extent to which it can be Indianized and harmoniously blended with our constitutional jurisprudence. That we in no way consider ourselves bound by American exposition of constitutional law is well demonstrated by the fact that in *R.D. Shetty*¹⁵ this Court preferred the minority opinion of Douglas, J. in *Jackson v. Metropolitan Edison Company*¹⁶ as against the majority opinion of Rehnquist, J. And again in *Air India v. Nergesh Meerza*¹⁶ this Court whilst preferring the minority view in *General Electric Company v. Martha V. Gilbert*¹⁷ said that the provisions of the American Constitution cannot always be applied to Indian conditions or to the provisions of our Constitution and whilst some of the principles adumbrated by the American decisions may provide a useful guide, close adherence to those principles while applying them to the provisions of our Constitution is not to be favoured, because the social conditions in our country are different.

30. Before we part with this topic, we may point out that this Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in our corporate structure. The purpose of expansion has not been to destroy the *raison d'être* of creating corporations but to advance the human rights jurisprudence. Prima facie we are not inclined to accept the apprehensions of learned counsel for Shriram as well founded when he says that our including within the ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial activity. Whenever a new advance is made in the field of human rights, apprehension is always expressed by the status quoists that it will create enormous difficulties in the way of smooth functioning of the system and affect its stability. Similar apprehension was voiced when this Court in *R.D. Shetty case*¹⁵ brought public sector corporations within the scope

15. 42 L Ed (2d) 477

16. (1982) 1 SCR 438 : (1981) 4 SCC 335 : 1981 SCC (L&S) 599

17. 50 L Ed (2d) 343

and ambit of Article 12 and subjected them to the discipline of fundamental rights. 'Such apprehension expressed by those who may be affected by any new and innovative expansion of human rights need not deter the court from widening the scope of human rights and expanding their reach and ambit, if otherwise it is possible to do so without doing violence to the language of the constitutional provision. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quoists. But we do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12, because we have not had sufficient time to consider and reflect on this question in depth. The hearing of this case before us concluded only on December 15, 1986 and we are called upon to deliver our judgment within a period of four days, on December 19, 1986. We are therefore, of the view that this is not a question on which we must make any definite pronouncement at this stage. But we would leave it for a proper and detailed consideration at a later stage if it becomes necessary to do so.

31. We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in *Rylands v. Fletcher*¹⁸ apply or is there any other principle on which the liability can be determined. The rule in *Rylands v. Fletcher*¹⁸ was evolved in the year 1866 and it provides that a person who for his own purposes brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority.

18. (1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1

Vide *Halsbury's Laws of England*, vol. 45, para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry as part of the developmental programme, this rule evolved in the 19th century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in *Rylands v. Fletcher*¹⁸ as developed in England recognises certain limitations and exceptions, we in India must hold back our hands and not venture to evolve a new principle of liability since English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must

be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in *Rylands v. Fletcher*¹⁸.

32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

33. Since we are not deciding the question as to whether *Shriram* is an authority within the meaning of Article 12 so as to be subjected to the discipline of the fundamental right under Article 21, we do

422

SUPREME COURT CASES

(1987) 1 SCC

not think it would be justified in setting up a special machinery for investigation of the claims for compensation made by those who allege that they have been the victims of oleum gas escape. But we would direct the Delhi Legal Aid and Advice Board to take up the cases of all those who claim to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram. Such actions claiming compensation may be filed by the Delhi Legal Aid and Advice Board within two months from today and the Delhi Administration is directed to provide the necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court will nominate one or more judges as may be necessary for the purpose of trying such actions so that they may be expeditiously disposed of. So far as the issue of relocation and other issues are concerned the writ petition will come up for hearing on February 3, 1987.

(1987) 1 Supreme Court Cases 422

(BEFORE A.P. SEN AND B.C. RAY, JJ.)

J.B. CHOPRA AND OTHERS

.. Petitioners ;

Versus

UNION OF INDIA AND OTHERS

.. Respondents.

Special Leave Petition No. 7991 of 1986†, decided on December 19, 1986

Administrative Tribunals Act, 1985 — Sections 14(1), 28 and 29(1) — Central Administrative Tribunal have jurisdiction to decide constitutionality of statutes, statutory rules, regulations or notifications

Held :

The Administrative Tribunal being a substitute of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Articles 14 and 16(1). Therefore, the Tribunal had authority or jurisdiction to strike down the impugned notification dated March 15, 1980 purporting to amend Rule 4 of the Central Hindi Directorate (Class III and Class IV) Posts Recruitment Rules, 1961 as being wholly mala fide, arbitrary and irrational and thus offending Articles 14 and 16(1) (Para 2)

S.P. Sampath Kumar v. Union of India, (1987) 1 SCC 124 : (1987) 2 A.T.C 82, applied

SLP dismissed

R-M/7663/CA

Advocates who appeared in this case :

V.C. Mahajan, Senior Advocate, (*Mrs. Urmila Kapoor*, Advocate, with him), for the Petitioners ;

N.S. Rao, Senior Advocate, (*M/s. Ashok K. Srivastava* and *Ms. S. Relan*, Advocates, with him), for the Respondents.

The Order of the Court was delivered by

A.P. SEN, J.—In this special leave petition a question was raised regarding the authority and jurisdiction of the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 to strike down as consti-

†From the Judgment and Order dated May 29, 1986 of the Central Administrative Tribunal, Principal Bench, Delhi in C.W.P. No. 277/80 in T.A. No. 599/85.

(1996) 5 Supreme Court Cases 281

(BEFORE KULDIP SINGH, S. SAGHIR AHMAD AND B.N. KIRPAL, JJ.)

a INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 664 of 1993[†], decided on April 18, 1996

- b* **A. Constitution of India — Arts. 32 & 226, 21, 48-A and 51-A — PIL — Ecological fragility — Non-compliance with anti-pollution laws — Govt. apathy — Orders and directions are issued by court for implementation and enforcement of the laws to protect the fundamental right to life of the people — Passing such orders and directions do not amount to usurpation of legislative or executive function — They are issued by the court in discharge of its judicial function — However, Court is not concerned with day-to-day enforcement of the law which is the function of the executive — High Courts being acquainted with the local conditions, they would be in a better position to ensure proper implementation of the law — PIL complaining ecological degradation in coastal areas — Notification issued by Central Govt. under R. 5(3)(d) of Environment Protection Rules, 1986 after detailed study of relevant issues — Non-compliance with the notification alleged and subsequent amendments to the notification challenged on ground that the same resulted in defeating the intent of the**
- c* **notification — Contentions directed to be raised before respective High Courts — Meanwhile no development should take place in ‘no-development zone’ in the coastal area — Environment Protection Act, 1986, S. 3(1) and (2)(v) — Environment Protection Rules, 1986, R. 5(3)(d)**
- d* **B. Ecology — Generally — Anti-pollution laws — Proper implementation and enforcement of, is of prime importance to avoid ecological degradation and its adverse effects — Jurisprudence — Law — Enforcement of**

- e* **C. Environment Protection Rules, 1986. — R. 5(3)(d) — Central Govt.’s notification under — Presumed to have been issued after due deliberations and study — While issuing such notification Govt. should endeavour to strike a balance between ecological interests and economic, social and cultural interests — Industrial development at the cost of environmental degradation or environmental protection at the cost of industrial and economic growth not warranted**
- f* **D. Jurisprudence — Law — Object and purpose of — Non-enforcement or condonation of violation of — Propriety — Rule of law — Public Interest Litigation — Seeking enforcement of laws — Maintainability — Constitution of India, Arts. 32 & 226, 51-A and 48-A**

- g* **E. Constitution of India — Art. 226 — PIL — High Courts must shoulder greater responsibilities in taking up local issues of which they can have closer awareness and easy monitoring such as ecological matters in their respective States in the light of law laid down by the Supreme Court — This would ensure that the orders passed are effective and complied with — Ecology — PIL — Place of filing**

- h* **The Central Government issued a notification dated 19-2-1991 (‘the main Notification’) in exercise of the powers conferred on it by clause (d) of sub-rule (3) of Rule 5 of the Environment Protection Rules, 1986. By this notification, it declared**

[†] Under Article 32 of the Constitution of India

the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which were influenced by tidal action (in the landward side) up to 500 metres from the High Tide Line ('HTL') and the land between Low Tide Line ('LTL') and HTL as Regulation Zones. With regard to this area, it imposed, with effect from the date of the said notification, various restrictions on the setting up and expansion of industries, operation or processes etc. in the said Regulation Zones. It was clarified that for the purposes of the main Notification, HTL was defined as the line up to which the highest high tide reaches at springtime. Subsequently, a Notification dated 18-8-1994 was issued making six amendments in the main Notification. These amendments were made after the receipt of the report of a committee, headed by Mr B.B. Vohra, which had been set up by the Central Government. There is no challenge to the validity of the main Notification. A writ petition by way of public interest litigation was filed alleging that there had been blatant violation of the main notification and industries were illegally being set up, thereby causing serious damage to the environment and ecology of the area. It was also submitted that the Ministry of Environment and Forests except for issuing the main Notification, had taken no steps to follow up its own directions contained in the main Notification. The validity of the Notification dated 18-8-1994 was also challenged. The main prayer in the writ petition was that the Supreme Court should issue appropriate writ, order or direction to the respondent so as to enforce the main Notification.

Held :

The main Notification was issued under Sections 3(1) and 3(2)(v) of the Environment Protection Act, presumably after a lot of study had been undertaken by the Government. Normally, such notifications are issued after a detailed study and examination of all relevant issues. In matters relating to environment, it may not always be possible to lay down rigid or uniform standards for the entire country. While issuing the notifications like the present, the Government has to balance various interests including economic, ecological, social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation such developmental activity is sought to be regulated. (Paras 32 and 31)

Having issued the main Notification, no follow-up action was taken either by the coastal States and Union Territories or by the Central Government. The provisions of the main Notification appear to have been ignored and, possibly violated with impunity. There has been a complete laxity in the implementation of the Act and other related statutes. (Paras 27 and 45)

Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that

INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION v UNION OF INDIA

283

a it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged b which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations. (Para 26)

c With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public-spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing environmental d degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. (Para 41)

e The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law for the protection of the fundamental rights of the people. Passing of f appropriate orders requiring the implementation of the law cannot be regarded as the court having usurped the functions of the legislature or the executive. The orders are passed and directions are issued by the court in discharge of its judicial function, namely, to see that if there is a complaint by a petitioner regarding the infringement of any constitutional or other legal right, as a result of any wrong action or inaction on the part of the State, then such wrong should not be permitted to continue. (Paras 41 and 28)

g For effective orders to be passed, so as to ensure that there can be protection of environment along with development, it becomes necessary for the court dealing with such issues to know about the local conditions. Such conditions in different parts of the country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the h infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling

such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by the Supreme Court, more effective implementation of the same can, in a number of cases, be effected, if the High Courts concerned assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology. (Para 42)

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There is a likelihood that there will be instances of infringement of the main Notification and also of the Management Plans, as and when framed, taking place in different parts of the country. Instead of agitating these questions before the Supreme Court, now that the general principles have been laid down and are well-established, it will be more appropriate that action with regard to such infringement even if they relate to the violation of fundamental rights, should first be raised before the High Court having territorial jurisdiction over the area in question. It is expected that each High Court will deal with such issues urgently. Environmental law has now become a specialised field. In the decision which was taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June 1992 in which India had also participated, the States had been called upon to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages. (Para 43)

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c

Allegations relating to infringement of any Government notification should be filed in the High Courts having territorial jurisdiction and the High Courts should issue appropriate orders and directions. (Para 43)

d

There is 6000 kms long coastline of India. It is the responsibility of the coastal States and Union Territories in which these stretches exist to see that both the notifications are complied with and enforced. Management Plans have to be prepared by the States and approved by the Central Government. If the said plans have been approved, the development can take place only in accordance therewith. Till the preparation and approval of the said plans by virtue of the provisions of the main Notification, no development in the coastal areas within the NDZ can take place. Therefore, it is in the interest of all concerned that the Management Plans are submitted and approved at the earliest. (Para 44)

e

With increasing threat to the environmental degradation taking place in different parts of the country, it may not be possible for any single authority to effectively control the same. Environmental degradation is best protected by the people themselves. In this connection, some of the non-governmental organisations (NGOs) and other environmentalists are doing singular service. Time has perhaps come when the Government can usefully draw upon the resources of such NGOs to help and assist in the implementation of the laws relating to protection of the environment. Under Section 3 of the Act, the Central Government has the power to constitute one or more authorities for the purposes of exercising and performing such powers and functions, including the power to issue directions under Section 5 of the Act of the Central Government as may be delegated to them. (Para 47)

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Considering the fact that the Pollution Control Boards are not only overworked but simultaneously have a limited role to play insofar as it relates to controlling of pollution for the purpose of ensuring effective implementation of the notifications of 1991 and 1994, as also of the Management Plans, the Central Government should consider setting up under Section 3 of the Act, State Coastal Management Authorities in each State or zone and also a National Coastal Management Authority.

(Para 47)

h

INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION v. UNION OF INDIA 285

[Directions for the State and Central Governments and submission of reports passed. (Para 47)]

- a *Indian Council for Enviro-Legal Action v. Union of India*, (1995) 3 SCC 77, referred to R-M/T/16136/C

Advocates who appeared in this case :

- Ms Seema Midha and K.R. Rajasekaran, Advocates, for the Petitioner;
Ms H. Wahi, P.K. Manohar, S.K. Sinha, R.K. Mehta, K.L. Taneja, C.V.S. Rao, S.K. Mehta, A.S. Bhasme, Ms M. Karanjawala, V. Krishnamurthi, Vineet Kumar, K. Ram Kumar, A. Mariarputham, R. Sasiprabhu, P.N. Puri, Kh. Nobin Singh, Ms Indu Malhotra, Ms Meenakshi Arora, Sanjay Parikh, Anip Sachthey, H.K. Puri, S.N. Bhat and Ms Ruby Ahuja, Advocates, for the Respondents.
- b

Chronological list of cases cited on page(s)

1. (1995) 3 SCC 77, *Indian Council for Enviro-Legal Action v. Union of India* 292a

ORDER

- c 1. Concern for the protection of ecology and for preventing irreversible ecological damage to the coastal areas of the country has led to the filing of the present petition under Article 32 of the Constitution of India as a public interest litigation.
- d 2. The main grievance in this petition is that a notification dated 19-2-1991 declaring coastal stretches as Coastal Regulation Zones (hereinafter referred to as 'the Regulation Zones') which regulates the activities in the said zones has not been implemented or enforced. This has led to continued degradation of ecology in the said coastal areas. There is also a challenge to the validity of the notification dated 18-8-1994 whereby the first notification dated 19-2-1991 has been amended, resulting in further relaxations of the provisions of the 1991 Notification and such relaxation, it is alleged, will help in defeating the intent of the main Notification itself.
- e 3. The petitioner is a registered voluntary organisation working for the cause of environment protection in India. India has a coastline running into 6000 kms which has abundance of natural endowments, geographic attractions and natural beauty. According to the petitioner, these coastal areas are highly complex and have dynamic ecosystems, sensitive to development pressures. The stresses and pressure of high population growth, non-restrained development, lack of adequate infrastructure facilities for the resident population are stated to be some of the factors responsible for the decline in environmental quality in these areas. The developmental activities in the coastal areas are stated to cause short-term and long-term physical, chemical and biological changes that will and has caused damage to flora and fauna, public health and environment. It is further alleged that as a consequence of indiscriminate industrialisation and urbanisation, without the requisite pollution control systems, the coastal waters are highly polluted.
- f 4. It is further the case of the petitioner that some of the coastal areas contained extensive groundwater resources and sometimes mineral resources, while in other areas, there are iron ore, oil and gas resources and mangrove forests. As a result of the impact of tidal waves and cyclones, mangrove forests are being increasingly destroyed, while some of the major
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fishing areas in some of the coastal areas of the country are undergoing serious damage consequent to ecologically unsound development. Over-exploitation of groundwater in the coastal areas in places like Madras and Vishakhapatnam is stated to have resulted in growing intrusion of salt water from the sea to inland areas and fresh water aquifers previously used for drinking, agriculture and horticulture are getting highly damaged. Unplanned urbanisation and industrialisation in the coastal belts is stated to be causing fast disappearance of fertile agricultural lands, fruit gardens and energy plantations like casuarina trees, that serve as windbreakers and protect inland habitations from the cyclonic damages.

5. With a view to protect the ecological balance in the coastal areas, the then Prime Minister is stated to have written a letter in November 1981 to the Chief Ministers of coastal States in which she stated as under:

“The degradation and misutilization of beaches in the coastal States is worrying as the beaches have aesthetic and environmental value as well as other values. They have to be kept clear of all activities at least up to 500 metres from the water at the maximum high tide. If the area is vulnerable to erosion, suitable trees and plants have to be planted on the beaches without marring their beauty. Beaches must be kept free from all kinds of artificial development. Pollution from industrial and town wastes must also be avoided totally.”

Working groups were set up by the Ministry of Environment and Forests in 1982 to prepare environmental guidelines for development of beaches and coastal areas. In July 1983 environmental guidelines for beaches were promulgated which, inter alia, stated:

“The traditional use of sea water as a dump site from our land-derived wastes has increased the polluted loads of sea and reduced its development potentials including the economic support it provides to people living nearby. Degradation and misutilization of beaches are affecting the aesthetic and environmental loss. These could be avoided through prudent coastal development and management based on assessment of ecological values and potential damages from coastal developments.”

These guidelines further stated that “adverse direct impact” of development activities was possible within 500 metres from the high watermark or beyond two kilometres from it. The example which was given was that the sand-dunes and vegetation clearing, high density construction etc. along the coast could alter the ecological system of the area.

6. The environment guidelines for the development of beaches, inter alia, required the State Governments to prepare a status report on the obtaining situation of the coastal areas, as a prerequisite to environmental management of the area. Such a status report was required to be followed by a master plan identifying the areas required for conservation, preservation and development and other activities. A master plan so prepared would ensure a scientific assessment and development of the coastline and this

would ultimately ensure the preservation and enforcement of the coastal eco-system.

a 7. The Ministry of Environment and Forests undertook an exercise with regard to the protection and development of the coastal areas. It invited objections against the declaration of the coastal stretches as Regulation Zones and imposing restrictions on industries, operation and processes in the Regulation Zones.

b 8. After considering all the objections, the Central Government issued a notification dated 19-2-1991 (hereinafter referred to as 'the main Notification') in exercise of the powers conferred on it by clause (d) of sub-rule (3) of Rule 5 of the Environment Protection Rules, 1986. By this notification, it declared the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which were influenced by tidal action (in the landward side) up to 500 metres from the High Tide Line (hereinafter referred to as 'HTL') and the land between Low Tide Line (hereinafter referred to as 'LTL') and HTL as Regulation Zones. With regard to this area, it imposed, with effect from the date of the said notification, various restrictions on the setting up and expansion of industries, operation or processes etc. in the said Regulation Zones. It was clarified that for the purposes of the main Notification, HTL was defined as the line up to which the highest high tide reaches at springtime.

9. The salient features of the main Notification are that a number of activities were declared as prohibited in the Regulation Zones, which are as follows:

e "(i) setting up of new industries and expansion of existing industries, except those directly related to waterfront or directly needing foreshore facilities;

(ii) manufacture or handling or storage or disposal of hazardous substances as specified in the notifications of the Government of India in the Ministry of Environment and Forests No. SO 594(E) dated 28-7-1989, SO 966(E) dated 27-11-1989 and GSR 1037(E) dated 5-12-1989;

f (iii) setting up and expansion of fish processing units including warehousing (excluding hatchery and natural fish drying permitted areas);

g (iv) setting up and expansion of units mechanisms for disposal of wastes and effluents, except facilities required for discharging treated effluents into the watercourse with approval under the Water (Prevention and Control of Pollution) Act, 1974 except for storm water drains;

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements; schemes shall be implemented by the authorities concerned for phasing out the existing practices, if any, within a reasonable time period not exceeding three years from the date of this notification;

h (vi) dumping of city or town wastes for the purposes of landfilling or otherwise; the existing practice, if any, shall be phased out within a

reasonable time not exceeding three years from the date of this notification;

(vii) dumping of ash or any wastes from thermal power stations; a

(viii) land reclamation, bunding or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal erosion and maintenance or clearing of waterways, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and for sweet water recharge; b

(ix) mining of sands, rocks and other substrata materials, except those rare minerals not available outside the CRZ areas;

(x) harvesting or drawal of groundwater and construction of mechanisms therefore, within 200 m of HTL; in the 200 m to 500 m zone it shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries; c

(xi) construction activities in ecologically sensitive areas as specified in Annexure I of this notification;

(xii) any construction activity between the Low Tide Line and High Tide Line except facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this notification; and d

(xiii) dressing or altering of sand-dunes, hills, natural features including landscape changes, 50 per cent of the plot size and the total height of construction shall not exceed 9 metres.” e

Secondly, the main Notification provided for regulation of permissible activities. Furthermore, the coastal States and Union Territory Administrations were required to prepare, within one year from the date of the main Notification, Coastal Zone Management Plans (hereinafter referred to as ‘the Management Plans’) identifying and clarifying the Regulation Zones areas within their respective territories in accordance with the guidelines contained in the main Notification and those plans were required to be approved, with or without modification, by the Central Government, Ministry of Environment and Forests. The main Notification also stipulated that within the framework of the approved Management Plans, all developments and activities within the Regulation Zones, except the prohibited activities and those which required environment clearance from Ministry of Environment and Forests, Government of India, were to be regulated by the State Government, Union Territory Administration or the local Authority, as the case may be, in accordance with the guidelines contained in Annexures I and II of the main Notification. f g

10. Anticipating that it will take time till the Management Plans are prepared and approved, the main Notification provided that till the approval of the Management Plans, “all development and activities within CRZ shall not violate the provisions of this Notification”. The State Governments and h

Union Territory Administrations were required to ensure adherence to the provisions of the main Notification and it was provided that any violation thereof, shall be subject to the provisions of the Environment Protection Act, 1986 (hereinafter referred to as 'the Act').

11. It was also provided in clause 4 of the main Notification that the Ministry of Environment and Forests and the State Government or Union Territory, and such other authorities at the State or Union Territory levels, as may be designated for the purpose, shall be responsible for the monitoring and enforcement of the main Notification within their respective jurisdictions.

12. As already noticed, there are two annexures, namely, Annexure I and Annexure II to the main Notification. While Annexure I contains the Coastal Area Classification and Development Regulations which are for general application, Annexure II is the specific provision which contains the guidelines for development of beach resorts/hotels in the designated areas of CRZ III for temporary occupation of tourists/visitors with prior approval of the Ministry of Environment and Forests.

13. Annexure I consists of clause 6(1) which relates to the classification of Coastal Regulation Zones. The norms for regulation activities in the said zones are provided by clause 6(2) for regulating development activities. The coastal stretches within 500 metres of HTL of the landward side are classified under clause 6(1) into four categories, which are as under:

(a) Category I (CRZ I) includes the areas that are ecologically sensitive and important, such as national parks/marine parks, sanctuaries etc., areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as have been declared by the Central Government or the authorities concerned at the State/Union Territory level from time to time. In addition thereto, CRZ I also contains the area between the LTL and the HTL.

(b) Category II (CRZ II) contains the areas that have already been developed up to or close to the shore line. This is the area which is within the municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains.

(c) Category III (CRZ III) is the area which was originally undisturbed and includes those areas which do not belong either to Category I or Category II. CRZ III includes coastal zone in the rural areas (developed and undeveloped) and also areas within the municipal limits or in other legally designated urban areas which are not substantially built up.

(d) Category IV (CRZ IV) contains the coastal stretches in the Andaman and Nicobar, Lakshadweep and small islands except those designated as CRZ I, CRZ II or CRZ III.

14. Clause 6(2) of Annexure I provides for norms for regulation of activities in CRZ I, II, III and IV. With regard to CRZ I, the norms for regulation of activities do not permit new construction within 500 metres of the HTL. Furthermore, practically, no construction activity is allowed between the LTL and HTL. The norms for regulation of activities in CRZ II relate to construction or reconstruction of the buildings within the said zone. a

15. With regard to CRZ III, the norms for regulation of activities, inter alia, provide that the area up to 200 metres from the HTL is to be earmarked as "No Development Zone". The only exception is that there can be repairs of existing authorised structures but, the permissible activity in this zone is for its use for agriculture, horticulture, gardens, pastures etc. The norms further provide for development of vacant plots between 200 and 500 metres of HTL in designated areas of CRZ III with prior approval of the Ministry of Environment and Forests for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines in Annexure II. b c

16. In CRZ IV also, detailed norms for regulation of activities are provided in the said clause 6(2) of Annexure I.

17. As already noticed, Annexure II contains the guidelines for development of beach resorts/hotels in the designated area of CRZ III for temporary occupation of tourists/visitors. The vacant area beyond 200 metres in the landward side, even if it is within 500 metres of the HTL can be used, after obtaining permission, for construction of beach resorts for tourists/visitors. There was no provision for allowing any fresh construction within 200 metres of the HTL or within the LTL and HTL. Clause 7(1) of the main Notification which comes under Annexure II contains various conditions which have to be fulfilled before approval can be granted by the Ministry of Environment and Forests for the construction of beach resorts/hotels in the designated area of CRZ III. d e

18. In the background of the aforesaid facts, we will now deal with the main contentions raised, namely, the non-implementation of the main Notification and the validity of the notification dated 18-8-1994 (hereinafter referred to as 'the 1994 Notification'). f

Re: Non-Implementation of the main Notification

19. It is the case of the petitioner that with a view to protect the ecological balance in the coastal areas, the aforesaid notification was issued by the Central Government which contained various provisions for regulating development in the coastal areas. It was contended that there had been a blatant violation of this notification and industries were illegally being set up, thereby causing serious damage to the environment and ecology of the area. It was also submitted that the Ministry of Environment and Forests except for issuing the main Notification, had taken no steps to follow up its own directions contained in the main Notification. The main prayer in the writ petition was that this Court should issue appropriate writ, order or direction to the respondent so as to enforce the main Notification. g h

- 20.** In the writ petition, specific allegations were also contained to the effect that the Ministry of Environment and Forests, Government of India
- a had issued another notification dated 20-6-1991 under clause (5) of sub-section (2) of Section 3 of the Act declaring Dahanu Taluka, District Thane, Maharashtra as an ecologically fragile area.

- 21.** The main Notification was issued so as to ensure that the development activities are consistent with the environmental guidelines for beaches and coastal areas and to impose restrictions on the setting up of
- b industries which have detrimental effect on the coastal environment. This notification also required the Government of Maharashtra to prepare a master plan or regional plan for the Dahanu Taluka based on the existing land use of Dahanu within a period of one year from the notification and to get the said plan approved by the Ministry of Environment and Forests. The master plan and the regional plan was to demarcate all the existing green
 - c areas, orchards, tribal areas and other environmentally sensitive areas in the said Dahanu Taluka. Industries which were using chemicals above the limits/quantities prescribed by the Act or by the rules were to be considered hazardous industries. The hazardous waste was required to be disposed of in the identified areas after taking precautionary measures. This notification also required the Government of Maharashtra to constitute a monitoring
 - d committee to ensure the compliance or conditions mentioned in the notification in which local representatives may be included. According to the petitioner, the Maharashtra Government has not implemented the directions contained in the said notification and has permitted development activities which have resulted in new polluting industries being established in the coastal area, thereby seriously endangering the ecology. The industries
 - e which are operating in Dahanu are stated to be balloon-manufacturing units, buffing and chromium-plating units and chemical units. There has been a failure to make the master plan or the regional plan for the said Dahanu Taluka and indiscriminate licences have been issued and consent given to new industries by the State Government and the predominately agricultural area is slowly being converted into an industrial area in complete disregard
 - f of environmental laws, guidelines and notifications. There are other instances stated to be in the writ petition with relation to the Dahanu Taluka but, for the view we are taking, it is not necessary to deal with the same in any great length.

- 22.** Notices were issued by this Court on 3-10-1994 to the respondents including the coastal States, namely, Maharashtra, Kerala, Karnataka, Orissa,
- g West Bengal, Tamil Nadu, Andhra Pradesh and the Union Territory of Pondicherry. On 12-12-1994, while granting time to the respondents to file their counter-affidavits, this Court directed that "the respondent States shall not permit the setting up of any industry or construction of any type on the area at least up to 500 metres from the sea water at the maximum high tide". Notice was also directed to issue to the State of Goa, the Union Territory of
 - h Daman and Diu and the islands of Andaman & Nicobar and Lakshadweep, which were added as respondents. The aforesaid interim order dated 12-12-

1994 was slightly modified by this Court by its order dated 9-3-1995* in the following terms: (SCC pp. 77-78, para 1)

“We modify our order dated 12-12-1994 and direct that all the restrictions, prohibitions regarding construction and setting up of industries or for any other purpose contained in the notification dated 19-2-1991 issued by the Ministry of Environment and Forests, Government of India under clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 shall be meticulously followed by all the States concerned. The activities which have been declared as prohibited within the Coastal Regulation Zone shall not be undertaken by any of the respondent-States. The regulations of permissible activities shall also be meticulously followed. The restrictions imposed by the Coastal Areas Classification and Development Regulations contained in Annexure I to the abovesaid notification shall also be strictly followed by the respondent-States.”

23. According to clause 3(i) of the main Notification, the coastal States and Union Territory administrations were required to prepare the Management Plans within one year from the date of the main Notification. This was essential for the implementation of the said notification. The lack of commitment on the part of these States and administrations, towards the protection and regulation of the coastal stretches, is evident from their inaction in complying with the aforesaid statutory directive requiring the preparation of Management Plans within the specified period. In view of the fact that there had been a non-compliance with this provision, this Court on 3-4-1995 directed all the coastal States and Union Territory Administrations to frame their plans within a further period of six weeks thereof.

24. A status report was filed in court by the Union of India which shows non-compliance of clause 3(i) by practically everyone concerned. While some of the States and Union Territory Administrations submitted their plans, though belatedly, except in the case of Pondicherry, none of the other plans were approved by the Central Government. It appears that some modifications were suggested and those States and Union Territories had to resubmit their plans. Directions will have to be issued to these States and Union Territories to resubmit their plans and the Central Government will also be required to approve the resubmitted plans within a specified time. The State of Orissa had only partly complied with this Court's order dated 3-4-1995 inasmuch as the plans submitted by it were only for a small part of a coast. The State of West Bengal only submitted a preliminary concept while the States of Andhra Pradesh, Gujarat, Karnataka and Kerala did not care to submit any plans at all. Therefore, these six States namely, Orissa, West Bengal, Andhra Pradesh, Gujarat, Karnataka and Kerala have to be answerable for non-compliance with the directions issued by this Court on 3-4-1995.

* *Indian Council for Enviro-Legal Action v. Union of India*, (1995) 3 SCC 77

25. Affidavits which have been filed by the respondents clearly show that all the provisions of the main Notification have not been complied with.

- a Explanations for the delay in preparation of the Management Plans and their approval have been offered, but they are far from satisfactory. If the mere enactment of the laws relating to the protection of environment was to ensure a clean and pollution-free environment, then India would, perhaps, be the least polluted country in the world. But, this is not so. There are stated to be over 200 Central and State Statutes which have at least some concern
- b with environment protection, either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which, on the contrary, has increased over the years. Enactment of a law, relating to protection of environment, usually provides for what activity can or cannot be done by people. If the people were to voluntarily respect such a law, and abide by it, then it would result in law being able to
- c achieve the object for which it was enacted. Where, however, there is a conflict between the provision of law and personal interest, then it often happens that self-discipline and respect for law disappears.

26. Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.

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- h 27. The present case also shows that having issued the main Notification, no follow-up action was taken either by the coastal States and Union Territories or by the Central Government. The provisions of the main Notification appear to have been ignored and, possibly violated with

impunity. The coastal States and Union Territory administrations were required to prepare Management Plans within a period of one year from the date of the notification but this was not done. The Central Government was to approve the plans which were to be prepared but it did not appear to have reminded any of the coastal States or the Union Territory administrations that the plans had not been received by it. Clause 4 of the main Notification required the Central Government and the State Governments as well as Union Territory administrations to monitor and enforce the provisions of the main Notification, but no effective steps appear to have been taken and this is what led to the filing of the present writ petition. a b

28. There is no challenge to the validity of the main Notification. Counsel for all the parties are agreed that the main Notification is valid and has to be enforced. Instances have been given by the petitioner as well as some of the intervenors where in different States, infringement of the main Notification is taking place but no action has been taken by the authorities concerned. The courts are ill-equipped and it is not their function to see day-to-day enforcement of law. This is an executive function which it is bound to discharge. A public interest litigation like the present, would not have been necessary if the authorities, as well as the people concerned, had voluntarily obeyed and/or complied with the main Notification or if the authorities who were entrusted with the responsibility, had enforced the main Notification. It is only the failure of enforcement of this notification which has led to the filing of the present petition. The effort of this Court while dealing with public interest litigation relating to environmental issues, is to see that the executive authorities take steps for implementation and enforcement of law. As such the court has to pass orders and give directions for the protection of the fundamental rights of the people. Passing of appropriate orders requiring the implementation of the law cannot be regarded as the court having usurped the functions of the legislature or the executive. The orders are passed and directions are issued by the court in discharge of its judicial function, namely, to see that if there is a complaint by a petitioner regarding the infringement of any constitutional or other legal right, as a result of any wrong action or inaction on the part of the State, then such wrong should not be permitted to continue. It is by keeping the aforesaid principles in mind that one has to consider as to what directions should be issued to ensure, in the best possible manner, that the provisions of the main Notification which has been issued for preserving the coastal areas are not infringed. c d e f

Validity of notification of 1994

29. The notification dated 18-8-1994 made six amendments in the main Notification. These amendments were made after the receipt of the report of a committee, headed by Mr B.B. Vohra, which had been set up by the Central Government. The validity of the amended notification was also challenged in IA No. 19 of 1995 which was filed by three environment protection groups, namely, the Goa Foundation, Nirmal Vishwa and Indian Heritage Society (Goa Chapter). In the said application, the applicants gave a table containing the main points of the main Notification, the g h

INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION v. UNION OF INDIA 295

recommendations made by the Vohra Committee and the amendments made by amended notification of 1994. The said particulars are as follows:

<i>a</i>	<i>"Main CRZ Notification dated 19-2-1991 issues for relaxation"</i>	<i>Vohra Committee recommendations</i>	<i>Amending notification dated 18-8-1994</i>
<i>b</i>	1. 200 metres from HTL is no-development zone.	Relaxation allowed rocky and hilly areas; no limit specified.	Blanket relaxation for all areas up to HTL if Central Government so desires.
	2. No-development zone for rivers, creeks and backwaters 100 metres.	Clarification demanded about limits; no relaxation suggested.	No-development zone relaxed to 50 metres.
<i>c</i>	3. No levelling or digging of sand-dunes or sand.	Allows destruction of sand-dunes	No destruction of sand-dunes allowed. However, goalposts, net posts, lampposts allowed.
<i>d</i>	4. No-development zone area cannot be used for FSI calculations.	Recommends no-development zone area be permitted for FSI calculations.	Relevant section not amended but explanation added as an afterthought in the notification permitting no-development zone area to be included for FSI calculations.
<i>e</i>	5. No basements allowed area not to be included in FSI.	Basements permitted.	Basements allowed.
<i>f</i>	6. No fencing permitted within 200 metre-zone from HTL.	Only green fencing permitted, no barbed wire fencing allowed.	Allows green and barbed wire fencing."

g Contending that the 1994 Notification will adversely affect the environment and would lead to unscientific and unsustainable development and ecological destruction, an application was filed by the petitioner being IA No. 16 of 1995, inter alia, praying for the quashing of the said notification.

30. A reply was filed by the Union of India justifying the amendments and giving reasons for the issuance of the 1994 Notification.

h 31. While examining the validity of the 1994 Notification, it has to be borne in mind that normally, such notifications are issued after a detailed

study and examination of all relevant issues. In matters relating to environment, it may not always be possible to lay down rigid or uniform standards for the entire country. While issuing the notifications like the present, the Government has to balance various interests including economic, ecological, social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation that developmental activity is sought to be regulated.

32. The main Notification was issued under Sections 3(1) and 3(2)(v) of the Environment Protection Act, presumably after a lot of study had been undertaken by the Government. That such a study had taken place is evident from the bare perusal of notification itself which shows how coastal areas have been classified into different zones and the activities which are prohibited or permitted to be carried out in certain areas with a view to preserve and maintain the ecological balance.

33. According to the Union of India, while implementing the main Notification, certain practical difficulties were faced by the authorities concerned. There was a need for having sustainable development of tourism in coastal areas and that amendments were effected after giving due consideration to all relevant issues pertaining to environment protection and balancing of the same with the requirement of development. It has been specifically averred that a committee headed by Mr B.B. Vohra was set up by the Government in response to the need for examining the issues relating to development of tourism and hotel industry in coastal areas and to regulate the same keeping in view the requirements of sustainable development and the fragile coastal ecology. According to the Union of India, the Committee also included three environmentalist members who had expressed their views and that the Government had accepted the recommendations of the Vohra Committee with slight modifications. According to it, there has been no blanket relaxation in any area as alleged and adequate environmental safeguards have been provided in the 1994 Notification.

34. In this background, we now deal with each of these six amendments separately:

(i) According to the main Notification, distance of 200 metres from the HTL was a no-development zone (hereinafter referred to as 'NDZ'). The representation of the Hotel and Tourism Industry was that the

- a existing 200 metres' depth of NDZ constituted a serious handicap to the said industry competing with the beach hotels of other countries where there were no such restrictions. It was represented that a reduction of the NDZ would not be ecologically harmful and there was no convincing scientific reason for fixing 200 metres as the appropriate width for the NDZ. It was also stated before the Committee that according to its projection, the Hotel Industry in India would at the most require only about 20-30 kms of coastline for the construction of seaside resorts over the next 15 years or so. If this requirement was viewed in the context of the fact that the total coastline of the country was over 6000 kms in length, the industry represented that relaxation with regard to this limited area would not pose any big threat to the country's ecology.
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35. The Vohra Committee in its recommendations observed that certain members of the Committee had felt that a blanket provision of 200 metres in the case of sandy beaches would lead to difficulties and there should be provision for relaxation to be made in suitable cases, but the consensus that emerged was that the present regulations should not be disturbed. The Committee, however, recommended that relaxations in 200 metres' rule may be made in a case-to-case basis with regard to such stretches of the coastline which were rocky or hilly, but the relaxations should be made after carrying out necessary impact assessment studies. Furthermore, this relaxation should be made by the Ministry of Environment and Forests and not by the State Governments concerned.
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36. In the 1994 Notification, there is a clear departure from the recommendations of the Vohra Committee. The notification now provides that for reasons to be recorded, the Central Government may permit any construction within the said 200 metres NDZ subject to such conditions and restrictions as it may deem fit.
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37. In the written submissions filed by the Union of India in this Court on 29-9-1995, this amendment has been sought to be justified and explained by it in the following words:

- f "As regards the developmental activities up to the High Tide Line, the Central Government may for reasons recorded in writing permit construction in any particular case taking into account the geographical features and other relevant aspects.

- This is necessary as providing of 200 metres of no-development zone all along was not possible in the coastal line in a uniform way on account of wide variations in geographical features, existing human settlements and developmental activities requiring foreshore facilities etc."
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- The relaxation with regard to NDZ was sought by the Hotel and Tourism Industry and they desired concession only with regard to 20-30 kms of coastline. By the amended notification, power had been given to the Central Government to make such relaxation with regard to any part of the 6000 kms long coastline of India. The Central Government has, thus, retained the
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absolute power of relaxation of the entire 6000 kms long coastline and this, in effect, may lead to the causing of serious ecological damage as the said provision gives unbridled power and does not contain any guidelines as to how or when the power is to be exercised. The said provision is capable of abuse. The Central Government also did not confine the relaxation to the extent as specified by the Vohra Committee. No satisfactory reason has been given by the Union of India as to why it departed from the opinion of the Expert Committee and that too in such a manner that the concession which has now been given is far in excess of what was demanded by the Hotel and Tourism Industry. a
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38. We, accordingly, hold that the newly added proviso in Annexure II in paragraph 7 in sub-paragraph (1) (Item i) which gives the Central Government arbitrary, uncanalized and unguided power, the exercise of which may result in serious ecological degradation and may make the NDZ ineffective is ultra vires and is hereby quashed. No suitable reason has been given which can persuade us to hold that the enactment of such a proviso was necessary, in the larger public interest, and the exercise of power under the said proviso will not result in large-scale ecological degradation and violation of Article 21 of the citizens living in those areas. c

(ii) The NDZ for rivers, creeks and backwaters which was 100 metres from HTL has, by the amended notification, been relaxed to 50 metres. As already seen the main Notification does not apply to all the rivers. It applies only to tidal rivers which are part of the coastal environment. It was contended that the reduction from 100 metres to 50 metres was arbitrary and was not made on any basis. It was also contended that the Vohra Committee had made no proposal for relaxation along the rivers but it merely asked for a clarification of the limits to which the control would apply since in some areas, tidal ingress could go up to 50 kms from the coastline. d
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39. Justifying this amendment, it was contended by the Union of India that in case of creeks, rivers or backwaters, it is not possible to have a uniform basis for demarcating NDZ. The zone shall be regulated based upon each individual case. It is no doubt true that there can be no uniform basis for demarcating NDZ and it will depend upon the requirements by each State authority concerned in their own Management Plans but no reason has been given why in relation to tidal rivers, there has been a reduction of the ban on construction from 100 metres to 50 metres. Even the Vohra Committee which had been set up to look into the demands of Hotel and Tourism Industry had not made such a proposal and, therefore, it appears to us that such a reduction does not appear to have been made for any valid reason and is arbitrary. This is more so when it has been alleged that in some areas like Goa, there are mangrove forests that need protection and which stretch to more than 100 metres from the river bank and this contention had not been denied. In the absence of any justification for this reduction being given the only conclusion which can be arrived at is that the relaxation to 50 metres has been done for some extraneous reason. It was submitted, at the time of f
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arguments by the Additional Solicitor General that construction has already taken place along such rivers, creeks etc. at a distance of 50 metres and more, but no such explanation has been given in the reply affidavit. Even if this be so such reduction will permit new construction to take place and this reduction cannot be regarded as a protection only to the existing structures. In the absence of a categorical statement being made in an affidavit that such reduction will not be harmful or result in serious ecological imbalance, we are unable to conclude that the said amendment has been made in the larger public interest and is valid. This amendment is, therefore, contrary to the object of the Environment Act and has not been made for any valid reason and is, therefore, held to be illegal.

(iii) The main Notification had provided that there would be no levelling of sand-dunes or sand extraction. The Vohra Committee, however, allowed extraction of sand. This recommendation has not been accepted but the amended notification allowed the installation of goalposts or lampposts. Justifying this amendment, it was contended by the Union of India that installing such goalposts or lampposts will not result in flattening of sand-dunes and will also not have any other undesirable effect with regard to the said sand-dunes. No permanent structure for sport facilities is permitted. We do not see any illegality having been committed by allowing the goalposts, net posts and lampposts to be erected. In fact the erection of these would facilitate or lead to more enjoyment of the beaches. Therefore, the challenge to this amendment fails.

(iv) By the amended notification, the NDZ is now to be included for FSI calculations. Justifying this amendment, it was submitted by the Union of India that an explanation had been added to the effect that although no construction is allowed in NDZ, for the purpose of calculation of FSI the area of the entire plot including portions which fall within NDZ shall be taken into account. This modification has been brought in because the area in NDZ will in any case be left vacant and although this land may belong to a private owner, he has to keep it vacant. To compensate for this, he is allowed to construct a building of such FSI as permissible after taking into account the area which falls in NDZ. This, it was submitted, is based upon fair and equitable conditions and as such this would have no effect on the ecological balance in the coastal area.

40. In view of the aforesaid reasons given by the Union of India and also keeping in view the fact that a similar recommendation had also been made by the Vohra Committee, we agree with the principle that some compensation is to be allowed to the private owner whose land falls in the NDZ, but at the same time haphazard and congested construction — a pollutant in itself — cannot be permitted in any area of the city. We, therefore, modify the amendment and direct that a private owner of land in NDZ shall be entitled to take into account half of such land for the purpose

of permissible FSI in respect of the construction undertaken by him outside the NDZ.

(v) With regard to the amendment which allows construction of the basements, it was contended that the deep foundations and structure could interfere in the coastal areas where there is an intermixture of salt and sweet aquifers. According to the Union of India, this amendment has been made on the recommendation of the Vohra Committee. It was, however, stated that the basements shall be allowed subject to the condition that the other authorities such as State Ground Water Boards will permit such construction and will issue no-objection certificate after confirming that the basement will not hamper free flow of groundwater in that area. It is, therefore, obvious that there will not be any adverse effect to the ecological balance in the area if basements are allowed to be constructed subject to the satisfaction of the authorities concerned that the same will not hamper free flow of groundwater.

(vi) The main Notification had not permitted fencing within 200 metres' zone from HTL. By the amended notification, green and barbed wire fencing within the said zone has been permitted. Challenging this amendment, it was contended that the effect of such fencing would be to prevent the public from using the beaches. Justifying this amendment, the Union of India had stated that the Vohra Committee had permitted green fencing. By the amended notification barbed fencing, in addition to green fencing, has also been allowed. The reason for this is that green and barbed fencing has been allowed so that private owners are in a position to stop encroachment on their properties. Furthermore, in the interest of security also, a private owner would like to have some kind of boundary so that his property is safe. The implication, therefore, clearly is that it is not as if public beaches will be encroached upon or fenced. The fencing is being allowed only of the privately-owned property in order to protect the same. We, however, direct that fencing should not be raised in such a manner so as to prevent access of the public to public beaches. In other words, the right of way enjoyed by the general public to those areas which they are free to enjoy, should in no way be closed, hampered or curtailed. The amendment as made, does not, in our opinion, call for any interference.

General conclusion

41. With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public-spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing

environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court.

- a The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations
- b whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law.

- c 42. As far as this Court is concerned, being conscious of its constitutional obligation to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of environment and preventing pollution. For effective orders to be passed, so as to ensure that there can be protection of environment along with development, it becomes necessary for the court dealing with such issues to know about the local conditions. Such conditions in different parts of the
- d country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to
- e shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be effected, if the High Courts concerned assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly
- f made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology.

- g 43. There is a likelihood that there will be instances of infringement of the main Notification and also of the Management Plans, as and when framed, taking place in different parts of the country. In our opinion, instead of agitating these questions before this Court, now that the general principles have been laid down and are well-established, it will be more appropriate that action with regard to such infringement even if they relate to the violation of fundamental rights, should first be raised before the High Court having territorial jurisdiction over the area in question. We are sure and we expect that each High Court will deal with such issues urgently. Environmental law has now become a specialised field. In the decision which was taken at the United Nations Conference on Environment and
- h Development held at Rio de Janeiro in June 1992 in which India had also participated, the States had been called upon to develop national laws

regarding liability and compensation for the victims of pollution and other environmental damages.

44. There is 6000 kms long coastline of India. It is the responsibility of the coastal States and Union Territories in which these stretches exist to see that both the notifications are complied with and enforced. Management Plans have to be prepared by the States and approved by the Central Government. If the said plans have been approved, the development can take place only in accordance therewith. Till the preparation and approval of the said plans by virtue of the provisions of the main Notification, no development in the coastal areas within the NDZ can take place. Therefore, it is in the interest of all concerned that the Management Plans are submitted and approved at the earliest.

45. There has been a complete laxity in the implementation of the Act and other related statutes. Under the said Act, the Central Government has essentially been entrusted with the responsibility to enforce and implement the Act. Section 23 of the Act, however, enables the Central Government, by notification in the Official Gazette, to delegate such of its powers and functions to the State Governments or authorities. Thus, the implementation of the provisions of the Act has now essentially become the function of the State Governments. In an effort to control pollution, State Pollution Boards have also been established but the extent of its effectiveness is yet to be demonstrated. The Environment (Protection) Act, as framed, and Section 5 of the Act in particular, gives the Government extensive powers to issue directions to any person, officer or authority which they are bound to comply. The directions as issued have necessarily to be in accordance with the provisions of law and to give protection to environment.

46. As far as the implementation of the main Notification is concerned, the Vohra Committee has stated in its report that many members of the Committee expressed great concern that sufficient attention was not being paid to the enforcement of regulations. It also noted that "in the absence of anything like adequate machinery to implement the regulations, a great deal of unauthorised development is taking place on most beaches which it will be difficult if not impossible to remove in the future". The Committee also recommended that the problems relating to the implementation of the regulations should be given high priority by the Ministry, if these are not to become a mockery.

47. With increasing threat to the environmental degradation taking place in different parts of the country, it may not be possible for any single authority to effectively control the same. Environmental degradation is best protected by the people themselves. In this connection, some of the non-governmental organisations (NGOs) and other environmentalists are doing singular service. Time has perhaps come when the Government can usefully draw upon the resources of such NGOs to help and assist in the implementation of the laws relating to protection of the environment. Under Section 3 of the Act, the Central Government has the power to constitute one or more authorities for the purposes of exercising and performing such

INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION v. UNION OF INDIA 303

powers and functions, including the power to issue directions under Section 5 of the Act of the Central Government as may be delegated to them.

a Directions

- (1) Keeping in view the aforesaid observations in mind, we would direct that if any question arises with regard to the enforcement or implementation or infringement of the main Notification as amended by the notification of 1994, the same should be raised before and dealt with by the respective High Courts. In the present case, there were allegations of infringement having been taking place by allowing the setting up of industries in Dahanu Taluka in Maharashtra in violation of the provisions of the main Notification and which industries are stated to be causing pollution. Similarly, there were allegations of non-compliance with the provisions of law by a unit manufacturing alcohol in Pondicherry; with regard to Goa also allegations have been made. As we have already observed, it will be more appropriate if the allegations so made are dealt with by the respective High Courts, for they would be in a better position to know about and appreciate the local conditions which are prevailing and the extent of environmental damage which is being caused. We, accordingly, direct that the contentions raised in the petition regarding infringement of the main Notification and of the notification dated 20-6-1991 relating to Dahanu Taluka should be dealt with by the Bombay High Court. The High Court may issue such directions as it may deem fit and proper in order to ensure that the said notifications are effectively implemented and complied with. A copy of the writ petition along with a copy of the judgment should be sent to the High Court by the Registry for appropriate orders. As regards IAs Nos. 17-18 of 1995 relating to alcohol-manufacturing unit at Pondicherry, the said application is transferred to the Madras High Court for disposal in accordance with law.

- (2) Any allegation with regard to the infringement of any of the notifications dated 19-2-1991, 20-6-1991 and 18-8-1994 be filed in the High Courts having territorial jurisdiction over the areas in respect of which the allegations are made. As far as this Court is concerned, this matter stands concluded except to examine the reports which are to be filed by all the States with regard to the approval of the Management Plans, or any classification which may be sought.

- (3) Considering the fact that the Pollution Control Boards are not only overworked but simultaneously have a limited role to play insofar as it relates to controlling of pollution for the purpose of ensuring effective implementation of the notifications of 1991 and 1994, as also of the Management Plans, the Central Government should consider setting up under Section 3 of the Act, State Coastal Management Authorities in each State or zone and also a National Coastal Management Authority.

- (4) The States which have not filed the Management Plans with the Central Government are directed to file the complete plans by 30-6-1996. The Central Government shall finalise and approve the said plans,

304

SUPREME COURT CASES

(1996) 5 SCC

with or without modifications within three months thereafter. It is possible that the plans as submitted by the respective State Governments and Union Territories may not be acceptable to the Ministry of Environment and Forests. Returning the said plans for modifications and then resubmission of the same may become an unnecessary, time-consuming and, perhaps, a futile exercise. In order to ensure that these plans are finalised at the very earliest, we direct that the plans as submitted will be examined by the Central Government who will inform the State Government or the Union Territory concerned with regard to any shortcomings or modifications which the Ministry of Environment and Forests may suggest. If necessary, a discussion amongst the representatives of the State Governments and the Ministry of Environment and Forests should take place and thereafter the plans should be finalised by the Ministry of Environment, if necessary, by carrying out such modifications as may be required. The decision by the Ministry of Environment and Forests in this regard shall be final and binding.

A report with regard to the submission and the finalisation of the plans should be filed in this Court and the case will be listed for noting compliance in September 1996.

(5) Pending finalisation of the plans, the interim orders passed by this Court on 12-12-1994 and 9-3-1995 shall continue to operate.

(6) Four States, namely, Andhra Pradesh, Gujarat, Karnataka and Kerala have not yet submitted their Management Plans to the Central Government. There is thus a clear non-compliance with the direction issued by this Court on 12-12-1994 and 9-3-1995. We issue notices to the Chief Secretaries of these States to explain and show cause why further appropriate action be not taken for this non-compliance. The notices are to be returnable after six weeks.

(1996) 5 Supreme Court Cases 304

(BEFORE K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAİK, JJ.)

CH. RAMA RAO

.. Petitioner;

Versus

LOKAYUKTA AND OTHERS

.. Respondents.

SLPs (C) Nos. 10754-55 of 1996[†], decided on May 9, 1996

A. Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983 (2 of 1983) — Ss. 10(1)(a), (b) & (2)(a) and 11(2) — Preliminary verification and investigation — Procedure — Affording opportunity to a public servant, held, necessary at the stage of the investigation but not at the stage of the preliminary verification — Administrative Law — Natural justice — Applicability

[†] From the Judgment and Order dated 23-4-1996 of the Andhra Pradesh High Court in WPs Nos. 8274 and 8715 of 1996

VELLORE CITIZENS' WELFARE FORUM v UNION OF INDIA

647

(1996) 5 Supreme Court Cases 647

(BEFORE KULDIP SINGH, FAIZAN UDDIN AND K. VENKATASWAMI, JJ.)

a VELLORE CITIZENS' WELFARE FORUM . . . Petitioner;
Versus
UNION OF INDIA AND OTHERS . . . Respondents.

Writ Petition (C) No. 914 of 1991[†], decided on August 28, 1996

- b A. Constitution of India — Arts. 32, 21, 47, 48-B, 51-A(g) — Environmental pollution by tannery industries — While the industries are vital for country's development, but having regard to pollution caused by them, principle of Sustainable Development has to be adopted as a balancing concept — Precautionary Principle and Polluter Pays Principle acceptable as part of the law of the country and should be implemented — Precautionary environmental measures should be taken by State Govt. and statutory authorities and lack of scientific certainty cannot be a ground for postponing such measures where
- c there are serious threats to ecology — Onus on polluter industries to prove that their actions were environmentally benign — Polluter industries liable to pay compensation to individuals affected as well as to make good the ecological damage — Discharge of untreated effluent by tanneries in State of T.N. rendering river water unfit for human consumption, contaminating the subsoil water and spoiling the physico-chemical properties of the soil making it unfit for agricultural purposes — Held, such industries cannot be permitted to continue
- d their operation unless they set up pollution control devices — Such industries liable to compensate for the past pollution generated by them — Pollution fine of Rs 10,000 imposed on each tannery — Amount to be deposited in Environment Protection Fund which shall be utilised for compensating the affected persons and restoring the ecological balance — Environment (Protection) Act, 1986 — Ecology — Damage to — Compensation
- e B. Ecology — Environment (Protection) Act, 1986 — S. 3(3) — Authority under — Directed to be constituted by Central Govt. before 30-9-1996 — Authority to be headed by a retired High Court Judge — Authority to have all powers necessary to deal with the situation created by the polluting industries — Authority also to implement the Precautionary Principle and the principle of Polluter Pays — Authority to compute compensation payable by the polluting industries to individuals affected and that payable for restoring the damage it caused to the environment — Authority also to frame a scheme in consultation
- f with expert bodies like NEERI, Central Board and State Board for reversing the ecological damage and environmental pollution
- g C. Constitution of India — Arts. 32, 226 & 21 — PIL — Ecology — Green Bench — Environmental pollution caused by tanneries in State of T.N. — Suitable directions issued by Supreme Court — However, instead of itself monitoring the matter any further Madras High Court advised to constitute a Green Bench to deal with all the environmental matters — Such Green Benches already functioning in some other High Courts
- D. International Law — Customary international law — If not contrary to the municipal law, deemed to be incorporated in domestic law
- E. Judicial activism — Inaction on the part of the Govt. to set up regulatory/adjudicatory statutory authorities as directed by the Act makes it imperative for the Court to pass suitable necessary directions
- h

[†] Under Article 32 of the Constitution of India

648

SUPREME COURT CASES

(1996) 5 SCC

Held :

Though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it has no right to destroy the ecology, degrade the environment and pose as a health-hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry. (Para 9)

The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists. (Para 10)

"The Precautionary Principle" and "the Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" — in the context of the municipal law — means:

(i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.

"The Polluter Pays Principle" has been held to be a sound principle. The "Polluter Pays Principle" as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject. In view of the constitutional and statutory provisions it must be held that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country. (Paras 11 to 14)

Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212 : JT (1996) 2 SC 196, *relied on*

Even otherwise, once these principles are accepted as part of the customary international law there would be no difficulty in accepting them as part of the domestic law. The rules of customary international law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. (Para 15)

A.D.M. v. Shivakant Shukla, (1976) 2 SCC 521 : AIR 1976 SC 1207; *Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360 : AIR 1980 SC 470; *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, (1984) 2 SCC 534 : 1984 SCC (Cri) 313 : AIR 1984 SC 667, *relied on*

The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the

VELLORE CITIZENS' WELFARE FORUM v. UNION OF INDIA

649

- a inalienable common law right of clean environment. Our legal system having been founded on the British common law the right of a person to a pollution-free environment is a part of the basic jurisprudence of the land. (Paras 16 and 17)

Commentaries on the Laws of England of Sir William Blackstone Vol. III, Fourth Edn. published in 1876. Chapter XIII, relied on

- b The Environment Act contains useful provisions for controlling pollution. The main purpose of the Act is to create an authority or authorities under Section 3(3) of the Act with adequate powers to control pollution and protect the environment. It is a pity that till date no authority has been constituted by the Central Government. The work which is required to be done by an authority in terms of Section 3(3) read with other provisions of the Act is being done by the Supreme Court and the other courts in the country. It is high time that the Central Government realises its responsibility and statutory duty to protect the degrading environment in the country. If the conditions in the five districts of Tamil Nadu, where tanneries are operating, are permitted to continue then in the near future all rivers/canals shall be polluted, underground waters contaminated, agricultural lands turned barren and the residents of the area exposed to serious diseases. It is, therefore, necessary for the Supreme Court to direct the Central Government to take immediate action under the provisions of the Environment Act. (Para 20)

- c There are more than 900 tanneries operating in the five districts of Tamil Nadu. Some of them may, by now, have installed the necessary pollution control measures; they have been polluting the environment for over a decade and in some cases even for a longer period. The Supreme Court has in various orders indicated that these tanneries are liable to pay pollution fine. The polluters must compensate the affected persons and also pay the cost of restoring the damaged ecology. (Para 21)

- d The Board has the power under the Environment Act and the Rules to lay down standards for emissions or discharge of environmental pollutants. Rule 3(2) of the Rules even permits the Board to specify more stringent standards from those provided under the Rules. The NEERI having justified the standards stipulated by the Board, it is directed that these standards are to be maintained by the tanneries and other industries in the State of Tamil Nadu. (Para 24)

[Keeping in view the above position the Supreme Court gave specific directions in para 25.]

- e However, it is not necessary for the Supreme Court to monitor these matters any further. The Madras High Court would be in a better position to monitor these matters hereinafter. Therefore, the Chief Justice of the Madras High Court is directed to constitute a Special Bench — "Green Bench" — to deal with this case and other environmental matters. However, it would be open to the Bench to pass any appropriate order/orders keeping in view the directions issued by "Green Benches" already functioning in Calcutta, Madhya Pradesh and some other High Courts. (Para 26)

R-M/T/16616/C

- g Advocates who appeared in this case :
R. Mohan, V.A. Bobde, Kapil Sibal, M.R. Sharma, V.C. Mahajan and S.S. Ray, Senior Advocates (K.R.R. Pillai, M.C. Mehta, Ms Seema Midha, V.G. Pragasam, Vijay Panjwani, S. Sukumaran, Sudhir Walia, A.T.M. Sampath, M.S. Dahiya, Sudhir Walia, Roy Abraham, Sm. Baby Krishna, P. Sukumar, Praveen Kumar, Romesh C. Pathak, M.A. Krishnamoorthy, V. Krishnamurthi, Ms Anil Katiyar, Ms Indra Sawhney, Deepak Divan, S.M. Jadhav, A.V. Rangam, Zafarullah Khan, Shahid Rizvi, Shakil Ahmed Syed, Jaideep Gupta and Sanjay Hegde, Advocates, with them)
- h for the appearing parties.

650 SUPREME COURT CASES (1996) 5 SCC

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2. (1984) 2 SCC 534 : 1984 SCC (Cr) 313 : AIR 1984 SC 667, *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey* 660e
3. (1980) 2 SCC 360 : AIR 1980 SC 470, *Jolly George Varghese v. Bank of Cochin* 660d-e
4. (1976) 2 SCC 521 : AIR 1976 SC 1207, *A.D.M. v. Shivakant Shukla* 660d-e

The Judgment of the Court was delivered by

KULDIP SINGH, J.— This petition — public interest — under Article 32 of the Constitution of India has been filed by Vellore Citizens' Welfare Forum and is directed against the pollution which is being caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It is stated that the tanneries are discharging untreated effluent into agricultural fields, roadsides, waterways and open lands. The untreated effluent is finally discharged in River Palar which is the main source of water supply to the residents of the area. According to the petitioner the entire surface and subsoil water of River Palar has been polluted resulting in non-availability of potable water to the residents of the area. It is stated that the tanneries in the State of Tamil Nadu have caused environmental degradation in the area. According to the preliminary survey made by the Tamil Nadu Agricultural University Research Centre, Vellore nearly 35,000 hectares of agricultural land in the tanneries belt has become either partially or totally unfit for cultivation. It has been further stated in the petition that the tanneries use about 170 types of chemicals in the chrome tanning processes. The said chemicals include sodium chloride, lime, sodium sulphate, chlorium (*sic*) sulphate, fat, liquor, ammonia and sulphuric acid besides dyes which are used in large quantities. Nearly 35 litres of water is used for processing one kilogram of finished leather, resulting in dangerously enormous quantities of toxic effluents being let out in the open by the tanning industry. These effluents have spoiled the physico-chemical properties of the soil and have contaminated groundwater by percolation. According to the petitioner an independent survey conducted by Peace Members, a non-governmental organisation, covering 13 villages of Dindigul and Peddiar Chatram Anchayat Unions, reveals that 350 wells out of total of 467 used for drinking and irrigation purposes have been polluted. Women and children have to walk miles to get drinking water. Legal Aid and Advice Board of Tamil Nadu requested two lawyers namely, M.R. Ramanan and P.S. Subramaniam to visit the area and submit a report indicating the extent of pollution caused by the tanneries. Relevant part of the report is as under:

“As per the Technical Report dated 28-5-1983 of the hydrological investigations carried out in Solor village near Ambur it was noticed that 176 chemicals including acids were contained in the tannery effluents. If 40 litres of water with chemicals are required for one kilo of leather, with the production of 200 tons of leather per day at present and likely to

VELLORE CITIZENS' WELFARE FORUM v. UNION OF INDIA (*Kuldip Singh, J.*) 651

a be increased multifold in the next four to five years with the springing up of more tanneries like mushroom in and around Ambur town, the magnitude of the effluent water used with chemicals and acids let out daily can be shockingly imagined. ... The effluents are let out from the tanneries in the nearby lands, then to Goodar and Palar rivers. The lands, the rivulet and the river receive the effluents containing toxic chemicals and acids. The subsoil water is polluted ultimately affecting not only arable lands, wells used for agriculture but also drinking-water wells.

b The entire Ambur town and the villages situated nearby do not have good drinking water. Some of the influential and rich people are able to get drinking water from a far-off place connected by a few pipes. During rainy days and floods, the chemicals deposited into the rivers and lands spread out quickly to other lands. The effluents thus let out affect cultivation; either crops do not come up at all or if produced the yield is reduced abnormally too low. ... The tanners have come to stay. The industry is a foreign exchange earner. But one moot point is whether at the cost of the lives of lakhs of people with increasing human population the activities of the tanneries should be encouraged on monetary considerations. We find that the tanners have absolutely no regard for the healthy environment in and around their tanneries. The effluents

d discharged have been stored like a pond openly in most of the places adjacent to cultivable lands with easy access for the animals and the people. The Ambur Municipality, which can exercise its powers as per the provisions of the Madras District Municipalities Act, 1920 (5 of 1920) more particularly under Sections 226 to 231, 249 to 253 and 338 to 342 seems to be a silent spectator. Probably it does not want to antagonise the highly influential and stupendously rich tanners. The powers given under Section 63 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) have not been exercised in the case of tanneries in Ambur and the surrounding areas."

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2. Along with the affidavit dated 21-7-1992 filed by Deputy Secretary to Government, Environment and Forests Department of Tamil Nadu, a list of villages affected by the tanneries has been attached. The list mentions 59 villages in the three divisions of Thirupathur, Vellore and Ranipet. There is acute shortage of drinking water in these 59 villages and as such alternative arrangements were being made by the Government for the supply of drinking water.

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3. In the affidavit dated 9-1-1992 filed by Member Secretary, Tamil Nadu Pollution Control Board (the Board), it has been stated as under:

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"It is submitted that there are 584 tanneries in North Arcot Ambedkar District vide Annexures 'A' and 'D', out of which 443 tanneries have applied for consent of the Board. The Government were concerned with the treatment and disposal of effluent from tanneries. The Government gave time up to 31-7-1985 to tanneries to put up Effluent Treatment Plant (ETP). So far 33 tanneries in North Arcot

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652

SUPREME COURT CASES

(1996) 5 SCC

Ambedkar District have put up Effluent Treatment Plants. The Board has stipulated standards for the effluent to be disposed of by the tanneries.”

4. The affidavits filed on behalf of the State of Tamil Nadu and the Board clearly indicate that the tanneries and other polluting industries in the State of Tamil Nadu are being persuaded for the last about 10 years to control the pollution generated by them. They were given option either to construct common effluent treatment plants for a cluster of industries or to set up individual pollution control devices. The Central Government agreed to give substantial subsidy for the construction of Common Effluent Treatment Plants (CETPs). It is a pity that till date most of the tanneries operating in the State of Tamil Nadu have not taken any step to control the pollution caused by the discharge of effluent. This Court on 1-5-1995 passed a detailed order. In the said order this Court noticed various earlier orders passed by this Court and finally directed as under:

“Mr R. Mohan, the learned Senior Counsel for the Tamil Nadu Pollution Control Board, has placed before us a consolidated statement dividing the 553 industries into three parts. The first part in Statement 1 and the second part in Statement 2 relate to those tanneries who have set up the Effluent Treatment Plants either individually or collectively to the satisfaction of the Tamil Nadu Pollution Control Board. According to the report placed on the record by the Board, these industries in Statements 1 and 2 have not achieved the standard or have not started functioning to the satisfaction of the Board. So far as the industries in Statements 1 and 2 are concerned, we give them three months’ notice from today to complete the setting up of Effluent Treatment Plant (either individually or collectively) failing which they shall be liable to pollution fine on the basis of their past working and also liable to be closed. We direct the Tamil Nadu Pollution Control Board to issue individual notices to all these industries within two weeks from today. The Board is also directed to issue a general notice on three consecutive days in a local newspaper which has circulation in the district concerned.

So far as the 57 tanneries listed in Statement III (including 12 industries who have filed writ petition, numbers of which have been given above) are concerned, these units have not installed and commissioned the Effluent Treatment Plants despite various orders issued by this Court from time to time. Mr R. Mohan, the learned Senior Counsel appearing for Tamil Nadu Pollution Control Board, states that the Board has issued separate notices to these units directing them to set up the Effluent Treatment Plants. Keeping in view the fact that this Court has been monitoring the matter for the last about four years and various orders have been issued by this Court from time to time, there is no justification to grant any further time to these industries. We, therefore, direct the 57 industries listed hereunder to be closed with immediate effect. ... We direct the District Collector and the Senior Superintendent of Police of the district to have our orders complied with

VELLORE CITIZENS' WELFARE FORUM v. UNION OF INDIA (*Kuldeep Singh, J.*) 653

immediately. Both these officers shall file a report in this Court within one week of the receipt of the order.

a We give opportunity to these 57 industries to approach this Court as and when any steps towards the setting up of Effluent Treatment Plants and their commissioning have been taken by these industries. If any of the industries wish to be relocated to some other area, they may come out with a proposal in that respect."

b 5. On 28-7-1995 this Court suspended the closure order in respect of seven industries mentioned therein for a period of eight weeks. It was further observed as under:

c "Mr G. Ramaswamy, the learned Senior Advocate appearing for some of the tanneries in Madras, states that the setting up of the Effluent Treatment Plants is progressing satisfactorily. According to him several lakhs have already been spent and in a short time it would start operating. Mr Mohan, the learned counsel for the Tamil Nadu Pollution Control Board, states that the team of the Board will inspect the project and file a report by 3-8-1995."

6. This Court on 8-9-1995 passed the following order:

d "The Tamil Nadu Pollution Control Board has filed its report. List No. I relates to about 299 industries. It is stated by Mr G. Ramaswamy, Mr Kapil Sibal and Mr G.L. Sanghi, the learned Senior Advocates appearing for these industries, that the setting up of the projects is in progress. According to the learned counsel Tamil Nadu Leather Development Corporation (TALCO) is in charge of the project. The learned counsel state that the project shall be completed in every respect within 3 months from today. The details of these industries and the projects undertaken by TALCO as per List No. I are as under. ... We are of the view that it would be in the interest of justice to give a little more time to these industries to complete the project. Although the industries have asked for three months' time, we give them time till 31-12-1995. We make it clear that in case the projects are not completed by that time, the industries shall be liable to be closed forthwith. Apart from that, these industries shall also be liable to pollution fine for the past period during which they had been operating.

e We also take this opportunity to direct TALCO to take full interest in these projects and have the projects completed within the time granted by us.

g Mr Kapil Sibal, the learned counsel appearing for the tanneries, stated that Council for Indian Finished Leather Manufacturers' Export Association is a body which is collecting 5 per cent on all exports. This body also helps the tanneries in various respects. We issue notice to the Association to be present in this Court and assist this Court in all the matters pertaining to the leather tanneries in Madras. Mr Sampath takes notice.

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654

SUPREME COURT CASES

(1996) 5 SCC

So far as List No. II is concerned, it relates to about 163 tanneries (except M/s Vibgyor Tanners & Co., Kailasagiri Road, Mittalam-635 811, Ambur (via). The Pollution Control Board has inspected all these tanneries and placed its report before us. According to the report most of these tanneries have not even started primary work at the spot. Some of them have not even located the land. The tanneries should have themselves set up the pollution control devices right at the time when they started working. They have not done so. They are not even listening to various orders passed by this Court from time to time during the last more than 2 years. It is on the record that these tanneries are polluting the area. Even the water around the area where they are operating is not worth drinking. We give no further time to these tanneries. We direct all the following tanneries which are numbering about 162 to be closed with immediate effect.”

It may be mentioned that this Court suspended the closure orders in respect of various industries from time to time to enable the said industries to install the pollution control devices.

7. This Court by the order dated 20-10-1995 directed the National Environmental Engineering Research Institute, Nagpur (NEERI) to send a team of experts to examine, in particular, the feasibility of setting up of CETPs for cluster of tanneries situated at different places in the State of Tamil Nadu where the work of setting up of the CETPs has not started and also to inspect the existing CETPs including those where construction work was in progress. NEERI submitted its first report on 9-12-1995 and the second report on 12-2-1996. This Court examined the two reports and passed the following order on 9-4-1996:

“Pursuant to this Court’s order dated December 15, 1995, NEERI has submitted Final Examination Report dated February 12, 1996 regarding CETPs constructed/under construction by the tanneries in various districts of the State of Tamil Nadu. A four-member team constituted by the Director, NEERI inspected the CETPs from January 27, 1996 to February 12, 1996. According to the report, at present, 30 CETP sites have been identified for tannery clusters in the five districts of Tamil Nadu viz., North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. All the 30 CETPs were inspected by the team. According to the report, only 7 CETPs are under operation, while 10 are under construction and 13 are proposed. The following 7 CETPs are under operation:

1. M/s TALCO Ranipet Tannery Effluent Treatment Co. Ltd., Ranipet, District North Arcot Ambedkar.
2. M/s TALCO Ambur Tannery Effluent Treatment Co. Ltd., Thuthipet Sector, Ambur, District North Arcot Ambedkar.
3. M/s TALCO Vaniyambadi Tanners Enviro Control Systems Ltd., Vaniyambattu, Vaniyambadi, District North Arcot.

VELLORE CITIZENS' WELFARE FORUM v UNION OF INDIA (*Kuldip Singh, J.*) 655

4. M/s Pallavaram Tanners Industrial Effluent Treatment Co., Chrompet Area, District Chengai MGR.

a 5. M/s Ranipet SIDCO Finished Leather Effluent Treatment Co. Pvt. Ltd., Ranipet, District North Arcot Ambedkar.

6. M/s TALCO Vaniyambadi Tanners Enviro Control Systems Ltd., Udayendiram, Vaniyambadi, District North Arcot Ambedkar.

b 7. M/s TALCO Pernambut Tannery Effluent Treatment Co. Ltd., Bakkalapalli, Pernambut, District North Arcot Ambedkar.

c The CETPs mentioned at Sl. Nos. 5, 6 and 7 were commissioned in January 1996 and were on the date of report passing through stabilization period. The report indicates that so far as the above CETPs are concerned, although there is improvement in the performance, they are still not operating at their optimal level and are not meeting the standards as laid down by the Ministry of Environment and Forests and the Tamil Nadu Pollution Control Board for inland surface water discharge. The NEERI has given various recommendations to be followed by the above-mentioned units. We direct the units to comply with the recommendations of NEERI within two months from today. The Tamil Nadu Pollution Control Board shall monitor the directions and have the recommendations of the NEERI complied with. So far as the three units which are under stabilization are concerned, the NEERI Team may inspect the same and place a final report before this Court within the period of two months.

d Apart from the tanneries which are connected with the above-mentioned 7 units, there are large number of other tanneries operating in the 5 districts mentioned above which have not set up any satisfactory pollution control devices. Mr Mohan, the learned counsel for the Tamil Nadu Pollution Control Board, states that notices were issued to all those tanneries from time to time directing them to set up the necessary pollution control devices. It is mandatory for the tanneries to set up the pollution control devices. Despite notices it has not been done. This Court has been monitoring these matters for the last about 4 years. There is no awakening or realisation to control the pollution which is being generated by these tanneries.

e The NEERI has indicated the physico-chemical characteristics of groundwater from dug wells near tannery clusters. According to the report, water samples show that well waters around the tanneries are unfit for drinking. The report also shows that the quality of water in Palar river downstream from the place where effluent is discharged is highly polluted. We, therefore, direct that all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. which are not connected with the seven CETPs mentioned above, shall be closed with immediate effect. None of these tanneries shall be permitted to operate till the time the CETPs are constructed to the satisfaction of the Tamil Nadu Pollution Control

h

656

SUPREME COURT CASES

(1996) 5 SCC

Board. We direct the District Magistrate and the Superintendent of Police of the area concerned, to have all these tanneries closed with immediate effect. Mr Mehta has placed on record the report of Tamil Nadu Pollution Control Board. In Statement I of the Index, there is a list of 30 industries which have also not been connected with any CETPs. According to the report, these industries have not, till date set up pollution control devices. We direct the closure of these industries also. List is as under. ... The Tamil Nadu Pollution Control Board has filed another report dated January 18, 1996 pertaining to 51 tanneries. There is dispute regarding the permissible limit of the quantity of total dissolved solids (TDS). Since the NEERI Team is visiting these tanneries, they may examine the TDS aspect also and advise this Court accordingly. Meanwhile, we do not propose to close any of the tanneries on the ground that it is discharging more than 2001 TDS.

The report indicates that except the 17 units, all other units are non-complaint units in the sense that they are not complying with the BOD standards. Excepting these 17 industries, the remaining 34 tanneries listed hereunder are directed to be closed forthwith. ... We direct the District Magistrate and the Superintendent of Police of the area concerned to have all these industries mentioned above closed forthwith. The tanneries in the 5 districts of Tamil Nadu referred to in this order have been operating for a long time. Some of the tanneries are operating for a period of more than two decades. All this period, these tanneries have been polluting the area. Needless to say that the total environment in the area has been polluted. We issue show-cause notice to these industries through their learned counsel who are present in Court, why they be not subjected to heavy pollution fine. We direct the State of Tamil Nadu through the Industry Ministry, the Tamil Nadu Pollution Control Board and all other authorities concerned and also the Government of India through the Ministry of Environment and Forests, not to permit the setting up of further tanneries in the State of Tamil Nadu.

Copy of this order be communicated to the authorities concerned within three days. To come up for further consideration after the replies to the show-cause. There are a large number of tanneries in the State of Tamil Nadu which have set up individual pollution control devices and which according to the Tamil Nadu Pollution Control Board are operating satisfactorily. The fact, however, remains that all these tanneries are discharging the treated effluents within the factory precincts itself. We direct NEERI Team which is visiting this area to find out as to whether the discharge of the effluent on the land within the factory premises is permissible environmentally. *M/s Nandeem Tanning Company, Valayampet Vaniyambadi* is one of such industries. Copy of the report submitted by the Tamil Nadu Pollution Control Board be forwarded to the NEERI. NEERI may inspect this industry within ten days and file a report in this Court. Copy of this order be communicated to NEERI.

VELLORE CITIZENS' WELFARE FORUM v UNION OF INDIA (*Kuldip Singh, J.*) 657

Matters regarding distilleries in the State of Tamil Nadu

- a The Tamil Nadu Pollution Control Board has placed on record the factual report regarding 6 distilleries mentioned in page 4 of the Index of its Report dated April 5, 1996. The learned counsel for the Board states that the Board shall issue necessary notices to these industries to set up pollution control devices to the satisfaction of the Board, failing which these distilleries shall be closed. The Pollution Control Board shall place a status report before this Court."
- b The NEERI submitted two further reports on 1-5-1996 and 11-6-1996 in respect of CETPs set up by various industries. The NEERI reports indicate that the physico-chemical characteristics of groundwater from dug wells in Ranipet, Thuthipeth, Valayambattu, Vaniyambadi and various other places do not conform to the limits prescribed for drinking purposes.
- c 8. This Court has been monitoring this petition for almost five years. The NEERI, Board and the Central Pollution Control Board (Central Board) have visited the tanning and other industries in the State of Tamil Nadu several times. These expert bodies have offered all possible assistance to these industries. The NEERI reports indicate that even the seven operational CETPs are not functioning to its satisfaction. NEERI has made several recommendations to be followed by the operational CETPs. Out of the 30
- d CETP sites which have been identified for tannery clusters in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R., 7 are under operation, 10 are under construction and 13 are proposed. There are a large number of tanneries which are not likely to be connected with any CETP and are required to set up pollution control devices on their own. Despite repeated extensions granted by this Court
- e during the last five years and prior to that by the Board the tanneries in the State of Tamil Nadu have miserably failed to control the pollution generated by them.
- f 9. It is no doubt correct that the leather industry in India has become a major foreign exchange earner and at present Tamil Nadu is the leading exporter of finished leather accounting for approximately 80 per cent of the country's export. Though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it has no right to destroy the ecology, degrade the environment and pose as a health-hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry.
- g 10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our
- h Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known

658

SUPREME COURT CASES

(1996) 5 SCC

as “Brundtland Report”. In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called “Caring for the Earth” which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history — deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio “Sustainable Development” has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. “Sustainable Development” as defined by the Brundtland Report means “Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”. We have no hesitation in holding that “Sustainable Development” as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists. a b c d

11. Some of the salient principles of “Sustainable Development”, as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that “The Precautionary Principle” and “The Polluter Pays Principle” are essential features of “Sustainable Development”. The “Precautionary Principle” — in the context of the municipal law — means: e

(i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation. f

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The “onus of proof” is on the actor or the developer/industrialist to show that his action is environmentally benign. g

12. “The Polluter Pays Principle” has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action v. Union of India*¹. The Court observed: (SCC p. 246, para 65)

h

1 (1996) 3 SCC 212 : JT (1996) 2 SC 196

VELLORE CITIZENS' WELFARE FORUM v. UNION OF INDIA (*Kuldip Singh, J.*) 659

a "... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country".

The Court ruled that: (SCC p. 246, para 65)

b "... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity *irrespective* of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

c Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

d 13. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:

e "47. *Duty of the State to raise the level of nutrition and the standard of living and to improve public health.*—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

f 48-A. *Protection and improvement of environment and safeguarding of forests and wildlife.*—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

g 51-A. (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."

h Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the

660

SUPREME COURT CASES

(1996) 5 SCC

Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

14. In view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.

15. Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.R. Khanna's opinion in *A.D.M. v. Shivakant Shukla*², *Jolly George Varghese case*³ and *Gramophone Co. case*⁴.

16. The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstone's commentaries on the Laws of England (*Commentaries on the Laws of England of Sir William Blackstone*) Vol. III, fourth edition published in 1876. Chapter XIII, "Of Nuisance" depicts the law on the subject in the following words:

"Also, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if one's neighbour sets up and exercises any offensive trade; as a tanner's, a tallow-chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, 'sic utere tuo, ut alienum non leadas'; this

² (1976) 2 SCC 521 : AIR 1976 SC 1207

³ *Jolly George Varghese v. Bank of Cochun*, (1980) 2 SCC 360 : AIR 1980 SC 470

⁴ *Gramophone Co. of India Ltd v. Birendra Bahadur Pandey*, (1984) 2 SCC 534 : 1984 SCC (Cr) 313 : AIR 1984 SC 667

VELLORE CITIZENS' WELFARE FORUM v UNION OF INDIA (*Kuldip Singh, J.*) 661

therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in one's immediate neighbourhood may be a nuisance.

- a ... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of 'doing to others, as we would they should do unto ourselves'."
- b

17. Our legal system having been founded on the British common law the right of a person to a pollution-free environment is a part of the basic jurisprudence of the land.

- c 18. The Statement of Objects and Reasons to the Environment Act, inter alia, states as under:

- d "The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food-chains, growing risks of environmental accidents and threats to life-support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972. The Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident.
- e

- f Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build-up of hazardous substances especially new chemicals in the environment, are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long-term requirements of environmental safety and to give direction to, and coordinate a system of speedy and adequate response to emergency situations threatening the environment.
- g

- h In view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable coordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate

662

SUPREME COURT CASES

(1996) 5 SCC

powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening the environment and deterrent punishment to those who endanger human environment, safety and health.” a

Sections 3, 4, 5, 7 and 8 of the Environment Act which are relevant are as under:

“3. *Power of Central Government to take measures to protect and improve environment.*—(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. b

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

(i) coordination of actions by the State Governments, officers and other authorities—

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

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

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

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

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever; e

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources; f

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

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

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

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

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

VELLORE CITIZENS' WELFARE FORUM v UNION OF INDIA (*Kuldip Singh, J.*) 663

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

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

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

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

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

d (3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

f 4. *Appointment of officers and their powers and functions.*—(1) Without prejudice to the provisions of sub-section (3) of Section 3, the Central Government may appoint officers with such designations as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.

g (2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government or, if so directed by that Government, also of the authority or authorities, if any, constituted under sub-section (3) of Section 3 or of any other authority or officer.

h 5. *Power to give directions.*—Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

664

SUPREME COURT CASES

(1996) 5 SCC

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) stoppage or regulation of the supply of electricity or water or any other service.

7. *Persons carrying on industry, operation, etc., not to allow emission or discharge of environmental pollutants in excess of the standards.*—No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

8. *Persons handling hazardous substances to comply with procedural safeguards.*—No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.”

19. Rules 3(1), 3(2) and 5(1) of the Environment (Protection) Rules, 1986 (the Rules) are as under:

“3. *Standards for emission or discharge of environmental pollutants.*—(1) For the purposes of protecting and improving the quality of the environment and preventing and abating environmental pollution, the standards for emission or discharge of environmental pollutants from the industries, operations or processes shall be as specified in Schedules I to IV.

3. (2) Notwithstanding anything contained in sub-rule (1), the Central Board or a State Board may specify more stringent standards from those provided in Schedules I to IV in respect of any specific industry, operation or process depending upon the quality of the recipient system and after recording reasons therefor in writing.

5. *Prohibition and restriction on the location of industries and the carrying on of processes and operations in different areas.*—(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas—

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

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

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

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

VELLORE CITIZENS' WELFARE FORUM v UNION OF INDIA (*Kuldip Singh, J.*) 665

- (v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.
- a (vi) Environmentally compatible land use.
- (vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.
- b (viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.
- c (ix) Proximity to human settlements.
- (x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area."

20. It is thus obvious that the Environment Act contains useful provisions for controlling pollution. The main purpose of the Act is to create an authority or authorities under Section 3(3) of the Act with adequate powers to control pollution and protect the environment. It is a pity that till date no authority has been constituted by the Central Government. The work which is required to be done by an authority in terms of Section 3(3) read with other provisions of the Act is being done by this Court and the other courts in the country. It is high time that the Central Government realises its responsibility and statutory duty to protect the degrading environment in the country. If the conditions in the five districts of Tamil Nadu, where tanneries are operating, are permitted to continue then in the near future all rivers/canals shall be polluted, underground waters contaminated, agricultural lands turned barren and the residents of the area exposed to serious diseases. It is, therefore, necessary for this Court to direct the Central Government to take immediate action under the provisions of the Environment Act.

21. There are more than 900 tanneries operating in the five districts of Tamil Nadu. Some of them may, by now, have installed the necessary pollution control measures; they have been polluting the environment for over a decade and in some cases even for a longer period. This Court has in various orders indicated that these tanneries are liable to pay pollution fine. The polluters must compensate the affected persons and also pay the cost of restoring the damaged ecology.

22. Mr M.C. Mehta, the learned counsel for the petitioner has invited our attention to the notification GOMs No. 213 dated 30-3-1989 which reads as under:

"In the government order first read above, the Government have ordered, among other things, that no industry causing serious water

666

SUPREME COURT CASES

(1996) 5 SCC

pollution should be permitted within one kilometre from the embankments of rivers, streams, dams, etc. and that the Tamil Nadu Pollution Control Board should furnish a list of such industries to all local bodies. It has been suggested that it is necessary to have a sharper definition for water sources so that ephemeral water collections like rainwater ponds, drains, sewerages (bio-degradable) etc. may be excluded from the purview of the above order. The Chairman, Tamil Nadu Pollution Control Board has stated that the scope of the government order may be restricted to reservoirs, rivers and public drinking-water sources. He has also stated that there should be a complete ban on location of highly polluting industries within 1 kilometre of certain water sources. a b

2. The Government have carefully examined the above suggestions. The Government impose a total ban on the setting up of the highly polluting industries mentioned in Annexure I to this order within one kilometre from the embankments of the water sources mentioned in Annexure II to this order. c

3. The Government also direct that under any circumstances if any highly polluting industry is proposed to be set up within one kilometre from the embankments of the water sources other than those mentioned in Annexure II to this order, the Tamil Nadu Pollution Control Board should examine the case and obtain the approval of the Government for it." d

Annexure I to the notification includes distilleries, tanneries, fertilizer, steel plants and foundries as the highly polluting industries. We have our doubts whether the above-quoted government order is being enforced by the Tamil Nadu Government. The order has been issued to control pollution and protect the environment. We are of the view that the order should be strictly enforced and no industry listed in Annexure I to the order should be permitted to be set up in the prohibited area. e

23. The learned counsel for the tanneries raised an objection that the standard regarding total dissolved solids (TDS) fixed by the Board was not justified. This Court by the order dated 9-4-1996 directed the NEERI to examine this aspect and give its opinion. In its report dated 11-6-1996 NEERI has justified the standards stipulated by the Board. The reasoning of the NEERI given in its report dated 11-6-1996 is as under: f

"The total dissolved solids in ambient water have physiological, industrial and economic significance. The consumer's acceptance of mineralized water decreases in direct proportion to increased mineralization as indicated by Bruvold (1). High total dissolved solids (TDS), including chlorides and sulphates, are objectionable due to possible physiological effects and mineral taste that they impart to water. High levels of total dissolved solids produce laxative/cathartic/purgative effect in consumers. The requirement of soap and other detergents in household and industry is directly related to water hardness as brought g h

VELLORE CITIZENS' WELFARE FORUM v. UNION OF INDIA (*Kuldip Singh, J.*) 667

a out by DeBoer and Larsen (2). High concentration of mineral salts, particularly sulphates and chlorides, are also associated with costly corrosion damage in wastewater treatment systems, as detailed by Patterson and Banker (3). Of particular importance is the tendency of scale deposits with high TDS thereby resulting in high fuel consumption in boilers.

b The Ministry of Environment and Forests (MEF) has not categorically laid down standards for inland surface water discharge for total dissolved solids (TDS), sulphates and chlorides. The decision on these standards rests with the respective State Pollution Control Boards as per the requirements based on local site conditions. The standards stipulated by the TNPCB are justified on the afore-referred considerations.

c The prescribed standards of the TNPCB for inland surface water discharge can be met for tannery wastewaters cost effectively through proper implant control measures in tanning operation, and rationally designed and effectively operated wastewater treatment plants (ETPs and CETPs). Tables 3 and 5 depict the quality of groundwater in some areas around tanneries during peak summer period (3-6-1996 to 5-6-1996). Table 8 presents the data collected by TNPCB at individual ETPs indicating that TDS, sulphates and chloride concentrations are below the prescribed standards for inland surface water discharge. The quality of ambient waters needs to be maintained through the standards stipulated by TNPCB.”

e 24. The Board has the power under the Environment Act and the Rules to lay down standards for emissions or discharge of environmental pollutants. Rule 3(2) of the Rules even permits the Board to specify more stringent standards from those provided under the Rules. The NEERI having justified the standards stipulated by the Board, we direct that these standards are to be maintained by the tanneries and other industries in the State of Tamil Nadu.

f 25. Keeping in view the scenario discussed by us in this judgment, we order and direct as under:

g 1. The Central Government shall constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The authority shall be headed by a retired Judge of the High Court and it may have other members — preferably with expertise in the field of pollution control and environment protection — to be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under Section 5 of the Environment Act and for taking measures with respect to the matters referred to in clauses (v), (vi), (vii), (viii), (ix), (x) and (xi) of sub-section (2) of Section 3. The Central Government shall constitute the authority before September 30, 1996.

668

SUPREME COURT CASES

(1996) 5 SCC

2. The authority so constituted by the Central Government shall implement the "Precautionary Principle" and the "Polluter Pays Principle". The authority shall, with the help of expert opinion and after giving opportunity to the polluters concerned assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise. a

3. The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collectors/District Magistrates of the area concerned. The Collector/District Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families. c

4. The authority shall direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him. This shall be in addition to the recovery from him as arrears of land revenue. d

5. An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the residents of the area. e

6. We impose pollution fine of Rs 10,000 each on all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. The fine shall be paid before October 31, 1996 in the office of the Collector/District Magistrate concerned. We direct the Collectors/District Magistrates of these districts to recover the fines from the tanneries. The money shall be deposited, along with the compensation amount recovered from the polluters, under a separate head called "Environment Protection Fund" and shall be utilised for compensating the affected persons as identified by the authorities and also for restoring the damaged environment. The pollution fine is liable to be recovered as arrears of land revenue. The tanneries which fail to deposit the amount by October 31, 1996 shall be closed forthwith and shall also be liable under the Contempt of Courts Act, 1971. f

7. The authority, in consultation with expert bodies like NEERI, Central Board, Board shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollution in the State of Tamil Nadu. The scheme/schemes so framed shall be executed by the State Government under the supervision of the Central Government. The g

VELLORE CITIZENS' WELFARE FORUM v UNION OF INDIA (*Kuldip Singh, J.*) 669

a expenditure shall be met from the "Environment Protection Fund" and from other sources provided by the State Government and the Central Government.

b 8. We suspend the closure orders in respect of all the tanneries in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. We direct all the tanneries in the above five districts to set up CETPs or Individual Pollution Control Devices on or before November 30, 1996. Those connected with CETPs shall have to install in addition the primary devices in the tanneries. All the tanneries in the above five districts shall obtain the consent of the Board to function and operate with effect from December 15, 1996. The tanneries who are refused consent or who fail to obtain the consent of the Board by December 15, 1996 shall be closed forthwith.

c 9. We direct the Superintendent of Police and the Collector/District Magistrate/Deputy Commissioner of the district concerned to close all those tanneries with immediate effect who fail to obtain the consent from the Board by the said date. Such tanneries shall not be reopened unless the authority permits them to do so. It would be open to the authority to close such tanneries permanently or to direct their relocation.

d 10. Government Order No. 213 dated March 30, 1989 shall be enforced forthwith. No new industry listed in Annexure I to the notification shall be permitted to be set up within the prohibited area. The authority shall review the cases of all the industries which are already operating in the prohibited area and it would be open to the authority to direct the relocation of any of such industries.

e 11. The standards stipulated by the Board regarding total dissolved solids (TDS) and approved by the NEERI shall be operative. All the tanneries and other industries in the State of Tamil Nadu shall comply with the said standards. The quality of ambient waters has to be maintained through the standards stipulated by the Board.

f 26. We have issued comprehensive directions for achieving the end result in this case. It is not necessary for this Court to monitor these matters any further. We are of the view that the Madras High Court would be in a better position to monitor these matters hereinafter. We, therefore, request the Chief Justice of the Madras High Court to constitute a Special Bench "Green Bench" to deal with this case and other environmental matters. We make it clear that it would be open to the Bench to pass any appropriate order/orders keeping in view the directions issued by us. We may mention that "Green Benches" are already functioning in Calcutta, Madhya Pradesh and some other High Courts. We direct the Registry of this Court to send the records to the Registry of the Madras High Court within one week. The High Court shall treat this matter as a petition under Article 226 of the Constitution of India and deal with it in accordance with law and also in terms of the directions issued by us. We give liberty to the parties to approach the High Court as and when necessary.

670

SUPREME COURT CASES

(1996) 5 SCC

27. Mr M.C. Mehta has been assisting this Court to our utmost satisfaction. We place on record our appreciation for Mr Mehta. We direct the State of Tamil Nadu to pay Rs 50,000 towards legal fees and other out of pocket expenses incurred by Mr Mehta. a

(1996) 5 Supreme Court Cases 670

(BEFORE B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.)

P. KANNADASAN AND OTHERS

Appellants/
Petitioners; b

Versus

STATE OF T.N. AND OTHERS

Respondents. c

Civil Appeals No. 9847 of 1996 with Nos. 9849, 9780-81, 9905, 9851, 9906-07, 9777, W.Ps. Nos. 269 of 1995, 270 of 1994, 9908-09, 9850, 9778, 9910, 408, 9911-13 of 1996, 518, 9914-15 of 1996, 688 of 1992, 9848, 9774-76, 9916 and 9917 of 1996[†], decided on July 26, 1996

A. Mines and Minerals — Cess and Other Taxes on Minerals (Validation) Act, 1992 — S. 2(1), (2) & (3) and the Sch. — Validity — State laws imposing cess or other taxes on minerals found by the Supreme Court/High Courts to be beyond the legislative competence of the State Legislature — Provision in S. 2 validating such State laws, held, not beyond the legislative competence of Parliament — Contention that the said provision sought to overturn the judicial decisions, repelled — Constitution of India, Arts. 245 & 246, 265 and Sch. VII List I Entries 54 & 97 & List II Entries 23 and 50 — Statute Law — Validating statute — Constitutional law — Separation of powers — Words and phrases — “Checks and balances” — Mines and Minerals (Regulation and Development) Act, 1957, Ss. 2, 9 & 9-A and Sch. II — Panchayats and Zila Parishads — T.N. Panchayats Act, 1958 (35 of 1958), S. 115 — Tax — Cess d e

B. Mines and Minerals — Cess and Other Taxes on Minerals (Validation) Act, 1992 — S. 2(1) and the Sch. — Validity — State laws imposing cess or other taxes on minerals found by the Supreme Court/High Courts to be beyond the legislative competence of the State Legislature — Provision in S. 2(1) validating such State laws from the date on which they were enacted by the State Legislature concerned, held, not bad for retrospectivity — Statute law — Validating statute — Statute validating a tax retrospectively — Validity — Taxation — Taxing statutes — Retrospective validation of an invalid taxing statute — Taxing Statutes — Constitution of India, Art. 265 f

C. Interpretation of the Constitution — Final arbiter on, held, is the Supreme Court — Constitution of India, Arts. 141, 32 and 136 — Interpretation of the Constitution g

Certain States had enacted statutes imposing a local cess on minerals which were annulled by the Supreme Court/High Courts for want of legislative competence. Therefore, Parliament enacted the Cess and Other Taxes on Minerals (Validation) Act, 1992 deeming such Acts, including Tamil Nadu Panchayats Act, 1958, Section 115, always to have been valid as if enacted by Parliament. The 1992 h

[†] From the Judgment and Order dated 27-6-1994 of the Madras High Court in WP No 14178 of 1989

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA

575

(2013) 4 Supreme Court Cases 575

(BEFORE A.K. PATNAIK AND H.L. GOKHALE, JJ.)

a **STERILITE INDUSTRIES (INDIA) LIMITED**
AND OTHERS ... Appellants;

Versus

UNION OF INDIA AND OTHERS ... Respondents.

Civil Appeals Nos. 2776-83 of 2013[†], decided on April 2, 2013

b **A. Environment Protection and Pollution Control — Polluter pays principle — Closure of polluting plant or direction to pay compensation for loss suffered by citizenry due to harm caused to environment — Factors to be considered and balanced — Sustainable development — Considerations of — Remedial action to restore environmental damage caused by polluting plant concerned/improve environment — Possibility of, without closure of plant**

c — Environmental impact assessment (EIA) for setting up copper smelter plant by appellant Company and environmental clearance by authorities being valid, rational and as per procedure — But plant while operating failing to maintain emission and effluent standards and operating without renewal permission and thereby causing air and water pollution
d which could have been averted — High Court therefore quashing environmental clearance and directing closure of plant — But when matter coming to Supreme Court, appellant removing 29 out of 30 pollution-causing deficiencies at plant pointed out by NEERI (National Environmental Engineering and Research Institute)

e — Considering: (a) economic importance of plant and need of sustainable development in public interest, (b) that authorities could exercise their discretion under R. 5(1)(v), 1986 Rules at any later stage to shift the plant if they felt the need therefor without closing down plant, (c) well-settled principles and grounds for judicial review and intervention, (d) that pollution could be checked/remedied without the plant being closed down, and (e) paying capacity of plant to pay compensation — Held, the
f plant should not be closed down but instead appellant Company should pay compensation of Rs 100 crores to remedy environmental damage caused/improve environment as directed — Therefore, High Court order directing closure of plant, set aside — Clarified that State Pollution Control Board (i.e. TNPCB) can issue directions to appellant Company including a direction for closure of the plant, for the protection of environment in accordance with law, if found necessary at any stage — Also clarified that award of
g Rs 100 crores as compensation would not bar any other claim by any person that may be available under law — Constitution of India — Arts. 21, 32, 47, 48-A, 226 and 136 — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3,

h [†] Arising out of SLPs (C) Nos. 28116-23 of 2010. From the Judgment and Order dated 28-9-2010 of the High Court of Judicature of Madras in WPs Nos. 15501-502 of 1996, 5769 of 1997, 16861 of 1998, WMPs Nos. 8044-46 of 1999 and WP No. 15503 of 2006

576

SUPREME COURT CASES

(2013) 4 SCC

16 and 18 — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environment (Protection) Rules, 1986 — Rr. 5(1)(v) & (3) — Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, R. 19

a

B. Environment Protection and Pollution Control — Pollutants/ Polluting industry — Compensation on basis of polluter pays principle — Manner of determination of amount — Paying capacity of polluter — Reckoning of — Closure of plant, when not desirable

C. Environment Protection and Pollution Control — Polluter pays principle — Compensation awarded under, for causing harm to environment for a particular period, held, not to affect any claim for damages for the aforesaid period or any other period that may lie in a civil court or any other forum in accordance with law

b

D. Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Judicial review/Quashment of — Grounds and scope for judicial intervention — Principles summarised

c

— Held, Environmental Impact Assessment (EIA) done and environmental clearance granted by expert authorities can only be quashed on well-recognised principles of judicial review i.e. only if there is any illegality, irrationality or procedural impropriety in granting such permission (which is not the case here) — However, if after setting up of plant, the plant begins/continues to pollute environment, fundamental right under Art. 21 of Constitution can always be invoked — But as remedies were available to remedy damage caused/improve environment without closing the plant, High Court should not have directed closure of plant (and as per latest record, plant had already removed 29 out of 30 pollution-causing deficiencies pointed out by NEERI) — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environmental clearance granted under — Grounds and scope of judicial intervention — Evidence Act, 1872 — S. 45 — Expert opinion — EIA (Environment Impact Assessment) — Grounds for judicial review

d

e

E. Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Ground of procedural impropriety — When can be resorted to, to quash environmental clearance — Held, ground of procedural impropriety can be resorted to, to quash environmental clearance only when a mandatory requirement is violated — As requirements of comprehensive EIA and public hearing prior to grant of environmental clearance were not mandatory (as per prevalent notification), High Court could not have quashed environmental clearance on said grounds — Environment (Protection) Act, 1986, Ss. 3(1) & (2)

f

g

F. Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Grant of environmental clearance/NOC for setting up of plant/industry — If valid and proper in present case

— (a) There being no public hearing on issue of environmental effects of setting up of plant at location where it was set up (which was opposed at

h

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA

577

- a three other places in India), (b) EIA being conducted speedily by taking only data of one season, (c) authorities reducing requirement of green belt around plant from 250 m to 25 m, and (d) plant being located within 25 km of ecologically sensitive area (i.e. islands of Gulf of Munnar) as notified under S. 35(1), 1972 Act — Against this Supreme Court found that requirement of public hearing and comprehensive EIA were not mandatory as per prevalent notification (EIA Noti. dt. 27-1-1994), though later notification (i.e. EIA Noti. dt. 10-4-1997) requiring mandatory public hearing and comprehensive EIA —
- b Rapid EIA being permissible under prevalent notification, whereunder EIA could be done by taking data of only one season — All procedures regarding rapid EIA were complied with as per prevalent notification — It could not be shown as to how by reducing green belt from 250 m to 25 m around the plant area any procedure was violated or there was any irrationality — Rather plant had installed air control utilities such that it satisfied ambient air quality standards prescribed by State Pollution Control Board (i.e. TNPCB) — Therefore, held,
- c there was no illegality, irrationality, or procedural impropriety in granting environmental clearance to the project of appellant — Regarding location, no notification prohibiting setting up of industry in said area had been issued under R. 5(1)(v), 1986 Rules — Thus as and when Central Government issues a notification under R. 5(1)(v), 1986 Rules, prohibiting or restricting location of plant, steps may be taken by all concerned for shifting of the industry subject to content of notification and subject to legal challenge by industry concerned — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3, 16 and 18 — Wild Life (Protection) Act, 1972 — Ss. 35(1) & (4) — Notification under S. 35(4) not having been issued — Effect — Environment (Protection) Rules, 1986, Rr. 5(1)(v) & (3)
- d
- e

G. Environment Protection and Pollution Control — Sustainable development — Polluting plant — Relief of setting aside order of closure — Said relief, when can be given even if there was suppression and misrepresentation of material facts by polluting plant (appellant) — EIA Noti. dt. 27-1-1994 — Para 2(c) and Explan. Note, Para 5 — EIA Noti. dt. 10-4-1997 — Constitution of India, Arts. 226, 32 and 136

- f H. Environment Protection and Pollution Control — Non-Governmental Organisations (NGOs) and Third Sector — Appreciation expressed by Supreme Court for work done by writ petitioners and intervenor for prosecuting these proceedings in genuine public interest

Allowing the appeal in the terms below, the Supreme Court

Held:

- g The environmental clearance for setting up the plant of the appellant Company was granted to the appellants under Section 3(1) of the Environment (Protection) Act, 1986 (1986 Act). The prevalent Environmental Impact Assessment (EIA) notification issued under Section 3(2)(v), 1986 Act, and Rule 5(3) of the Environment (Protection) Rules, 1986, by the Central Government was EIA Notification dated 27-1-1994. The language of Para 2(c),
- h EIA Notification dated 27-1-1994 did not lay down that a public hearing was a must for giving environmental clearance when the appellants' case was under

578

SUPREME COURT CASES

(2013) 4 SCC

consideration. In the present case the environmental clearance was thus granted by MoEF on 16-1-1995 in accordance with the procedure laid down by the EIA Notification dated 27-1-1994 well before the issuance of the EIA Notification dated 10-4-1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. Therefore, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before the grant of the environmental clearances. (Paras 28 to 29, 2, 7 and 22)

Para 5 of the Explanatory Note, EIA Notification dated 27-1-1994 clarified that project proponents could furnish a rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and a comprehensive EIA report could be submitted later, if so asked for by the Impact Assessment Agency. Therefore, the High Court could not have allowed the writ petitions on the ground that environmental clearance was issued to the appellant Company on the basis of inadequate rapid EIA, particularly when the Union of India in its affidavit had clearly averred that the environmental clearance was granted after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994). The High Court has noticed some decisions of the Supreme Court on sustainable development, precautionary and polluter pays principles and public trust doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well-recognised principles of judicial review: for e.g. the High Court could interfere on the ground of illegality, irrationality, *Wednesbury* unreasonableness, or on the ground of procedural impropriety. However, on the ground of procedural impropriety, the High Court can quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. In the absence of a mandatory requirement of public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety. No materials have been produced to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision or that the decision of MoEF to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.

(Paras 30 to 33, 8 and 18 to 21)

Lafarge Union Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338, followed

Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647; *Tirupur Dyeing Factory Owners Assn. v. Noyyal River Ayacutdars Protection Assn.*, (2009) 9 SCC 737; *M.C. Mehta v. Union of India*, (2009) 6 SCC 142; *East Coast Railway v. Mahadev Appa Rao*, (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483; *Belize Alliance of Conservation Non-Governmental Organisations v. Deptt. of the Environment*, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC); *Northern Jamaica Conservation Assn. v. Natural Resources Conservation Authority*, Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC); *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), referred to

National Trust for Clean Environment v. Union of India, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), cited

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA

579

a It is for the authorities under the 1986 Act and Rules and the notifications issued thereunder to determine the scope of the project, the extent of the screening and the assessment of the cumulative effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review. (Para 34)

Belize Alliance of Conservation Non-Governmental Organisations v. Deptt. of the Environment, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC), *relied on*

b *Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)*, (2001) 2 FC 461 (Can), *approved*

c The TNPCB (State Pollution Control Board) while granting the consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 added the requirement that the location of the unit should be 25 km away from ecologically sensitive area without noting that the area for plant concerned was within 25 km from ecologically sensitive area. Since, however, the consent order was granted to the appellant Company to establish its plant in the said area, and the plant has in fact been established there, the High Court could not have come to the conclusion that the appellant Company had violated the consent order and based thereon directed closure of the plant. The Gulf of Munnar is an ecologically sensitive area [having been so notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986] and the Central Government may in exercise of its powers under Rule 5(1)(v), 1986 Rules, prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5, 1986 Rules, then appropriate steps may have to be taken by all concerned for shifting the industry depending upon the content of the order or notification and subject to the legal challenge by the industries. (Paras 37, 38, 6 to 6.3, 12 and 14 to 26)

e NEERI (National Environmental Engineering and Research Institute) Report of 1998, *referred to*

f Various conditions have been imposed on the plant/industry of the appellants to ensure that air pollution control measures are installed for the control of emissions generated from the plant and that the emissions from the plant satisfies the ambient air quality standards prescribed by the TNPCB and development of green belt contemplated under the environmental management plan around the battery limit of the industry of the appellants was an additional condition that was imposed by the TNPCB in the no objection certificate dated 1 8 1994. If the TNPCB after considering the representation of the appellants has reduced the requirement of width of the green belt from a minimum of 250 metres to a minimum of 25 metres around the battery limit of the industry of the appellants and it is not shown that this power which has been exercised was vitiated by procedural breach or irrationality, the High Court in exercise of its powers of judicial review could not have interfered with the exercise of such power by the TNPCB. (Paras 39.1, 9 and 13)

Sterlite Industries (I) Ltd. v. Union of India, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

h It is for the administrative and statutory authorities empowered under the law to consider and grant environmental clearance and the consents to the appellants for setting up the plant and where no ground for interference with the decisions of the authorities on well-recognised principles of judicial review is made out, the High Court could not interfere with the decisions of the authorities to grant

580

SUPREME COURT CASES

(2013) 4 SCC

the environmental clearance or the consents on the ground that had the authorities made a proper environmental assessment of the plant, the adverse environmental effects of the industry could have been prevented. If, however, after the grant of environmental clearance under the 1986 Act and Rules and the notifications issued thereunder and after the consents granted under the Air Act and the Water Act, the industry begins to/continues to pollute the environment so as to affect the fundamental right to life under Article 21 of the Constitution, the High Court could still direct the closure of the industry by virtue of its powers under Article 21 of the Constitution if it came to the conclusion that there were no other remedial measures to ensure that the industry maintains the standards of emission and effluent. (Paras 40 and 18)

M.C. Mehta v. Union of India, (1987) 4 SCC 463, *relied on*

The High Court relied on the report of NEERI (National Environmental Engineering and Research Institute) of 2005 to hold that the plant site itself is severely polluted and the ground samples level of arsenic justified classifying the whole site of the plant of the appellants as hazardous waste. The NEERI Report of 2005 did show that the emission and effluent discharged from the appellants' plant affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to remedy/improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants. As per the joint inspection carried out by TNPCB and CPCB as per Supreme Court, directions, out of the 30 directions issued by the TNPCB, the appellant Company has complied with 29 directions and only one more direction under the Air Act remains to be complied with. As the deficiencies in the plant of the appellants which affected the environment as pointed out by NEERI have now been removed, the impugned order of the High Court directing closure of the plant of the appellants is liable to be set aside. (Paras 41 to 44, 10, 14 and 23)

Sterlite Industries (I) Ltd. v. Union of India, (2011) 13 SCC 769; *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 13 SCC 773, *relied on*

Sterlite Industries (I) Ltd. v. Union of India, (2011) 13 SCC 772; *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 10 SCC 254; *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

National Trust for Clean Environment v. Union of India, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *reversed*

NEERI (National Environmental Engineering and Research Institute) Reports of 2005, 1998, 1999, 2003 and 2011; Joint Inspection Report of TNPCB and CPCB, September 2012, *referred to*

There is no doubt that there has been misrepresentation and suppression of material facts made in the SLP by the appellants, but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile and construction industries and infrastructure, etc. The plant of the appellants has about 1300 employees and it also provides employment to a large number of people through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates huge revenue to the Central and State Governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin Port. For these considerations of public interest, it will not be a proper exercise of the discretion under Article 136 of the Constitution to refuse relief on the grounds of

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA

581

misrepresentation and suppression of material facts in the SLP.

(Paras 48, 11 and 15 to 17)

- a Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC); *Hari Narain v. Badri Das*, AIR 1963 SC 1558; *G. Narayanaswamy Reddy v. Govt. of Karnataka*, (1991) 3 SCC 261; *Dalip Singh v. State of U.P.*, (2010) 2 SCC 114; (2010) 1 SCC (Civ) 324; *Abhyudya Sanstha v. Union of India*, (2011) 6 SCC 145; (2011) 3 SCC (Civ) 241, referred to

- b* The NEERI Reports of 1998, 1999, 2003 and 2005 show that the plant of the appellant did pollute the environment through emissions which did not conform to the standards laid down by the TNPCB under the Air Act and through discharge of effluent which did not conform to the standards laid down by the TNPCB under the Water Act. On account of some of these deficiencies, TNPCB also did not renew the consent to operate for some periods and yet the appellants continued to operate its plant without such renewal. For such damages caused to the environment from 1997 to 2012 and for operating the plant without a valid renewal for a fairly long period, the appellant Company obviously is liable to compensate by paying damages. (Para 45)

- c* Considering the magnitude, capacity and prosperity of the appellant Company, the appellant Company is directed to pay compensation of Rs 100 crores. The aforesaid amount will be deposited with the Collector of Thoothukudi District who will invest it in a fixed deposit. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. (Paras 47 and 50)

M.C. Mehta v. Union of India, (1987) 1 SCC 395; 1987 SCC (L&S) 37, followed

NEERI (National Environmental Engineering and Research Institute) reports of 1998, 1999, 2003 and 2005; Annual Report 2011 of the Sterlite Industries, at pp. 20 and 21, referred to

- e* The efforts of writ petitioners before the High Court and the intervenor before the Supreme Court are appreciated for having taken up the cause of the environment both before the High Court and the Supreme Court and for having assisted the Supreme Court on all dates of hearing with utmost sincerity and hard work. Voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of the environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervenor before the Supreme Court not only ventured but also put in their best for the cause of the general public. (Para 49)

Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212, relied on

- g* The impugned common judgment of the High Court is, therefore, set aside and it is made clear that the present judgment will not stand in the way of the TNPCB issuing directions to the appellant Company, including a direction for closure of the plant, for the protection of environment in accordance with law. It is also made clear that the direction for payment of compensation of Rs 100 crores by the present judgment against the appellant Company for the period from 1997 to 2012 will not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law. (Paras 50 and 51)

National Trust for Clean Environment v. Union of India, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), reversed

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SS D/51576/C

582

SUPREME COURT CASES

(2013) 4 SCC

Advocates who appeared in this case :

P.P. Malhotra, Additional Solicitor General, S. Guru Krishna Kumar, Additional Advocate General, C.A. Sundaram, C.U. Singh, Raj Panjwani and V. Prakash, Senior Advocates (Ms Rohini Musa, Zafar Inayat, Yogesh V. Kotemath, S. Raghunathan, Mahesh Agarwal, Rishi Agarwal, E.C. Agarwala, Ms Radhika Gautam, Abhinav Agrawal, Ms Rashmi Nandakumar, Rahul Chowdhury, Ms Anitha Shenoy, Ms Vinila Sinha, Yasser Rauf, B. Krishna Prasad, Subramonium Prasad, Ms Manju Jana, Shivaji M. Jadhav, Vijay Panjwani, G. Devedoss, M.S.M. Asaitthambi, G. Ananthaselvam, M. Yogesh Kanna, R. Veeramani, A. Prasanna Venkat, S. Beno Bencigar, P. Somasundaram, Abhay Kumar, V.N. Subramaniam, V. Senthila Kumar, K. Krishna Kumar and M.A. Chinnasamy, Advocates) for the appearing parties and Vaiko alias V. Gopalsamy, Respondent-in-Person.

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STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 583

The Judgment of the Court was delivered by

A.K. PATNAIK, J.—Leave granted.

a

Facts

b **2.** The relevant facts very briefly are that the appellant Company applied and obtained “no-objection certificate” on 1-8-1994 from the Tamil Nadu Pollution Control Board (for short “the TNPCB”) for setting up a copper smelter plant (for short “the plant”) in Melavittan Village, Tuticorin. On 16-1-1995, the Ministry of Environment and Forests, Government of India, granted environmental clearance to the setting up of the plant of the appellants at Tuticorin subject to certain conditions including those laid down by the TNPCB and the Government of Tamil Nadu. On 17-5-1995, the Government of Tamil Nadu granted clearance subject to certain conditions and requested the TNPCB to issue consent to the proposed plant of the appellants. Accordingly, on 22-5-1995, the TNPCB granted its consent under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (for short “the Air Act”) and under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (for short “the Water Act”) to the appellants to establish the plant in the SIPCOT Industrial Complex, Melavittan Village, Tuticorin Taluk.

d **3.** The environmental clearance granted by the Ministry of Environment and Forests, Government of India, and the consent orders under the Air Act and the Water Act granted by the TNPCB were challenged before the Madras High Court in WPs Nos. 15501-503 of 1996 by the National Trust for Clean Environment. While these writ petitions were pending, the appellants set up the plant and commenced production on 1-1-1997. Writ Petition No. 5769 of 1997 was then filed by V. Gopalsamy, General Secretary, MDMK Political Party, Thayagam, praying for, inter alia, a direction to the appellants to stop forthwith the operation of the plant. Writ Petition No. 16861 of 1998 was also filed by Shri K. Kanagaraj, Secretary, CITU District Committee, District Thoothukudi, for directions to the State of Tamil Nadu, the TNPCB and the Union of India to take suitable action against the appellant Company for its failure to take safety measures due to which there were pollution and industrial accidents in the plant.

g **4.** A Division Bench of the High Court heard Writ Petitions Nos. 15501-503 of 1996, Writ Petition No. 5769 of 1997 and Writ Petition No. 16861 of 1998 and by the common judgment dated 28-9-2010¹, allowed and disposed of the writ petitions with the direction to the appellant Company to close down its plant at Tuticorin. By the common judgment, the High Court also declared that the employees of the appellant Company would be entitled to compensation under Section 25-FFF of the Industrial Disputes Act, 1947 and directed the District Collector, Tuticorin, to take all necessary and immediate steps for the re-employment of the workforce of the appellant Company in some other companies/factories/organisations so as to protect their livelihood

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¹ *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

584

SUPREME COURT CASES

(2013) 4 SCC

and to the extent possible take into consideration their educational and technical qualifications and also the experience in the field.

5. Aggrieved, the appellant has filed these appeals against the common judgment dated 28-9-2010¹ of the Division Bench of Madras High Court and on 1-10-2010, this Court passed an interim order² staying the impugned judgment of the High Court.

Contentions on behalf of the appellants

6. Mr C.A. Sundaram, learned Senior Counsel appearing for the appellants, submitted that one of the grounds stated in the impugned judgment¹ of the High Court for directing closure of the plant of the appellants was that the TNPCB had stipulated in the consent order dated 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km away from the ecologically sensitive area and as per the report of NEERI (National Environmental Engineering and Research Institute) of 1998 submitted to the High Court, the plant is situated within 25 km from four of the twenty-one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, which are at distances of 6 km, 7 km and 15 km respectively from Tuticorin where the plant is located:

6.1. He submitted that there is no notification issued by the Central Government under Rule 5(1) of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of an industry in Tuticorin area. He submitted that the Government of Tamil Nadu, however, had issued a Notification dated 10-9-1986 notifying its intention under Section 35(1) of the Wild Life (Protection) Act, 1972 to declare the twenty-one islands of the Gulf of Munnar as a marine national park, but no notification has yet been issued by the Government of Tamil Nadu under Section 35(4) of the aforesaid Act declaring the twenty-one islands of the Gulf of Munnar as a national park.

6.2. He explained that prior to the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986, some environmental guidelines had been issued by the Ministry of Environment and Forests, Department of Environment, Government of India, in August 1985 and one of the guidelines therein was that industries must be located at least 25 km away from the ecologically sensitive areas and it is on account of these guidelines that the TNPCB in its consent order dated 22-5-1995 under the Water Act had stipulated that the plant of the appellants should be situated 25 km away from ecologically sensitive areas. He submitted that this stipulation was made in the consent order under the Water Act because the plant was likely to discharge effluent which could directly or indirectly affect the ecologically sensitive areas within 25 km of the industry, but in the consent

¹ *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

² *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC), wherein it was directed:

“List on 18-10-2010. Interim stay of the impugned judgment of the High Court till then.”

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 585

a order issued on 14-10-1996 to operate the industry, this stipulation was removed and instead it was stipulated in Clause 20 that the unit shall re-use the entire quantity of treated effluent in the process and ensure that no treated effluent is discharged into inland surface water or on land or sewer or sea as proposed by the unit.

b **6.3.** He submitted that in any case the consent for establishment issued under the Water Act by the TNPCB would show that the appellant Company was given the consent to establish its copper smelter project in SIPCOT Industrial Complex irrespective of the distance at which the SIPCOT Industrial Complex was located from any ecologically sensitive area and in the SIPCOT Industrial Complex, many other chemical industries are located and the High Court appears to have lost sight of this aspect of the consent given by the TNPCB to establish the plant.

c **7.** Mr Sundaram submitted that the second ground given by the High Court for directing closure of the plant of the appellants was that this being a project exceeding Rs 50 crores, environmental clearance was required to be obtained from the Ministry of Environment and Forests, Government of India, after a public hearing which was a mandatory requirement but no materials were produced before the High Court to show that there was any such public hearing conducted before the commencement of the plant of the appellant Company. He submitted that when the environmental clearance was granted to the appellant Company the Environmental Impact Assessment (for short "EIA") Notification dated 27-1-1994 was in force and this notification did not make public hearing mandatory and only stated that comments of the public may be solicited if so recommended by the Impact Assessment Agency within 30 days of the receipt of the proposal. He submitted that the High Court, therefore, was not correct in taking a view that a public hearing was mandatory during EIA before environmental clearance was given by the Ministry of Environment and Forests, Government of India. He clarified that by a subsequent Notification dated 10-4-1997, a public hearing was made compulsory but by the time this notification came into force environmental clearance had already been granted to the plant of the appellants on 16-1-1995.

f **8.** Mr Sundaram submitted that the High Court also took the view in the impugned judgment¹ on the basis of the report of the NEERI of 1998 that there was undue haste on the part of the governmental authorities in granting permissions and consents to the appellant Company. He submitted that in an explanatory note to the EIA Notification dated 27-1-1994 the Central Government has clarified that rapid EIA could also be conducted for obtaining environment clearance for any new project/activity and therefore the State Government while granting no-objection certificate by its Letter dated 1-8-1994 asked the appellants to conduct rapid EIA based on one season data and the appellants carried out rapid EIA study based on the data collected by the M/s Tata Consultancy Service (TCS). He relied on the

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¹ *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

586

SUPREME COURT CASES

(2013) 4 SCC

affidavit dated 1-12-1998 filed on behalf of the Ministry of Environment and Forests, Government of India to submit that rapid EIA before granting clearance to the plant of the appellant was conducted in accordance with the guidelines. a

9. Mr Sundaram submitted that the third ground on which the High Court directed closure of the plant of the appellants was that the TNPCB stipulated a condition in Clause 20 of the no-objection certificate that the appellants will develop a green belt of 250 metres width around the battery limit of the industry as contemplated under the environmental management plan but subsequently the appellant Company submitted a representation to TNPCB requesting TNPCB to reduce the requirement of green belt from 250 metres to the width of 10-15 metres as development of the green belt of 250 metres width requires a land of around 150 acres and TNPCB in its meeting held on 18-8-1994 relaxed this condition and stipulated that the appellant Company will develop a green belt of minimum width of 25 metres. He submitted that the land allocated by SPCOR to the appellants was not sufficient to provide a green belt of 250 metres width around the plant and hence this was an impossible condition laid down in the no-objection certificate and for this reason the appellants approached the TNPCB to modify this condition and the TNPCB reduced the width of the green belt to 25 metres. He further submitted that generally, the TNPCB and the Ministry of Environment and Forests, Government of India, have been insisting on a green belt of 25% of the plant area and the appellants could not be asked to provide a green belt of more than 25% of the plant area. b c d

10. Mr Sundaram submitted that the last ground, on which the High Court directed closure of the plant of the appellants is that the plant of the appellants has caused severe pollution in the area as has been recorded by NEERI in its report of 2005 submitted to the High Court and the groundwater samples taken from the area indicate that the copper, chrome, lead cadmium and arsenic and the chloride and fluoride content is too high when compared to the Indian drinking water standards. He referred to the reports of NEERI of 1998, 1999, 2003 and 2005 submitted to the High Court and the report of NEERI of 2011 and also the joint inspection report of TNPCB and CPCB of September 2012 submitted to this Court, to show that the finding of the High Court that the plant of the appellants had caused severe pollution in the area was not correct. He vehemently submitted that though there were no deficiencies in the plant of the appellants, the TNPCB in its affidavit has referred to its recommendations as if there were deficiencies. He submitted that the recommendations made by the TNPCB were only to provide the best of checks in the plant against environmental pollution with a view to ensure that the plant of the appellants becomes a model plant from the point of view of the environment, but that does not mean that the plant of the appellants had deficiencies which need to be corrected. He submitted that the reports of NEERI of 2005 and 2011 referred to accumulation of gypsum and phosphogypsum, which come out from the plant of the appellants as part of the slag but the opinion of CPCB in its letter dated 17-11-2003 to the TNPCB e f g h

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 587

is that such slag is non-hazardous and can be used in cement industries, for filling up lower level area and as building/road construction material, etc. and has no adverse environmental effects.

11. Mr Sundaram finally submitted that since none of the grounds given by the High Court in the impugned judgment¹ for directing closure of the plant of the appellants are well-founded, it is a fit case in which this Court should set aside the impugned judgment¹ of the High Court and allow the appeals. He submitted that the plant of the appellants produces 2,02,000 metric tonnes of copper which constitute 39% of the total of 5,14,000 metric tonnes of copper produced in India and that 50% of the copper produced by the plant of the appellants is consumed in the domestic market and the balance 50% is exported abroad. He also submitted that the plant provides direct and indirect employment to about 3000 people and yields a huge revenue to both the Central and State Governments. He submitted that closure of the plant of the appellants, therefore, would also not be in the public interest.

Contentions on behalf of the respondent-writ petitioner

12. Mr V. Gopalsamy, who was the writ petitioner in Writ Petition No. 5769 of 1997 before the High Court, appeared in person and supported the impugned judgment¹ of the High Court. He submitted that the TNPCB in its no-objection certificate dated 1-8-1994 as well as in its consent order dated 22-5-1995 under the Water Act clearly stipulated that the appellant Company shall ensure that the location of its unit should be 25 km away from the ecologically sensitive area and the Government of Tamil Nadu in their affidavit dated 27-10-2012 have stated that all the 21 islands including the four near Tuticorin in the Gulf of Munnar marine national park are ecologically sensitive areas. He submitted that NEERI in its report of 1998 has observed that four out of twenty-one islands, namely, Vanthivu, Kasuwar, Karaichalli and Villanguehalli, are at distances of 6 km, 7 km and 15 km respectively from Tuticorin. He further submitted that merely because a condition has been subsequently imposed on the appellant Company by TNPCB not to discharge any effluent to the sea, the restriction of minimum 25 km distance from the ecologically sensitive area from location of the unit of the appellants cannot be lifted particularly when the Government of Tamil Nadu as well as the Central Government are treating the Gulf of Munnar as a marine national park and extending financial assistance for the development of its ecology. He submitted that the proposal for issuance of a declaration under Section 35(4) of the Wild Life (Protection) Act, 1972 is pending for concurrence of the Central Government and, therefore, the ecological balance in the area of Gulf of Munnar would be disturbed if the plant of the appellants continues at Tuticorin and the High Court was right in directing closure of the plant of the appellants located at Tuticorin.

¹ *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

588

SUPREME COURT CASES

(2013) 4 SCC

13. Mr V. Gopalsamy submitted that the High Court was similarly right in directing closure of the plant of the appellants on the ground that the appellants did not develop a green belt of 250 metres width around their plant as stipulated in the no-objection certificate dated 1-8-1994 of the TNPCB and instead represented to the TNPCB and got the green belt reduced to only 25 metres width. He submitted that considering the grave adverse impact on the environment by the plant of the appellants, a 250 metres width of green belt was absolutely a must but the TNPCB very casually reduced the green belt from 250 metres width to 25 metres. He submitted that it will be seen from the joint report of the TNPCB and CPCB filed pursuant to the order dated 27-8-2012³ of this Court that as a condition of the renewal of the consent order, the appellant Company has been asked to develop a green belt to an extent of 25% of the total area of 172.17 ha which works out to 43.04 ha and yet the TNPCB has found development of green belt of 26 ha as sufficient compliance. He submitted that the appellants would, therefore, be required to develop a green belt of 17.04 ha more for compliance with the condition for renewal of consent stipulated by the TNPCB.

14. Mr V. Gopalsamy submitted that for their plant, the appellants have been importing copper concentrate from Australian mines which are highly radioactive and contaminated and contains high levels of arsenic, uranium, bismuth, fluorine and experts of environment like Mark Chernaik have given a report on the adverse impacts of the plant of the appellants at Tuticorin on the environment. In this context, he also submitted that an American company, namely, the Asarco producing copper had to be closed down on account of such adverse environmental effects. He submitted that the claim of the appellants that their plant has no deficiencies and that it does not have any impact on the environment is not correct and different reports of the NEERI would show that the plant of the appellants is continuing to pollute the

3 *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), wherein it was directed:

"1. Mr C.A. Sundaram, learned Senior Counsel states that pursuant to the order passed by this Court on 9-5-2012, the petitioner is taking effective steps to ensure strict compliance with the various conditions attached to the consent given by the Tamil Nadu Pollution Control Board. He further submits that the entire procedure for compliance with the conditions for consent will be completed by 31-8-2012.

2. The learned counsel appearing for the Tamil Nadu Pollution Control Board submits that, in fact, the Board was ready with an affidavit to be filed in Court today. However, in case the petitioner is able to achieve satisfactorily the required standards in the conditions imposed by the Tamil Nadu Pollution Control Board by 31-8-2012, the Board shall submit a detailed status report thereafter. The learned counsel appearing for the Central Pollution Control Board, in our opinion, has rightly made a submission that the Central Pollution Control Board shall also participate in the inspection to be carried out jointly by the Tamil Nadu Pollution Control Board and Central Pollution Control Board.

3. Let the inspection be completed by 14-9-2012. The joint report be submitted to the Court in a sealed cover. The Tamil Nadu Pollution Control Board is permitted to file any additional affidavit if deemed necessary by the said Board. However, advance copy of the same shall be given to the petitioner, the learned counsel for the Central Pollution Control Board as well as to the other respondents.

4. List the matter on 1-10-2012."

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Pataik. J.*) 589

air and has also affected the groundwater of the area by discharging effluent and the High Court, therefore, rightly directed the closure of the plant.

- a 15. Mr Gopalsamy submitted that the appellants had initially proposed to establish the plant in Gujarat but this was opposed vehemently and the appellants decided to shift the establishment of the plant to Goa but because of opposition the plant could not be established in Goa. He submitted that the appellants thereafter intended to set up the plant at Ratnagiri in Maharashtra and invested Rs 200 crores in construction activities after obtaining environmental clearance but because of the opposition of the farmers of Ratnagiri, the Maharashtra Government had to revoke the licence granted to the appellants. He submitted that the appellants have been able to set up the plant at Tuticorin in Tamil Nadu by somehow obtaining environmental clearance from the Ministry of Environment and Forests, Government of India, without a public hearing and the consents under the Water Act and the Air Act from the TNPCB and the High Court rightly allowed the writ petitions and directed closure of the plant of the appellants.
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- d 16. Mr V. Prakash, learned Senior Counsel appearing for the writ petitioner, National Trust for Clean Environment, in Writ Petitions Nos. 15501-503 of 1996 before the High Court, submitted that the appellants had made a false statement in the synopsis at p. (B) of the special leave petition that it has been consistently operating for more than a decade with all necessary consents and approvals from all the statutory authorities without any complaint. He submitted that similarly in Ground IV at p. 45 of the special leave petitions the appellants have falsely stated that the High Court has erred in not appreciating that the appellants had got all the statutory approvals/consent orders from the authorities concerned as also the Central Government and the State Government. He submitted that the report of NEERI of 2011 would show that the appellants did not have valid consent during various periods including the period when it filed the special leave petitions. He submitted that the appellants did not also inform this Court that when they moved this Court on 1-10-2010 to stay the operation of the impugned order¹ of the High Court, the plant of the appellants had already stopped operation. He vehemently argued that due to misrepresentation of the material facts by the appellants in the special leave petitions as well as suppression of the material facts, this Court was persuaded to pass the stay order dated 1-10-2010². He argued that on this ground alone this Court should refuse to grant relief to the appellants in exercise of its discretion under Article 136 of the Constitution.
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- g 17. Mr V. Prakash relied on the decisions of this Court in *Hari Narain v. Badri Das*⁴, *G. Narayanaswamy Reddy v. Govt. of Karnataka*⁵ and

1 *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28.9.2010 (Mad)

2 *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1.10.2010 (SC)

4 AIR 1963 SC 1558

5 (1991) 3 SCC 261

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590

SUPREME COURT CASES

(2013) 4 SCC

*Dalip Singh v. State of U.P.*⁶ and *Abhyudya Sanstha v. Union of India*⁷ for the proposition that this Court can refuse relief under Article 136 of the Constitution where the appellants have not approached this Court with clean hands and have made patently false statements in the special leave petition.

18. Mr Prakash next submitted that the main ground that was taken in the writ petitions before the High Court by the National Trust for Clean Environment was that the Ministry of Environment and Forests, Government of India, and the TNPCB had not applied their mind to the nature of the industry as well as the pollution fallout of the industry of the appellants and the capacity of the unit of the appellants to handle the waste without causing adverse impact on the environment as well as on the people living in the vicinity of the plant. He submitted that this Court has already held that a right to clean environment is part of the right to life guaranteed under Article 21 of the Constitution and has explained the precautionary principle and the principle of sustainable development in *Vellore Citizens' Welfare Forum v. Union of India*⁸, *Tirupur Dyeing Factory Owners Assn. v. Noyyal River Ayacutdars Protection Assn.*⁹ and *M.C. Mehta v. Union of India*¹⁰. He submitted that these principles, therefore, have to be borne in mind by the authorities while granting environmental clearance and consent under the Water Act or the Air Act, but unfortunately both the Ministry of Environment and Forests, Government of India, and the TNPCB have ignored these principles and have gone ahead and hastily granted environmental clearance and the consent under the two Acts. He submitted that, in the present case, the appellants have relied on the rapid EIA done by Tata Consultancy Service, but this rapid EIA was based on the data which is less than the month's particulars and is inadequate for making a proper EIA which must address the issue of the nature of the manufacturing process, the capacity of the manufacturing facility and the quantum of production the quantum and nature of pollutants, air, liquid and solid and handling of the waste.

19. Mr Prakash referred to the report of NEERI of 1998 submitted to the High Court to show that the inspection team of NEERI collected waste water samples from the plant of the appellants and an analysis of the waste water samples indicate that the treatment plant of the appellants was operating inefficiently as the levels of arsenic, selenium and lead in the treated effluent as also the effluent stored in the surge ponds were higher than the standards stipulated by the TNPCB. He also referred to the report of NEERI of February 1999 in which NEERI has stated that the treated effluent quality did not conform to the standards stipulated by the TNPCB.

20. Mr Prakash further submitted that the counter-affidavit of the Union of India filed on 1-12-1998 before the High Court also does not disclose whether, apart from the rapid EIA of Tata Consultancy Services, there was

6 (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324

7 (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241

8 (1996) 5 SCC 647

9 (2009) 9 SCC 737

10 (2009) 6 SCC 142

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 591

a any independent evaluation of the rapid EIA by the environmental impact assessment authority, namely, the Ministry of Environment and Forests. He submitted that the TNPCB in its no-objection certificate dated 1-8-1994 has stipulated in Clause 18 that the appellants have to carry out rapid EIA (for one season other than monsoon) as per the EIA Notification dated 27-1-1994 issued by the Ministry of Environment and Forests, Government of India, and furnish a copy to the TNPCB and this clause itself would show that TNPCB had not applied its mind as to whether there was a sufficient rational analysis of the nature of the industry, nature of pollutants, quantum of fallout and the plan or method for handling the waste. He submitted that since there was no application of mind by either the Ministry of Environment and Forests, Government of India, before granting the environmental clearance or by the TNPCB before granting the consents under the Water Act and the Air Act, the environmental clearance and the consent orders are liable to be quashed.

c **21.** In support of his submissions, Mr Prakash cited *East Coast Railway v. Mahadev Appa Rao*¹¹, for the proposition that for a valid order there has to be application of mind by the authority, and in the absence of such application of mind by the authority, the order is arbitrary and is liable to be quashed. He cited the decision of the Lords of the Judicial Committee of the Privy Council in *Belize Alliance of Conservation Non-Governmental Organisations v. Deptt. of the Environment*¹², WIR at para 69 in which it has been observed that EIA is expected to be comprehensive in treatment of the subject, objective in its approach and must meet the requirement that it alerts the decision-maker to the effect of the activity on the environment and the consequences to the community.

e **22.** Mr Prakash also relied on the judgment of the Supreme Court of Judicature of Jamaica in *Northern Jamaica Conservation Assn. v. Natural Resources Conservation Authority*¹³ to argue that a public hearing was a must for grant of environmental clearance and submitted that as there was no public hearing in this case and there was inadequate EIA before the grant of the environmental clearance for the plant of the appellants, the High Court has rightly directed closure of the plant of the appellants.

f **23.** Finally, Mr Prakash submitted that the finding of the High Court that the plant of the appellants continues to pollute the environment has been substantiated by the inspection report which has been filed in this Court by NEERI as well as the TNPCB from time to time. In particular, he referred to the joint inspection report of the TNPCB and CPCB to show that the directions issued by the TNPCB to improve solid waste disposal has not been complied with. He submitted that one of the conditions of the consent order of the TNPCB was that no slag was to be stored in the premises of the plant but huge quantity of slag has been stored in the premises of the plant and the direction to dispose at least 50% more than the monthly generation quantities of both slag and gypsum has not been complied with. He vehemently argued

h ¹¹ (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483

¹² (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC)

¹³ Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC)

592

SUPREME COURT CASES

(2013) 4 SCC

that unless the plant is shut down, the appellants will not be able to clear the huge quantity of slag and gypsum lying in the plant premises. He submitted that it is not correct as has been submitted on behalf of the appellants that the slag is not a hazardous waste containing arsenic and will certainly jeopardise the environment. He argued that there was therefore no other option for the High Court but to direct closure of the plant of the appellants to ensure clean environment in the area.

Contentions on behalf of the authorities

24. Mr S. Guru Krishna Kumar, learned counsel appearing for the TNPCB as well as the State of Tamil Nadu, relying on the affidavit filed on behalf of the State of Tamil Nadu on 29-10-2012 submitted that the Gulf of Munnar consisting of 21 islands in 4 groups was notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986 as this group of islands consisted of territorial waters between them and the proposal to declare Gulf of Munnar as a marine national park under Section 35(4) of the said Act was sent by the Chief Wild Life Warden to the State Government for approval on 30-4-2003 but the declaration under Section 35(4) of the said Act has not been finally made. He further submitted that all the 21 islands including the 4 islands in the Gulf of Munnar are therefore ecologically sensitive areas. He submitted that notwithstanding the fact that four of the islands were near Tuticorin, the TNPCB gave the consent under the Water Act to the appellants to set up the plant at Tuticorin because the plant has a zero effluent discharge. He also referred to the compliance affidavit of the TNPCB filed on 8-10-2012 to show that the TNPCB is monitoring the emissions from the plant of the appellants to ensure that the National Ambient Air Quality Standards are maintained.

25. Mr Vijay Panjwani, learned counsel appearing for CPCB, made a reference to Sections 3, 16 and 18 of the Water Act which relate to the CPCB and submitted that it was not for the CPCB but for the TNPCB to issue no-objection certificate and consent in respect of the plant set up in the State of Tamil Nadu. He submitted that under Rule 19 of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, however, improvement notices can be issued by the CPCB to any person to remedy the contravention of the Rules.

Contentions on behalf of the intervenor

26. Mr Raj Panjwani, learned counsel for the intervenor, submitted that a marine biosphere is an ecologically sensitive area and if in the consent order a condition was stipulated that the plant of the appellants has to be situated beyond 25 km from ecologically sensitive area, this condition has to be complied with. He further submitted that in any case the appellants are liable to compensate for having damaged the environment.

Findings of the Court

27. Writ Petition No. 15501 of 1996, Writ Petition No. 15503 of 1996 and Writ Petition No. 5769 of 1997 had been filed for quashing the environmental clearances dated 16-1-1995 and 17-5-1995 granted by the

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 593

Ministry of Environment and Forests, Government of India. to the appellants for setting up the plant at Tuticorin and by the impugned judgment¹, the High Court has not quashed the environmental clearance but has allowed the three writ petitions. Hence, the first question which we will have to decide is whether the High Court could have interfered with the environmental clearances granted by the Ministry of Environment and Forests, Government of India, and the Government of Tamil Nadu, Department of Environment?

28. The environmental clearance for setting up the plant was granted to the appellants under the Environment (Protection) Act, 1986:

28.1. Sub-section (1) of Section 3 of the Environment (Protection) Act, 1986 provides that:

“3. Power of Central Government to take measures to protect and improve environment.—(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.”

28.2. Sub-section (2) of Section 3 further provides that in particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the matters specified therein. One such matter specified in clause (v) of sub-section (2) is:

“3. (2)(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards.”

28.3. Rule 5(3) of the Environment (Protection) Rules, 1986 accordingly empowers the Central Government to impose prohibitions or restrictions on the location of an industry or the carrying on processes and operations in an area, by notification in the Official Gazette. In exercise of these powers under Section 3(2)(v) of the Environment (Protection) Act, 1986 and Rule 5(3) of the Environment (Protection) Rules, 1986, the Central Government has issued a Notification dated 27-1-1994 imposing restrictions and prohibitions on the expansion and modernisation of any activity or new projects being undertaken in any part of India unless environmental clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in the said notification.

29. Para 2 of the Notification dated 27-1-1994 lays down the requirements and procedure for seeking environmental clearance of projects, and clause (c) of Para 2 provides that the Impact Assessment Agency could solicit comments of the public within thirty days of receipt of proposal, in public hearings, arranged for the purpose, after giving thirty days' notice of such hearings in at least two newspapers, and after completion of public hearing, where required, convey its decision. The language of this notification did not lay down that the public hearing was a must. The impact

¹ *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

594

SUPREME COURT CASES

(2013) 4 SCC

assessment was done by Tata Consultancy Services as per the requirements then existing and the Government of India has granted the environmental clearance on 16-1-1995. The Notification dated 27-1-1994, however, was amended by Notification dated 10-4-1997 and it was provided in clause (c) of Para 2 of the notification that the Impact Assessment Agency shall conduct a public hearing and the procedure for public hearing was detailed in Schedule IV to the notification by the amendment Notification dated 10-4-1997. Admittedly, in this case, the environmental clearance was granted by the Ministry of Environment, Government of India, on 16-1-1995 in accordance with the procedure laid down by the Notification dated 27-1-1994 well before the Notification dated 10-4-1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. As there was no mandatory requirement in the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 that a public hearing has to be conducted before grant of environmental clearance, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before grant of the environmental clearances.

30. An explanatory note regarding the EIA Notification dated 27-1-1994 was also issued by the Central Government and Para 5 of the explanatory note clarified that project proponents could furnish rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and comprehensive EIA report may be submitted later, if so asked for by the Impact Assessment Agency and this was permitted where comprehensive EIA report would take at least one year for its preparation. In Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petitions Nos. 15501-503 of 1996, the allegation of the writ petitioner that the Ministry of Environment and Forests have accorded environmental clearance without applying its mind and without making any analysis of the adverse impacts on the marine ecological system has been denied and it has been further stated that after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis, the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and the project was accorded approval on 16-1-1995 subject to specific conditions. As the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 and as explained by the explanatory note issued by the Government of India permitted rapid EIA in certain circumstances, the High Court could not have allowed the writ petitions on the ground that environmental clearance was issued to the appellant Company on the basis of inadequate rapid EIA, particularly when the Union of India in its affidavit had clearly averred that the environmental clearance was granted after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 595

Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994).

- a 31. The High Court has noticed some decisions of this Court on sustainable development, precautionary and polluter pays principles and public trust doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well-recognised principles of judicial review as has been held by a three-Judge Bench of this Court in
- b *Lafarge Umiam Mining (P) Ltd. v. Union of India*¹⁴, SCC at p. 380. To quote *Environmental Law* edited by David Woolley, Q.C., John Pugh-Smith, Richard Langham and William Upton, Oxford University Press:

“The specific grounds upon which a public authority can be challenged by way of judicial review are the same for environmental law as for any other branch of judicial review, namely, on the grounds of

- c illegality, irrationality, and procedural impropriety.”
- Thus, if the environmental clearance granted by the competent authority is clearly outside the powers given to it by the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 or the notifications issued thereunder, the High Court could quash the environmental clearance on the
- d ground of illegality. If the environmental clearance is based on a conclusion so unreasonable that no reasonable authority could ever have come to the decision, the environmental clearance would suffer from *Wednesbury*¹⁵ unreasonableness and the High Court could interfere on the ground of irrationality. And, if the environmental clearance is granted in breach of proper procedure, the High Court could review the decision of the authority on the ground of procedural impropriety.

- e 32. Where, however, the challenge to the environmental clearance is on the ground of procedural impropriety, the High Court could quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. As stated in *Environmental Law* edited by David Woolley, Q.C., John Pugh-Smith, Richard Langham and
- f William Upton, Oxford University Press:

“It will often not be enough to show that there has been a procedural breach. Most of the procedural requirements are found in the regulations made under primary legislation. There has been much debate in the courts about whether a breach of regulations is mandatory or directory, but in the end the crucial point which has to be considered in any given

- g case is what the particular provision was designed to achieve.”
- As we have noticed, when the plant of the appellant Company was granted environmental clearance, the Notification dated 27-1-1994 did not provide for mandatory public hearing. The explanatory note issued by the Central Government on the Notification dated 27-1-1994 also made it clear that the

h ¹⁴ (2011) 7 SCC 338

¹⁵ *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)

596

SUPREME COURT CASES

(2013) 4 SCC

project proponents may furnish rapid EIA report to the IAA based on one season data (other than monsoon). for examination of the project comprehensive EIA report was not a must. In the absence of a mandatory requirement in the procedure laid down under the scheme under the Environment (Protection) Act, 1986 at the relevant time requiring a mandatory public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety.

33. Coming now to the ground of irrationality argued so vehemently by Mr V. Prakash, we find that no materials have been produced before us to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision. As we have already noticed, in Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petitions Nos. 15501-503 of 1996, it has been stated that the Ministry of Environment and Forests have accorded environmental clearance after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis, and that the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and only thereafter the project was accorded approval on 16-1-1995. No material has been placed before us to show that the decision of the Ministry of Environment and Forests to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.

34. In *Belize Alliance of Conservation Non-Governmental Organisations v. Deptt. of the Environment*¹² cited by Mr Prakash, the Lords of the Judicial Committee of the Privy Council have quoted with approval the following words of Linden, JA with reference to the Canadian legislation in *Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)*¹⁵, FC at p. 494:

“The Court must ensure that the steps in the Act are followed, but it must defer to the responsible authorities in their substantive determinations as to the scope of the project, the extent of the screening and the assessment of the cumulative effects in the light of the mitigating factors proposed. It is not for the Judges to decide what projects are to be authorised but, as long as they follow the statutory process, it is for the responsible authorities.”

The aforesaid passage will make it clear that it is for the authorities under the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 and the notifications issued thereunder to determine the scope of the project, the extent of the screening and the assessment of the cumulative

12 (2003) 1 W.L.R. 2839 : (2004) 64 W.I.R. 68 (P.C.)

15 (2001) 2 F.C. 461 (Can)

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 597

a effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review.

b 35. The next question that we have to decide is whether the High Court was right in directing closure of the plant of the appellants on the ground that the plant of the appellants is located at Tuticorin within 25 km of four of the twenty-one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli. The reason given by the High Court in coming to this conclusion is that the TNPCB had stipulated in the consent order dated 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km away from ecologically sensitive area and as per the report of NEERI, the plant of the appellants was situated at a distance of 6 km of Vanthivu, 7 km of Kasuwar and 15 km of Karaichalli and Villanguchalli and these four villages are part of the twenty-one islands in the Gulf of Munnar. Hence, the High Court directed closure of the plant because the appellant Company has violated the condition of the consent order dated 22-5-1995 issued by the TNPCB under the Water Act.

c 36. The consent order dated 22-5-1995 issued by the TNPCB under Section 25 of the Water Act states as follows:

d "Consent to establish or take steps to establish is hereby granted under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988) (hereinafter referred to as 'the Act') and the rules and orders made thereunder to

e The Chief Project Manager,
M/s Sterlite Industries (India) Limited
(Copper Smelter Project)
SIPCOT Industrial Complex,
Meelavittam Village, Tuticorin Taluk,
V.O. Chidambaraner District

f (hereinafter referred to as 'the applicant') authorising him/her/them to establish or take steps to establish the industry in the site mentioned below:

SIPCOT Industrial Complex,
Meelavittam Village, Tuticorin Taluk,
V.O. Chidambaraner District."

g The aforesaid extract from the consent order dated 22-5-1995 of the TNPCB issued under the Water Act makes it clear that the appellant Company was given consent to establish its plant in the SIPCOT Industrial Complex, Meelavittam Village, Tuticorin Taluk. Along with the consent order under the Water Act, special conditions were annexed and Clause 20 of the special conditions reads as follows:

h "20. (i) 1 km away from the water resources specified in GOMs No. 213 E&P Deptt., dt. 30-3-1989.
(ii) 25 km away from ecological/sensitive areas.
(iii) 500 metres away from high tide line."

598

SUPREME COURT CASES

(2013) 4 SCC

37. On the one hand, therefore, the appellants were given consent to establish their plant in the SIPCOT Industrial Complex, which as per the NEERI report is within 25 km of four of the twenty-one islands in the Gulf of Munnar. On the other hand, a condition was stipulated in the consent order that the appellants have to ensure that the location of the unit is 25 km away from ecologically sensitive area. It thus appears that the TNPCB while granting the consent under the Water Act for establishment of the plant of the appellants in the SIPCOT Industrial Complex added the above requirement without noting that the SIPCOT Industrial Complex was within 25 km from ecologically sensitive area. Since, however, the consent order was granted to the appellant Company to establish its plant in the SIPCOT Industrial Complex and the plant has in fact been established in the SIPCOT Industrial Complex, the High Court could not have come to the conclusion that the appellant Company had violated the consent order and directed closure of the plant on this ground.

38. This is not to say that in case it becomes necessary for preservation of ecology of the aforesaid four islands which form part of the Gulf of Munnar, the plant of the appellants cannot be directed to be shifted in future. We find from the affidavit filed on behalf of the State of Tamil Nadu on 29-10-2012 that the Gulf of Munnar consisting of 21 islands including the aforesaid four islands have been notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986 and a declaration may also be made under Section 35(4) of the said Act declaring the Gulf of Munnar as a marine national park. We have, therefore, no doubt that the Gulf of Munnar is an ecologically sensitive area and the Central Government may in exercise of its powers under clause (v) of sub-rule (1) of Rule 5 of the Environment (Protection) Rules, 1986 prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5 of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of industries within and around the Gulf of Munnar marine national park, then appropriate steps may have to be taken by all concerned for shifting the industry of the appellants from the SIPCOT Industrial Complex depending upon the content of the order or notification issued by the Central Government under the aforesaid Rule 5 of the Environment (Protection) Rules, 1986, subject to the legal challenge by the industries.

39. The next question with which we have to deal is whether the High Court could have directed the closure of the plant of the appellants on the ground that though originally the TNPCB stipulated a condition in the "no-objection certificate" that the appellant Company has to develop a green belt of 250 metres width around the battery limit of the plant, the appellants made representation to the TNPCB for reducing the width of the green belt and the TNPCB in its meeting held on 18-8-1994 relaxed this condition and required the appellants to develop the green belt with a minimum width of 25 metres:

39.1. We find on a reading of the no-objection certificate issued by the TNPCB that various conditions have been imposed on the industry of the

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 599

a appellants to ensure that air pollution control measures are installed for the control of emissions generated from the plant and that the emissions from the plant satisfy the ambient air quality standards prescribed by the TNPCB and development of green belt contemplated under the environmental management plan around the battery limit of the industry of the appellants was an additional condition that was imposed by the TNPCB in the no-objection certificate. If the TNPCB after considering the representation of the appellants has reduced the width of the green belt from a minimum of 250 metres to a minimum of 25 metres around the battery limit of the industry of the appellants and it is not shown that this power which has been exercised was vitiated by procedural breach or irrationality, the High Court in exercise of its powers of judicial review could not have interfered with the exercise of such power by the State Pollution Control Board.

c **39.2.** The High Court in the impugned judgment¹ has not recorded any finding that there has been any breach of the mandatory provisions of the Air Act or the Rules thereunder by the TNPCB by reducing the green belt to 25 metres. Nor has the High Court recorded any finding that by reducing the width of the green belt around the battery limit of the industry of the appellants from 250 metres to 25 metres, it will not be possible to mitigate the effects of fugitive emissions from the plant. The High Court has merely held that the TNPCB should not have taken such a generous attitude and should not have in a casual way dealt with the issue permitting the appellant Company to reduce the green belt particularly when there have been ugly repercussions in the area on account of the incidents which took place on 5-7-1997 onwards. It was for the TNPCB to take the decision in that behalf and considering that the appellant's plant was within a pre-existing industrial estate, the appellant could not have been singled out to require such a huge green belt.

f **40.** This takes us to the argument of Mr Prakash that had the Ministry of Environment and Forests, Government of India, applied its mind fully before granting the environment clearance and had the TNPCB applied its mind fully to the consents under the Air Act and the Water Act and considered all possible environmental repercussions that the plant proposed to be set up by the appellants would have, the environmental problems now created by the plant of the appellants would have been prevented. As we have already held, it is for the administrative and statutory authorities empowered under the law to consider and grant environmental clearance and the consents to the appellants for setting up the plant and where no ground for interference with the decisions of the authorities on well-recognised principles of judicial review is made out, the High Court could not interfere with the decisions of the authorities to grant the environmental clearance or the consents on the ground that had the authorities made a proper environmental assessment of the plant, the adverse environmental effects of the industry could have been prevented. If, however, after the environmental clearance is granted under the Environment (Protection) Act, 1986, and the Rules and the notifications

h ¹ *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

600

SUPREME COURT CASES

(2013) 4 SCC

issued thereunder and after the consents granted under the Air Act and the Water Act, the industry continues to pollute the environment so as to affect the fundamental right to life under Article 21 of the Constitution. the High Court could still direct the closure of the industry by virtue of its powers under Article 21 of the Constitution if it came to the conclusion that there were no other remedial measures to ensure that the industry maintains the standards of emission and effluent as laid down by law for safe environment (see *M.C. Mehta v. Union of India*¹⁶ in which this Court directed closure of tanneries polluting the waters of River Ganga).

41. We have, therefore, to examine whether there were materials before the High Court to show that the plant of the appellants did not maintain the standards of emission and effluent as laid down by the TNPCB and whether there were no remedial measures other than the closure of the industry of the appellants to protect the environment. We find on a reading of the impugned judgment¹ of the High Court that it has relied on the report of NEERI of 2005 to hold that the plant site itself is severely polluted and the ground samples level of arsenic justified classifying the whole site of the plant of the appellant as hazardous waste.

42. We extract hereinbelow the relevant observations of NEERI in its report of 2005 relating to air, water and soil environment in the executive summary:

“Air environment

The emission factors of SO₂ from sulphuric acid plant — I (SAP-I) and sulphuric acid plant — II (SAP-II) were 0.55 kg/MT of H₂SO₄ manufactured which is well within the TNPCB stipulated limit of 2kg/MT of H₂SO₄ manufactured.

The acid mist concentration of SAP-I was 85 mg/Nm₃, which exceeds the TNPCB limit of 50 mg/Nm₃. The acid mist concentration from SAP-II was 42 mg/Nm₃, which is well within the TNPCB limit. In view of the exceeding of TNPCB limit for acid mist, it is recommended that the performance of acid mist eliminators may be intermittently checked. It is further recommended to install a tail gas treatment plant to take care of occasional upsets.

Out of the seven DG sets, one (6.3 MW) was monitored for particulate matter (PM) emissions. The level of PM was 115 mg/Nm₃ (0.84 gm/kWh) which is within the TNPCB stipulated limit of 150 mg/Nm₃ for thermal power plants of 200 MW and higher capacity (165 mg/Nm₃) but higher than that stipulated for diesel engines/gen sets up to 800 kW capacity (0.3 gm/kWh). Therefore TNPCB may decide whether the present PM emissions from the DG sets of 6.3 MW capacity is within the limit or otherwise.

The fugitive emissions were monitored at four sites to assess the status of air quality with respect of SO₂, NO₂ and SPM. The results of

16 (1987) 4 SCC 463

¹ *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 601

a analysis at all fugitive emission monitoring sites indicate that the levels of gaseous pollutants SO₂ and NO₂, were below the respective NIOSH/OSHA standards for work place environment. The levels of SPM were also within the stipulated TNPCB standards for industrial areas.

b Impact of stack and fugitive emissions on surrounding air quality was also assessed by monitoring SO₂, NO₂ and SPM levels at five monitoring locations. The levels of SPM, SO₂ and NO₂ at all the five sites were far below the TNPCB standards of 120 µg/Nm₃ for SO₂ as well as NO₂ and 500 µg/Nm₃ for SPM for industrial zone.

Water environment

c Surface water samples were collected and analysed for physico-chemical, nutrient demand parameters. The physico-chemical characteristics and nutrient demand parameters i.e. with special reference to pH (7.9-8.0), TDS (120-160 mg/L), COD (11-18 mg/L) and levels of heavy metals viz. Cd, Cr, Cu, Pb, Fe, Mn, Zn and As in surface water, were found within the prescribed limits of drinking water standards (IS: 10500-1995).

d Total eight groundwater samples were collected (seven from hand-pumps and one from dug well) to assess the groundwater quality in the study area. The analysis on physico-chemical characteristics of groundwater samples collected from various locations showed high mineral contents in terms of dissolved solids (395-3020mg/L), alkalinity (63-210 mg/L), total hardness (225-2434 mg/L), chloride (109-950 mg/L), sulphate (29-1124 mg/L) and sodium (57-677 mg/L) as compared to the drinking water standards (IS:10500-1995). Thus, it could be concluded that water in some of the wells investigated is unfit for drinking. The concentrations of nutrient demand parameters revealed that phosphate was in the range 0.1-0.3 mg/L while nitrate was in the range 1-7.5 mg/L at all sampling locations which is within the limits stipulated under drinking water standards (IS:10500-1995). The levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards (IS:10500-1995).
f other heavy metal concentrations viz. iron, manganese, zinc and arsenic were found in the range 0.01-0.05 mg/L, ND-0.01 mg/L and ND-0.08 mg/L respectively which are within the drinking water standards (IS:10500-1995).

g To assess the impact on groundwater quality due to secured and fill sites and other waste disposal facilities, five samples were collected from monitoring wells (shallow bore wells located around the waste disposal sites). The physico-chemical characteristics of well water around secured landfill site and gypsum pond showed mineral contents higher than the levels stipulated in IS: 10500-1995 in terms of dissolved solids (400-3245 mg/L), alkalinity (57-137 mg/L), hardness (290-1280 mg/L), chloride (46-1390 mg/L), sulphate (177-649 mg/L) and sodium (9-271 mg/L). The results of nutrient demand parameters showed phosphate in
h the range 0.1-0.5 mg/L while nitrate was in the range 0.8-11.7 mg/L at all sampling locations, which are within the levels stipulated in IS:10500-

602

SUPREME COURT CASES

(2013) 4 SCC

1995, whereas level of arsenic was found in the range of ND-0.08 mg/l. as against the stipulated limit of 0.05 mg/L under drinking water standards (IS:10500-1995). The levels of cadmium, chromium, copper and lead were also found to exceed the drinking water standards in some of the wells. a

The hourly composite wastewater samples were collected at six locations. During the sample collection, flow monitoring was also carried out at the inlet and final outlet of the effluent treatment plant (ETP). The concentrations of total dissolved solid (TDS) and sulphate exceed the limit stipulated by the TNPCB for treated effluent. All the other parameters are within the consent conditions prescribed by TNPCB. The treated effluent is being recycled back in the process to achieve zero discharge. b

Soil environment

Soil samples were also analysed for level of heavy metals. The soil samples at the plant site showed presence of As (132.5 to 163.0 mg/kg). Cu (8.6 to 163.5 mg/kg), Mn (283 to 521.0 mg/kg) and Fe (929.6 to 1764.6 mg/kg). Though there is no prescribed limit for heavy metal contents in soil, the occurrence of these heavy metals in the soil may be attributed to fugitive emission, solid waste dumps, etc." c

It will be clear from the extracts from the Executive Summary of NEERI in its report of 2005, that while some of the emissions from the plant of the appellants were within the limits stipulated by the TNPCB, some of the emissions did not conform to the standards stipulated by TNPCB. It will also be clear from the extracts from the executive summary relating to water environment that the surface water samples were found to be within the prescribed limits of drinking water (IS:10500-1995) whereas groundwater samples showed high mineral contents in terms of dissolved solids as compared to the drinking water standards, but concentrations of nutrient demand parameters revealed that the phosphate and nitrate contents were within the limits stipulated under drinking water standards and levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards, whereas the heavy metal concentrations, namely, iron, manganese, zinc and arsenic were within the drinking water standards. Soil samples also revealed heavy metals. Regarding the solid waste out of slag in the plant site, the CPCB has taken a view in its communication dated 17-11-2003 to TNPCB that the slag is non-hazardous. Thus, the NEERI report of 2005 did show that the emission and effluent discharged affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants. d
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43. In fact, this Court passed orders on 25-2-2011¹⁷ directing a joint inspection by NEERI (National Environmental Engineering Research Institute) with the officials of the Central Pollution Control Board (for short h

¹⁷ *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 13 SCC 769

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Pamaik, J.*) 603

a “the CPCB”) as well as the TNPCB. Accordingly, an inspection was carried out during 6-4-2011 to 8-4-2011 and 19-4-2011 to 22-4-2011 and a report was submitted by NEERI to this Court. On 18-7-2011, this Court directed¹⁸ the Tamil Nadu Government and the TNPCB to submit their comments with reference to the NEERI report. On 25-8-2011, this Court directed¹⁹ TNPCB to file a synopsis specifying the deficiencies with reference to the NEERI report and suggest control measures that should be taken by the appellants so that this Court can consider the direction to be issued for remedial measures which can be monitored by the TNPCB. Accordingly, the TNPCB filed an affidavit dated 30-8-2011 along with the chart of deficiencies and measures to be implemented by the appellants and on 11-10-2011, this Court directed²⁰ the TNPCB to issue directions, in exercise of its powers under the Air Act and the Water Act to the appellants to carry out the measures and remove the deficiencies indicated in the chart. Pursuant to the order dated 11-10-2011²⁰, the TNPCB issued directions to the appellants and on 17-1-2012, the appellants claimed before the Court that they have removed the deficiencies pointed out by the TNPCB and on 27-8-2012, this Court directed³ that a joint inspection be carried out by TNPCB and CPCB and completed by 14-9-2012 and a joint report be submitted to this Court.

d 44. The conclusion in the joint inspection report of CPCB and TNPCB is extracted hereinbelow:

e “Out of the 30 directions issued by the Tamil Nadu Pollution Control Board, the industry has complied with 29 directions. The remaining Direction 1(3) under the Air Act on installation of bag filter to converter is at the final stage of erection, which will require further 15 working days to fully comply as per the industry’s revised schedule.”

f From the aforesaid conclusion of the joint inspection report, it is clear that out of the 30 directions issued by the TNPCB, the appellant Company has complied with 29 directions and only one more direction under the Air Act was to be complied with. As the deficiencies in the plant of the appellants which affected the environment as pointed out by NEERI have now been removed, the impugned order¹ of the High Court directing closure of the plant of the appellants is liable to be set aside.

g 45. We may now consider the contention on behalf of the intervenors that the appellants were liable to pay compensation for the damage caused by the plant to the environment. The NEERI reports of 1998, 1999, 2003 and 2005 show that the plant of the appellant did pollute the environment through emissions which did not conform to the standards laid down by the TNPCB under the Air Act and through discharge of effluent which did not conform to the standards laid down by the TNPCB under the Water Act. As pointed out by

18 *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 13 SCC 772

19 *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 13 SCC 773

20 *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 10 SCC 254

h 3 *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC)

1 *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

604

SUPREME COURT CASES

(2013) 4 SCC

Mr V. Gopalsamy and Mr Prakash, on account of some of these deficiencies, TNPCB also did not renew the consent to operate for some periods and yet the appellants continued to operate its plant without such renewal. This is evident from the following extracts from the NEERI Report of 2011:

“Further, renewal of the consent to operate was issued vide the following proceedings numbers and validity period:

<i>TNPCB proceeding</i>	<i>Validity up to</i>
No. T7/TNPCB/F.22276/RL/TTN/W/2007 dated 7-5-2007	30-9-2007
No. T7/TNPCB/F.22276/RI/TTN/A/2006 dated 7-5-2007	
No. T7/TNPCB/F.22276/URL/TTN/W/2008 dated 19-1-2009	31-3-2009
No. T7/TNPCB/F.22276/URL/TTN/A/2008 dated 19-1-2009	
No. T7/TNPCB/F.22276/URI/TTN/W/2009 dated 14-8-2009	31-12-2009
No. T7/TNPCB/F.22276/URI/TTN/A/2009 dated 14-8-2009	

Thereafter, the TNPCB did not renew the consents due to non-compliance with the following conditions:

Under the Water Act, 1974

(i) The unit shall take expedite action to achieve the time-bound target for disposal of slag, submitted to the Board, including BIS clearance before arriving at disposal to cement industries, marine impact study before arriving at disposal for landfill in abandoned quarries.

(ii) The unit shall take expedite action to dispose the entire stock of the solid waste of gypsum.

Under the Air Act, 1981

(i) The unit shall improve the fugitive control measure to ensure that no secondary fugitive emission is discharged at any stage, including at the points of material handling and vehicle movement area.”

For such damages caused to the environment from 1997 to 2012 and for operating the plant without a valid renewal for a fairly long period, the appellant Company obviously is liable to compensate by paying damages.

46. In *M.C. Mehta v. Union of India*²¹, a Constitution Bench of this Court held: (SCC pp. 420-21, para 31)

“31. ... The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is

²¹ (1987) 1 SCC 395 : 1987 SCC (L&S) 37

STERILITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 605

a engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.”

b The Constitution Bench in the aforesaid case further observed that the quantum of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it.

47. In the Annual Report 2011 of the appellant Company, at pp. 20 and 21, the performance of its copper project is given. We extract hereinbelow the paragraph titled “Financial Performance”:

c “PBDIT for the financial year 2010-2011 was Rs 1043 crores, 40% higher than PBDIT of Rs 744 crores for the financial year 2009-2010. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realisation.”

d Considering the magnitude, capacity and prosperity of the appellant Company, we are of the view that the appellant Company should be held liable for a compensation of Rs 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, any less amount, would not have the desired deterrent effect on the appellant Company. The aforesaid amount will be deposited with the Collector of Thoothukudi District, who will invest it in a fixed deposit with a nationalised bank for a period of five years. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu.

e
f 48. We now come to the submission of Mr Prakash that we should not grant relief to the appellants because of the misrepresentation and suppression of material facts made in the special leave petition that the appellants have always been running their plant with statutory consents and approvals and misrepresentation and suppression of material facts made in the special leave petition that the plant was closed at the time the special leave petition was moved and a stay order was obtained from this Court on 1-10-2010². There is no doubt that there has been misrepresentation and suppression of material facts made in the special leave petition but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile, construction and infrastructure, etc. The plant of the appellants has about 1300 employees and it also provides employment to a large number of people

h
2 *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC)

606

SUPREME COURT CASES

(2013) 4 SCC

through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates a huge revenue to the Central and State Governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin Port. For these considerations of public interest, we do not think it will be a proper exercise of our discretion under Article 136 of the Constitution to refuse relief on the grounds of misrepresentation and suppression of material facts in the special leave petition.

49. Before we part with this case, we would like to put on record our appreciation for the writ petitioners before the High Court and the intervenor before this Court for having taken up the cause of the environment both before the High Court and this Court and for having assisted this Court on all dates of hearing with utmost sincerity and hard work. In *Indian Council for Enviro-Legal Action v. Union of India*²², this Court observed that voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervenor before this Court not only ventured but also put in their best for the cause of the general public.

50. In the result, the appeals are allowed and the impugned common judgment¹ of the High Court is set aside. The appellants, however, are directed to deposit within three months from today a compensation of Rs 100 crores with the Collector of Thoothukudi District, which will be kept in a fixed deposit in a nationalised bank for a minimum of five years, renewable as and when it expires, and the interest therefrom will be spent on suitable measures for improvement of the environment, including water and soil, of the vicinity of the plant of the appellants after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. In case the Collector of Thoothukudi District, after consultation with TNPCB, finds the interest amount inadequate, he may also utilise the principal amount or part thereof for the aforesaid purpose after approval from the Secretary, Environment, Government of Tamil Nadu. By this judgment, we have only set aside the directions of the High Court in the impugned common judgment¹ and we make it clear that this judgment will not stand in the way of the TNPCB issuing directions to the appellant Company, including a direction for closure of the plant, for the protection of environment in accordance with law.

51. We also make it clear that the award of damages of Rs 100 crores by this judgment against the appellant Company for the period from 1997 to 2012 will not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law.

22 (1996) 3 SCC 212

¹ *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

2015 SCC OnLine NGT 5

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

In the National Green Tribunal, Principal Bench New Delhi
(BEFORE SWATANTER KUMAR, CHAIRPERSON, U.D. SALVI, J.M., DR. D.K. AGRAWAL, E.M. AND
PROFESSOR A.R. YOUSUF, E.M.)

In the Matter of:

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

Versus

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

Original Application No. 222 of 2014

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

Counsel for Applicant:

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

Counsel for Respondents:

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

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

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

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

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

JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Discussion on Merits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“PRAYER

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

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

INTERIM PRAYERS

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

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

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

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

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

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

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

"34.

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

(Refer: *Nivedita Sharma*).

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

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

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

In *Chhabil Dass Agrawal* this Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

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

"37.

...Once, the High Court entertains a petition Under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal Under Section 30 with leave to appeal Under Section 31 of the Act against the

order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court Under Article 226 of the Constitution Under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court Under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy Under Section 30 read with Section 31 Armed Forces Act.

38. The High Court (Delhi High Court) while entertaining the writ petition Under Article 226 of the Constitution bypassed the machinery created Under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions Under Article 226 and directed the writ Petitioners to seek resort Under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition Under Article 226 of the Constitution of India.

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

50. Now firstly, let us examine if the parties in both these proceedings are common. The present application was instituted by 3 applicants and none of them is a party to the Writ Petition before Hon'ble High Court of Karnataka. The official Respondents are common in both the proceedings. Respondent Nos. 11 and 12 were the petitioners No. 1 and 2 in the Writ Petition before the Hon'ble High Court. However, at a later stage of pendency of this application, they filed M.A. No. 139 and 140 for being impleaded as party to the present application. This application was contested by the respondents including Respondent no. 9 and 10 in the present application and the same was allowed vide order dated 25th July, 2014 passed by the Tribunal. In the said order, it was recorded that both these Respondent Nos. 11 and 12 have given an undertaking to the Tribunal that they would withdraw the Writ Petition that they had filed before the Hon'ble High Court of Karnataka. In compliance to the undertaking given to the Tribunal, these two Respondents filed an application before the Hon'ble High Court and vide order dated 1st August, 2014 passed in Writ Petition No. 36567 of 2013, the name of these two Respondents as Petitioner Nos. 1 and 2 were ordered to be deleted. Thus, as of today, none of the above applicants is the party in the Writ Petition before the High Court and in fact, they have been impleaded as Respondent Nos. 11 and 12 in consonance with the order of the Tribunal and that of the High Court as afore-referred. Now, we may proceed to deal with the content and scope of these proceedings. Undisputedly, the jurisdiction of the High Court under Article 226 of the Constitution of India is very wide. The jurisdiction of the Tribunal is very limited and it has to exercise it within the limitation of the Statute that created it. There are similar and at some places even identical contentions raised by the applicants in the present application, to the facts averred in the Writ Petition by the Petitioners before the High Court of Karnataka. The prayers in the Writ Petition as referred to above, both generally and substantially relate to acquisition of land, requiring the respondent authorities to resume the land in question, to examine the question of illegal allotment of the land and stop allotment and alienation of land. While the prayers before the Tribunal are and have to be restricted to environmental degradation and its restoration along with treating the areas in question as sensitive areas. The rampant development activities carried out by Respondent Nos. 9 and 10 are stated to have adverse impact on ecology, environment and the water bodies. It is

further prayed before tribunal that there should be restoration of ecology of sensitive area. Thus, it is evident from the prayers and genesis of the respective proceedings that they are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment, ecology and its restoration and have to be essentially a civil proceeding. While the proceedings before the High Court relate to entirely different issues i.e. the acquisition of land, its allotment and its transfer to third party. Thus, the issues in both the proceedings are neither substantially nor materially identical. Both jurisdictions have to operate in different fields governed by different and distinct laws. The objection taken by the Respondent does not satisfy the basic ingredients to attract the application of *res judicata* or constructive *res judicata*.

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

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

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

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

52. Discussion on this issue with reference to the facts of the case would require the Tribunal to decide as to what relief, if any, could be granted to the applicant and whether there is any need for the Tribunal to pass any direction in the interest of environment and ecology in the peculiar facts and circumstances of the case. As already noticed in the afore-indicated discussions, the serious objection herein is that these projects commenced their construction activities without seeking Environmental Clearance and therefore, the constructions are illegal and unauthorised. These huge constructions of residential, commercial and other purposes are located on the wetlands of different water bodies in the city of Bengaluru. The constructions have been raised even on the catchment areas of the water bodies. With reference to the

reports afore-noticed, averments are that these constructions have adversely affected the environment, ecology and particularly the water bodies and their biodiversity. These constructions would have tremendous impact on the water supply to the city of Bengaluru and that there is a likelihood of complete extinguishment of these historical lakes, which have been the basic factor behind maintaining the environmental and ecological balance in the city of Bengaluru.

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

54. Ramsar Convention uses a broad definition of wetlands. It includes all lakes and rivers, underground aquifers, swamps and marshes, wet grasslands, peatlands, oases, estuaries, deltas and tidal flats, mangroves and other coastal areas, coral reefs, and all human-made sites such as fish ponds, rice paddies, reservoirs and salt pans.

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

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

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

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

provide an effective institutional framework to manage water bodies through governmental and even non-governmental organizations.

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

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

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

62. In 1995, the National Lake Conservation Authority (NLCA) came up with National Lakes Conservation Plan (NLCP) for Bangalore, specifically aimed at raising the highest state of environmental alarm for dwindling quality of the remnants of the city's lakes. The National Lake Conservation Plan for Bangalore came with the theme of "*Integrated Lake Ecology with Water Quality*". This plan aimed at improving urban sanitation and health conditions, especially for the weaker sections of the society living within the lake catchment area. The plan also called for eco-friendly, low-cost, waste management bio-systems like "engineered wetlands". A total of 4 sub-systems comprising of around 20 lakes were selected for the first phase of the NLCP. These four subsystems included Agara Lake System (Hulimavu, Doddabegur, Madiwala, Puttenahalli; Agara Kere); Hebbal System (Narasipura I and II; Dodda Bomassandra, Hebbal Kere, and Nagavara); Bellandur Lake System (Ulsoor, Bellandur, Vartur); and Dorekere System (Vasanthapura, Janardhana, Dorekere, Moggekere). Rs. 5.542 Crore were sanctioned for the restoration of the Bellandur Lake under NLCP in January 2003. The proposal specified the following tasks for the restoration: de-silting of lakes, fencing around the lakes, afforestation and gardening, sewage water treatment, interception chambers, diversion channels, oxidation ponds, de-weeding of lakes, community sanitation, solid waste and garbage disposal, recreational facilities. This was to be a five year phasing project (1995–2000.) divided into the catchment area development (CAD); Sewage diversion channels; De-silting and Weed control; Face-lifting of lake; Biological studies and public awareness program; land acquisition. and

others. The total cost for five years was estimated at Rupees Twenty-One Crores, Twenty Lakhs and Thirty five thousands.

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

64. The LDA instituted in January 2002, identified about 60 lakes for immediate restoration soon after it was established. This program, like the NCLP one previously was proposed to be a five year phasing project costing Rs. 250 Crores, almost ten times the estimated cost proposed by the NLCA in 1995. These selected lakes included Ulsoor Lake, Sankey tank, Agara Lake, Narasipura Lake, Lal Bagh Lake, Dodda Bamasandra Lake, Hebbal Lake, Nagavara Lake and Bellandur Lake. The LDA's main objectives were: Resuscitation of lakes to boost aquifers, Diversion and treatment of sewage to generate alternative sources of raw water; improving sanitation and health conditions; and preserving the habitat of aquatic life.

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

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

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

67. The Environmental Information System (ENVIS), Centre for Ecological Sciences, Indian Institute of Science, Bangalore had carried out a study and submitted a report on the need for 'Conservation of Bellandur Wetlands: Obligation of Decision Makers to Ensure Intergenerational Equity'. This report had specifically dealt with the activity of

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

"Ecological and Environmental Implications:

- Land use change: Conversion of watershed area especially valley regions of the lake to paved surfaces would alter the hydrological regime.
- Loss of Drainage Network: Removal of drain (Rajakaluve) and reducing the width of the drain would flood the surrounding residential as the interconnectivities among lakes are lost and there are no mechanisms for the excessive storm water to drain and thus the water stagnates flooding in the surroundings.
- Alteration in landscape topography: This activity alters the integrity of the region affecting the lake catchment. This would also have serious implications on the storm water flow in the catchment.

The dumping of construction waste along the lakebed and lake has altered the natural topography thus rendering the storm water runoff to take a new course that might get into the existing residential areas. Such alteration of topography would not be geologically stable apart from causing soil erosion and lead to siltation in the lake.

- Loss of Shoreline: The loss of shoreline along the lakebed results in the habitat destruction for most of the shoreline birds that wade in this region. Some of the shoreline wading birds like the Stilts, Sandpipers; etc will be devoid of their habitat forcing them to move out such disturbed habitats. It was also apparent from the field investigations that with the illogical land filling and dumping taking place in the Bellandur lakebed, the shoreline are gobbled up by these activities.
- Loss of livelihood: Local people are dependent on the wetlands for fodder, fish etc. estimate shows that wetlands provide goods and services worth Rs. 10500 per hectare per day (Ramachandra et al., 2005).

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

It is the responsibility of Bangalore citizens (for intergenerational equity, sustenance of natural resources and to prevent human-made disasters such as floods, etc.) to stall the irrational conversion of land in the name of development

and restrict the decision makers taking the system (ecosystem including humans) for granted as in the case of *Bellandur wetlands* by KIADB.”

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

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

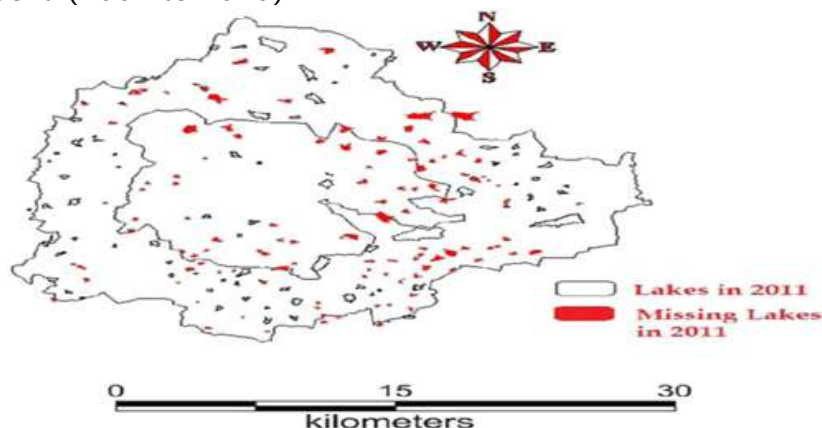


Figure 6: Lakes encroached by land mafia

Disappearance of water bodies or sharp decline in the number of water bodies in Bangalore is mainly due to intense urbanisation and urban sprawl. Many lakes (54%) were encroached for illegal buildings. Field survey of all lakes (in 2007) shows that nearly 66% of lakes are sewage fed, 14% surrounded by slums and 72% showed loss of catchment area. Also, lake catchments were used as dumping yards for either municipal solid waste or building debris (Ramachandra, 2009a; 2012a). The surrounding of these lakes have illegal constructions of buildings and most of the times, slum dwellers occupy the adjoining areas. At many sites, water is used for washing and household activities and even fishing was observed at one of these sites. Multi-storied buildings have come up on some lake beds that have totally intervene the natural catchment flow leading to sharp decline and deteriorating quality of water bodies. This is correlated with the increase in built up area from the concentrated growth model focusing on Bangalore, adopted by the state machinery, affecting severely open spaces and in particular water bodies. Some of the lakes have been restored by the city corporation and the concerned authorities in recent times. Threats faced by lakes and drainages of Bangalore:

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

7. Removal of shoreline riparian vegetation;
8. Pollution due to enhanced vehicular traffic.

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

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

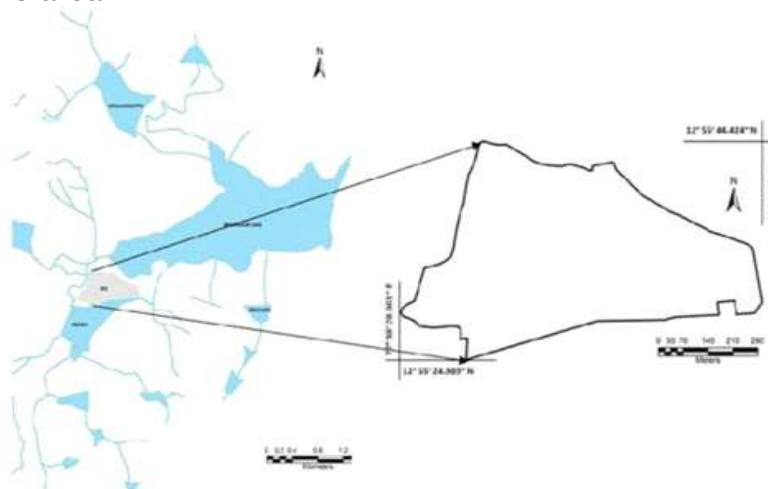


Figure 6: SEZ

Significance of the Region:

1. Wetlands with remediation functional ability (function as *kidneys* of the landscape). Removal of wetlands will affect the functional ability of the lake and would result in the death of Bellandur lake;
2. Considering severe water shortage to meet the drinking water requirement in Bangalore, there is a need to remove deposited silt in the Bellandur lake, which will enhance the storage capacity and in turn helps in mitigating the water

requirement;

3. Wetlands aid in recharging groundwater as soil are permeable;
4. Belanduru lake provide food (fish, etc.) and fodder;
5. Retain the excess water and prevent flooding in the vicinity;
6. Large number of farmers in the downstream is dependent on Belanduru lake water for agriculture, vegetable, etc.

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

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

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

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

Sl. No.	Conditions	Compliance
xiv)	Disposal of muck, construction debris during construction phase should not neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority	The project authorities stated that, the excavated soil from the project site would be stored in Rachenahalli village, K.R. Puram Hobli, Bangalore East Taluk which is about 10 km away from the site and further stated that, the construction debris will be reused/recycled for back filling/sub base work for roads, pavements, drains

		etc., within the project site and the earth work excavated material will be managed through back filling between foundations on the back side of retaining walls and underground tanks/sumps and also will be reused for filling up low lying areas within the site. As on today the levelling and excavation works are going on. The foundation work of commercial block in Phase-I has been started from here the excavated earth is kept just adjacent to this foundation work within the site and agreed to reuse back.
xv)	Soil and ground water samples should be tested at the project site during the construction phase to ascertain that there is no threat to ground water quality by leaching of heavy metals and or other toxic contaminants and reports submitted to SIEAA.	Soil (one location) and ground water (.....location) samples are being tested on monthly basis through the third party. The heavy metal has not been analyzed yet and agreed to analyse in future.
xvi)	Construction spoils, including bituminous material and other hazardous materials, must not be allowed to contaminate water courses and the dumpsites for such material must be secured so that they should not leach into the ground water.	The project authorities assured that hazardous material will not be used in the site.
xx)	Fly ash should be used as building material in construction as per the provisions of fly Ash Notification of September 1999 and amended as on August, 2003.	Fly ash bricks are not used because there is no coal based thermal power plant located within 200 km of the project site.
xxiv)	No ground water is to be drawn without permission from the Central Ground Water Authority.	Agreed to comply. The project construction activities are under initial stages. As gathered that, the ground water is purchased from outside for drinking and sanitation purpose.
xxxiv)	The project authority shall maintain and operate the common infrastructure facilities created including STP and solid waste management facility for a period of 5 years after commissioning the project.	Agreed to comply.
xxxix)	The natural sloping pattern of the project site shall remain unaltered and the natural hydrology of the area be	Execution of the project will necessarily sloping pattern of the project site and the natural

	maintained as it is to ensure natural flow of storm water.	hydrology of the area and hence specific condition no xxxix cannot be complied.
xi)	Lakes and other water bodies (if any) within and/or at the vicinity of the project area shall be protected and conserved.	The project area is in the catchment area of Bellandur lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by the project activities either during construction or during operation phase.
B. General Conditions		
ii)	All commitments made by the proponents in their application, and subsequent letters addressed to the SEAC/SEIAA should be accomplished before the construction work of the project is completed.	The project authorities have agreed to implement all the commitments made to the SEAC/SEIAA before the construction work of the project is completed.
v)	In case of any changes(s) in the scope of the project, the project would require a fresh appraisal by this Authority	Agreed to comply.
xii)	The issuance of Environmental Clearance doesn't confer any right to the project proponent to operate/run the project without obtaining Statutory clearance/sanctions from all other concerned authorities.	Agreed to comply.

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

69. We have also noticed above that the High Court of Karnataka in W.P. No. 817/2008 had passed certain directions in regard to the preservation of lakes and wetlands in the State of Karnataka. These directions were based upon the report dated 21st February, 2011, submitted to the High Court by the Committee Chaired by Justice N.K. Patil, in relation to the preservation and restoration of lakes in and around the city of Bangalore. In the report, recommendation had been made with regard to preservation of lakes, noticing rapid urbanisation of Bangalore city as the main cause for reduction in water bodies. While referring to an earlier report of 1985, prepared by Shri N. Lakshman Rau Expert Committee, constituted by the Government of Karnataka, it was emphatically stated that necessity of lake preservation is more pronounced in the context of urbanization, when city takes more and more villages into its fold, as in case of Bangalore city. It stated that the lakes are the lung spaces of a city and climate moderators, adding to thermal ambience. Most importantly in this report, emphasis was made on the role of the LDA in preservation of lakes. It was referred that the LDA was constituted in the year 2002 as a registered society. Its jurisdiction extends over lakes in metropolitan cities area of Bangalore inclusive of Bangalore Metropolitan Region Development Authority area, besides this LDA has jurisdiction over the lakes in other Municipal Corporations and Town Municipal Councils within the State. It is the regulatory, planning and policy making body with nodal

functions for protection, conservation, reclamation, restoration, regeneration and integrated development of lakes in its jurisdiction. Another important feature of this report was in relation to augmenting water supply to Bangalore city from these lakes. It stated that Bangalore population was likely to exceed 12 million by 2020 and at the current growth rate, the water shortage may lead to water crisis, if the problem is not tackled with advance planning. Report further stated that, the ground water was depleting and that bore-wells of 700 to 1000 feet deep were quite common in this city. These all were indicators of a grave situation.

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

At the time of inspection it was observed that huge construction activities were observed in this catchment area and on enquiry it was informed that the above said land was acquired by the KIADB for SEZ and allotted for different agencies for construction of apartment complexes, malls, etc., Due to huge construction activities in this catchment area there is change of land use and directly impacting the catchment of Bellandur lake.

As per the Para 2 of the report, it is reported that the wet land (a marshland ecosystem typically found around water bodies) has shrunk. It is not the wetland of Bellandur lake. It is a catchment area of Agara lake. Originally Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake. It is catchment area which was shrunk due to allotment of agricultural land by KIADB to different agencies for construction of apartment complexes, malls etc.

Hence KIADB's colossal "mixed - use development project in the catchment area of Bellandur will probably have adverse effect to Bellandur lake.

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

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

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

Proposal envisages for construction of residential apartment with (Block-1 (Block A:

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

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

- 1) The construction of both the projects had started prior to the grant to Environmental Clearance.
- 2) The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.
- 3) Revenue Map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
- 4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
- 5) Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.
- 6) Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
- 7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved: The inspection report by the MoEF clearly notes that condition nos. (xxxix) and (xl) in the Environmental Clearance of respondent no. 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase.

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

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

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

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

76. The MoEF monitoring report prepared by regional office of MoEF has forwarded on 14th August, 2013 mentions two most significant conditions which have a substantial bearing on the matters in issue before us is with regard to the preservation of the water bodies in Bengaluru and the natural slopping pattern and natural hydrology of the area to remain unaltered. These conditions having been noticed as not possible to be adhered to, we really do not understand as to how these projects have been permitted to progress any further.

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

78. There is sufficient material by way of reports, google images and other documents that the Bellandur Lake and even other lakes for that matter have wetlands

and catchment areas. There are encroachments on the Rajakaluves as well as on the catchment areas of the water bodies. The adverse impacts of this colossal mixed development projects had got the attention of all concerned, including the Press and the issue was widely raised. This resulted in the inspection by the LDA as well as other authorities, which commented on the adverse impacts of this project in the interest of environment and ecology. Furthermore, the stop-work notices issued by different authorities from time to time also suggest that the work and progress of the projects was in violation of the laws in force. Of course, these stop-work notices have been challenged before the Hon'ble High Court of Karnataka which has granted stay on these notices, but the fact of the matter remains that various authorities including the BBMP and the KIADB have found out and observed that the construction should be stopped forthwith.

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

80. It was vehemently contended before us that the construction of the projects is nearing completion and huge money of respondent nos. 9 and 10 including investments made by various land and other area purchasers is at stake. Thus, according to these respondents, the application should be declined by the Tribunal only on that fact. We are not impressed with this contention at all. The respondents have started the construction even prior to the grant of Environmental Clearance and instigated the public to invest money. They cannot be permitted to take advantage of their own wrong. However, it may also not be in the interest of justice and particularly, while applying the Principle of Sustainable Development in terms of Section 20 of the NGT Act, that these properties be demolished but that does not mean that they should not be directed to take all measures and precautions, even if it results in necessary demolition of some parts of the projects in the interest of environment, ecology and protection of lakes and wetlands. It cannot be disputed that there is serious scarcity of water in the city of Bangalore. Impact of these projects on water bodies ought to have been of fundamental consideration before the authorities concerned. In our considered view, they have failed to take complete notice of this fact and act objectively in light of the laws in force.

81. The project proponents, i.e. respondent nos. 9 and 10 submitted their respective applications for grant of Environmental Clearance to the concerned authorities in the year 2011 and 2012 respectively. The Environmental Clearance was granted to the Project proponents on 17th February, 2012 and 30th September, 2013 respectively. However, construction activities had been carried out by the project proponents much prior to the grant of Environmental Clearance. There is not even an iota, much less valid, reason placed by the project proponents before the Tribunal as to why the applications for Environmental Clearance were moved at such belated stage and why construction was started prior to grant of Environmental Clearance. The provisions of the EIA Notification, 2006 which was in force at all relevant times does not permit carrying on of any construction or any other activity in relation to the project prior to the grant of Environmental Clearance. The provisions of this Notification admit of no ambiguity that specific project or activities shall not require

prior Environmental Clearance. All steps in that direction, including site selection, are the subject matter of scrutiny at the time of grant of Environmental Clearance. The project proponents are clear defaulters of compliance of the statutory provisions. They cannot take advantage of their own wrong of raising construction prior to submission of the application for Environmental Clearance and even grant of Environmental Clearance. The respondent nos. 9 & 10 are intentional defaulters. They violated the law being fully conscious of their obligations under different laws in force. The authorities concerned had sanctioned the building plans of these respondents subject to a specific stipulation that such sanction was subject to grant of other clearances including Environmental Clearance under different laws. Since the construction and allied activities were being carried on contrary to law, they even would be deemed to have caused pollution not only of the environment but more particularly of the lakes and caused obstructions of the Rajakaluves in the area. Applying the Principle of 'Polluter Pays' as contemplated under Section 20 of the NGT Act, the project proponents must be held liable to pay compensation for restoration and restitution of the environmental pollution and degradation. There is sufficient material on record to show that there has been environmental degradation. From the date of grant of Environmental Clearance, the construction is supposed to be carried on in accordance the conditions of the Environmental Clearance and with due protection of the environment, which the respondents have failed to comply with. The project proponents are liable to pay compensation under the 'Polluter Pays' Principle, for the illegal and unauthorised construction carried on in violation of the environmental laws and prior to grant of Environmental Clearance. One who violates law renders itself liable for consequences of such violations.— Respondent nos. 9 & 10 commenced excavation and even construction prior to submission of their application for grant of Environmental Clearance. Obviously at that stage they did not take any protections in the interest of environment and ecology in relation to the project activities. The terms & conditions in that behalf came to be stipulated only in the order granting Environmental Clearance; prior thereto the entire project activity was illegal and unauthorised. The mining, excavation and construction work adversely affected the Lakes and the Rajakaluves. The possible risk and degradation, due to construction and operation of the project include actual damage and even threats to environment and ecology pertaining to pollution, encroachment, eutrophication, illegal mining of soil, loss of Biodiversity, ungoverned human activities and cultural misuse. The consequential damage and degradation of environment and ecology from the activities of these projects can broadly be placed under two distinct heads, while invoking the Polluter Pays Principle. First being the damage that has already been caused because of such activity, particularly, for the period when the activity was carried out in an illegal and unauthorised manner and without sanction of the competent authorities. Secondly, the damage and environmental degradation that is likely to occur upon completion of these projects and the liability of the concerned respondents in regard to restoration and restitution of environment. Another very important aspect which cannot be overlooked by the Tribunal is with regard to the respondent nos. 9 & 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with condition no. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August, 2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof.

82. It may not be possible to determine the above compensation with exactitude but that does not mean that the project proponents can avoid liability in that regard. The Supreme Court in the case of *Sterlite Industries (India) Ltd. v. Tamil Nadu PCB, JT*

2013 (4) SC 388, had directed payment of Rs. 100 crores by the Company which operated without consent of the Board. It needs to be noticed that M/s Sterlite Industries was possessed of the consent from the Board prior as well as subsequent to the period for which the compensation was imposed. In order to comply with the principle stated by the Hon'ble Supreme Court in the case of *Sterlite Industries* (supra) and as followed in the case of *Sarang Yadwadkar v. The Commissioner, Pune Municipal Corporation*, 2013 ALL (I) NGT REPORTER (DELHI) 299, discussed hereafter, we may refer to some relevant facts and figures from the records before us. The project area of respondent no. 9 is nearly 2,92,636.03 sq. m, while the built-up area is 13,50,454.98 sq.m., with a project cost of Rs. 2,347 Crores. While in the case of respondent no. 10 the plot area is 33,333.00 sq.m., while the built-up area is 72,180.64 sq. m., with a project cost of Rs. 450 Crores. The afore-noticed project activities and construction started much prior to moving of application and grant of Environmental Clearance. The principle which has often been adopted by the Courts, including the Hon'ble Supreme Court in the case of *Goa Foundation v. Union of India*, (2014) 6 SCC 590, is to direct deposit of certain percentage of the cost of the project at the first instance. In the case of *Goa Foundation*, the Supreme Court had directed deposit of 10 per cent of the value of the mineral extracted. In the case of *Krishankant Singh v. National Ganga River Basin Authority*, 2014 ALL (I) NGT REPORTER 3 DELHI 1, this Tribunal directed Simbhaoli Sugar Mills which had operated without consent of the concerned Board for a long period and had polluted the environment, Phuldera drain as well as the underground water, to pay a compensation of Rs. Five Crores. The said sugar factory had operated with the consent of the Board prior and subsequent to this period. The compensation was imposed for flouting the law and for causing the pollution. It may be noticed that the appeal against the said judgment of the Tribunal was dismissed by the Supreme Court in Civil Appeal No. Civil Appeal No. 10434 of 2014 vide its order dated 21st January, 2015. This liability primarily accrues on account of the illegal and unauthorised activities carried on by the Project Proponents. These are purely commercial ventures of respondent nos. 9 & 10 to make high profits, while causing environmental and ecological degradation and also by carrying on illegal and unauthorised activities, particularly, for the period prior to grant of Environmental Clearance.

83. The drawings and construction plans had been approved by respondent no. 7 vide its letter dated 4th July, 2007 and 22nd April, 2008, for respondent nos. 9 and 10 respectively. Despite this, the applications for seeking Environmental Clearance were moved much later i.e. on 3rd March, 2011 and 4th February, 2012. Even these letters granting approval of drawing and plans had mandated that these Respondents are expected to comply with all bye-laws and even other laws in force. When they applied for renewal of building plans and drawings, the same were granted vide letter dated 11th October, 2013 and 3rd January, 2013 respectively, where specific conditions were stipulated that other laws in force relating to construction and use of premises should be complied with and they were required to install ETP/STPs and use of recycled water for washing and flushing was mandated. From this, it emerges that there was clear onus on the part of these respondents to seek Environmental Clearance before commencing construction, which they intentionally and flagrantly violated and furthermore, there is nothing on record to show that the conditions with regard to setting up of ETP/STP and recycling of water have fully been satisfied. Furthermore, respondent no. 10 has been issued a specific letter on 18th March, 2013 by respondent no. 7 directing it that no construction works should commence prior to obtaining Environmental Clearance. They were also directed to obtain Consent for Establishment from KSPCB which was also not adhered to. They were required to furnish the requisite information within 7 days. These are the apparent violations of law committed by respondent nos. 9 and 10.

84. We are conscious of the fact that the projects in question have already been granted the Environmental Clearances and that they have raised constructions in furtherance to such Environmental Clearances. Still as discussed above, the matters in relation to conditions of the orders granting Environmental Clearances, adverse impacts of these projects upon the environment, ecology, lakes and wetlands, need for taking preventive and remedial measures for restoration of the environment and ecology as well as protection of the water bodies in future, are the matters which have been examined by us above. We may also appropriately make reference to the judgment of this Tribunal in the case of *Sarang Yadwadkar v. The Commissioner, Pune Municipal Corporation*, 2013 ALL (I) NGT REPORTER (DELHI) 299, wherein under somewhat similar circumstances, the Tribunal had while declining to demolish the construction raised in the project, issued substantive directions in the interest of environment and ecology and for protection of River Mutha in Pune. The Respondent Corporation had preferred an appeal before the Supreme Court of India being Civil Appeal Diary No. 3445 of 2015, which was dismissed on merits on 12th February, 2015. The Project Proponent was thus directed to comply with the directions of the Tribunal including partial demolition of the project in question. We have already indicated that at this stage the entire amount of compensation payable on various counts by the Project Proponent cannot be determined with exactitude, however, liability to pay for violation of law, raising construction unauthorizedly and illegally, renders the Project Proponent liable to pay the environmental compensation forthwith. The final amounts for restoration of environment and ecology would be determined by the Committee constituted in this judgment. We are of the considered view that 10 per cent of the project cost may be somewhat on the higher side and to maintain the equitable balance between the default and the consequential liability of the applicant, we direct the Project Proponents to pay at the first instance compensation for their default at the rate of 5 per cent of the cost of the project. In light of this, Respondent No. 10 would be liable to pay a sum of Rs. 22.5 crores and Respondent No. 9 would be liable to pay a sum of 117.35 crores.

85. This is a fit case where in exercise of its jurisdiction in terms of Section 20 of the NGT Act, the Tribunal has to invoke both polluter pays principle as well as precautionary principle. Further, where the Tribunal should also apply the principles of law enunciated by the Supreme Court and this Tribunal in the case of *Sterlite Industries* (supra), *Krishankant Singh* (supra) and *Sarang Yadwadkar* (supra) and issue the following directions:

- 1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal *inter alia* but specifically on the issues stated herein after.
 - a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
 - b) CEO of the Lake Development Authority, Karnataka State.
 - c) Chief Town Planner of BBMP, Bangalore.
 - d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.
 - e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.
 - f) Dr. Siddharth Kaul, former Advisor to MoEF.
 - g) An Senior Officer from the National Institute of Hydrology, Roorkee.
- 2) Member Secretary of the Karnataka State Pollution Control Board shall act as the Convenor of the Committee and would submit the final report to the Tribunal.
- 3) The Committee shall inspect not only the sites where the projects in question are

located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the water bodies, with particular reference to lakes.

- 4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of respondent nos. 9 and 10 or by any of the projects in the area in question.
- 5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.
- 6) The Committee shall substantially notice if any of the conditions of the Environmental Clearance order in each case of respondent nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.
- 7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.
- 8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.
- 9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letter dated 4th July, 2007 and 22nd April, 2008 respectively. Further, the Committee would also report whether both respondent nos. 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing etc., in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to respondent nos. 9 and 10 respectively.
- 10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and water bodies.
- 11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both respondent nos. 9 and 10 are hereby restrained from creating any 3rd party interests or part with the possession of the property in question or any part thereof, in favour of any person.
- 12) The committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the water bodies in the city of Bangalore.
- 13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the water bodies in and around of the area in question.

- 14) For the reasons stated in the judgment respondent no. 9 is liable and shall pay a sum of Rs. 117.35 crores, while respondent no. 10 shall pay a sum of Rs. 22.5 crores respectively being 5 per cent of the project value, within two weeks from today. The said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the Project Proponent in that area, after taking approval of the Tribunal.
- 15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of direction 14, onto the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.
86. Thus, we dispose of the Original Application No. 222 of 2014 in the above terms while leaving the parties to bear their own costs.

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2016 SCC OnLine NGT 4213

Partly reversed in *Goel Ganga Developers (India) (P) Ltd. v. Union of India*,
(2018) 18 SCC 257

In the National Green Tribunal
(Western Zone) Bench, Pune

(BEFORE DR. JAWAD RAHIM, J.M. AND DR. AJAY A. DESHPANDE, E.M.)

In the Matter of:

Mr. Tanaji Balasaheb Gambhire, Age : Adult, Occupation : Service
R/o. Flat No. 16, CTS-296, Laxmi Apartment, Near Shivaji
Maratha High School, Whiter House Lane, Shukrawar Peth, Pune
- 411 002. ... Applicant;

Versus

1. The Union of India, Through the Ministry of Environment & Forest, Government of India, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110 003.
2. The Principal Secretary, Environment Department, Government of Maharashtra, 15th Floor, New Administrative Building, Mantralaya, Mumbai - 400 032.
3. State Level Environment Impact Assessment Authority Through Member Secretary 15th Floor, New Administrative Building Mantralaya, Mumbai - 400 032.
4. Maharashtra Pollution Control Board Through its Member Secretary, Kalptaru Point, 3rd Floor, Near Sion Circle, Opp. Cine Planet Cinema, Sion (E), Mumbai.
5. Maharashtra Pollution Control Board Through its Regional Officer, SRO-1 Jog Centre, 3rd Floor, Mumbai-Pune Road, Wakadewadi, Pune - 411 003.
6. Pune Municipal Commissioner PMC Building, Shivajinagar, Pune - 411 005.
7. City Engineer Pune Municipal Corporation, PMC Building, Shivajinagar, Pune - 411 005.
8. District Collector - Pune President - District Environment Committee, Pune.
9. M/s. Goel Ganga Developers India Pvt. Ltd. 3rd Floor, San Mahu Complex, Opp. Poona Club, 5, Bund Garden, Pune - 411 001 ... Respondents.

Application No. 184/2015 (WZ) [M.A. No.77/2016, M.A. No.194/2016, M.A. No.186/2016]

Decided on September 27, 2016

Counsel for Applicant(s):

Mr. Shriram P. Pingle, Advocate

Counsel for Respondent(s):

Mr. S.S. Sanyal, Advocate a/w Mrs. Supriya Dangare, Advocate for Respondent Nos. 4 and 5

Mr. P.S. Suryavanshi, Adv. for Respondent Nos.6 &7

Mr. S.V. Mishra, Senior Advocate a/w Mr. Sachin S. Bhalerao, Advocate for Respondent No. 9

ORDER/JUDGMENT

1. This Application, numbered as 184/2015 invoking jurisdiction of this Tribunal, is under Section 14 and 15 of the National Green Tribunal Act, 2010 (for short 'NGT Act'). The Applicant Tanaji Balasaheb Gambhire has sought certain directions against the 9th Respondent - Project Proponent (PP) M/s Goel Ganga Developers India Private Limited who is said to have envisaged construction venture to construct a commercial and residential complex.

2. In the Application, the Applicant has sought following directions:

- A. Direct the Respondents to demolish the illegal structures at the site in question and restore the area to its original position.
- B. Direct the State Level Impact Assessment Authority and the Maharashtra State Pollution Control Board to initiate appropriate action against the project proponent for violation of the provisions of EIA notification, 2006 and other applicable laws.
- C. Direct Respondent No.2 to take appropriate action against the State Level Impact Assessment Authority for granting environment clearance in violation of the provisions of EIA Notification, 2006.
- D. Direct the State Level Impact Assessment Authority and the Maharashtra State Pollution Control Board to disclose all such projects which have been granted post facto clearance or have been constructed without taking prior environment clearance.
- E. Having regard to the damage to the public health, property and environment, principles of sustainable development and polluter pays principles and direct the Respondent No.9 to deposit a heavy amount of compensation to the environment relief fund.

3. In support of the reliefs so sought, he has averred factual and legal aspects to which we shall refer briefly now.

- a. The 9th Respondent obtained Environmental Clearance (for short 'EC') for its project at Survey Nos.35 to 40 in Village Vadgaon Budruk, Sinhagad Road, Pune. The project conceived and approved by said EC is to construct 12 buildings with stilt, basement plus 11 floors vertically for 552 flats, 50 shops and 34 offices. The total plot area is 79,100 sq.mts while the total built-up area is to 57,658.42 sq.mtrs.
- b. The EC was obtained by the 9th Respondent-PP on 4th April, 2008 and thereafter, PP has commenced construction activity. The Applicant has not brought in question the EC dated 4th April, 2008 but has other serious grievances.
- c. The Applicant would contend that after the project of 9th Respondent-PP has sufficiently progressed, the Member Secretary of Maharashtra Pollution Control Board (MPCB) caused inspection of the construction activity on 31st August, 2015 and thereafter, granted a personal hearing to the Respondent No.9-PP in respect of MPCB findings. The Minutes of the Meeting held on 31st August, 2015 show that the Regional Officer of the MPCB had reported non compliance of the terms on which EC was granted to the 9th Respondent. In that, there is clear statement that though the EC was for construction of 12 buildings but the Respondent No.9-PP has built 15 buildings and increased number of flats from 552 to 738 as also the number of shops was increased from 84 to 111.
- d. The Minutes of the Meeting further show that the representative of PP had accepted the non compliance to the conditions of EC in increasing the

construction of number of buildings, number of flats, offices and shops.

- e. The Minutes of the Meeting would also record that consent for additional building of Ground plus 30 Floor was not taken though the civil work of its construction was in progress.

4. The Applicant relies on such material information recorded in the Meeting to contend that there was clear finding on inspection by the competent authority i.e. MPCB that the Respondent No.9-PP had not complied with the conditions of the EC granted. Reference is also made to the fact that MPCB having noticed such non-compliance had directed the Respondent No.9-PP to voluntarily stop construction activity till modified EC is obtained. Consequently, having noticed deliberate violation of the conditions of EC and non-compliance of its voluntary closure directions, MPCB had issued direction not only for stopping further construction activity but directed disconnection of electricity to the project by its Order dated 30th September, 2015.

5. The Applicant further points out that despite such lapses on the part of the Respondent No.9-PP, it managed to get the Occupancy Certificate for part of the project which is complete and has virtually occupied it. This, according to the Applicant, is in total violation of the legal mandate that mandatory consent of operate should be obtained before the project activity is undertaken.

6. Amongst other issues raised he points out to the fact that building plan for construction activity of the project was revised by Respondent No.9-PP nine times. This, according to him, illustrates the significant modification in the scale of construction in terms of area, plinth area and floor heights, besides change in lay-out scheme. Referring to condition No.5 of the EC. It is alleged that the scope of the project in terms of built up area has changed. Moreover, the project lay-out as well as number of buildings also has substantially changed. Thus, the Respondent No.9-PP was obliged to obtain modified EC before undertaking such activity which is in total deviation to the original EC. Citing numerous statistical data, the Applicant would further claim that the construction activity carried out by the Respondent-9 PP has grossly exceeded the scope of the project as approved by EC in terms of built up area and configuration of project.

7. Based on these facts, he would contend that the project activity is not as per the proposal which was considered and approved by Ministry of Environment and Forest while granting the original EC on 4th April, 2008 and therefore there is gross violation of EC condition.

8. The other contention urged by the Applicant is to indicate failure on the part of the Statutory Authorities like Pune Municipal Corporation (PMC), State Level Environment Impact Assessment Authority (SEIAA), Department of Environment, State of Maharashtra (DoE) in discharge of its statutory functions. In this regard, he contends that Pune Municipal Corporation (for short 'PMC') was well aware of such violations but granted Completion Certificate. Reference was made to page-36 of the Rejoinder where it is stated that violation of noncompliance of EC was well within the knowledge of the concerned officer of PMC. He then refers to the action taken by Deputy Engineer of Building Construction Department of PMC who having realised the blanket violation of EC then, had directed Respondent No.9-PP on 20.2.2015 not to continue construction activity without obtaining amended EC. It is alleged, despite such clear direction of the Deputy Engineer, the Respondent No.9-PP continued construction as per its revised approved lay-out by PMC which depended totally on the validity of the EC. Thus, he contends that grant of revised lay-out plan by PMC itself is not tenable and consequently the construction activity being illegal needs to be restrained.

9. In this regard he would refer to the order passed by PMC imposing fine of Rs. 1,57,00,000/- for illegal occupancy of part of the project building which Respondent

No.9-PP without remorse has accepted and deposited on 23rd October, 2015.

10. The Applicant has further alleged total inaction on the part of SEAC and SEIAA and to substantiate his contention refers to the material on record which shows that SEAC sub-committee visited the project site on 29th February, 2014 with an object to verify compliance of the 2008 EC conditions. During such visit, it noticed non-compliance of the EC by Respondent No.9-PP but conveniently failed to record that Respondent No.9-PP had increased the project activity in terms of buildings, built-up area, etc. The report of SEAC Committee is described as cursory, casual, unscientific and against realities. It is only later that SEIAA on the basis of query/complaint of Applicant, on 3rd August, 2015 took action and in this regard proposed directions were issued under provisions of Section 5 of Environment (Protection) Act, 1986, by State Department of Environment (DOE) in August 2015 and thereafter, no follow up action was taken in terms of the directions. SEIAA which is competent to take independent decision and action against the violators of EC conditions and Project Proponents has failed to initiate any action. What he tries to say is that SEIAA, being specialised body, should have used its conferred power to take action rather than referring or depending on the action taken by Department of Environment. Thus, he contends that SEAC, SEIAA and DOE have jointly and severally failed to discharge its statutory function in taking appropriate legal permissible action against Respondent No.9-PP restraining such illegal activity for non-compliance thereby enabling the Respondent No.9-PP to further violate the EC mandate. He would contend that by keeping the proceedings before it, SEIAA has virtually allowed the Project Proponent to proceed with the illegal construction thereby wandering DoE direction issued on 3rd August, 2015.

11. On above set of facts, he has sought certain reliefs as recorded by us in the para supra.

12. On admission of this Application, Notice was caused to all the Respondents who are total nine in numbers. Amongst them Union of India through Ministry of Environment and Forest -1st Respondent, The Principal Secretary, Environment Department -2nd Respondent, State Level Environment Impact Assessment Authority - 3rd Respondent, Maharashtra Pollution Control Board - 3rd Respondent, Regional Officer, Maharashtra Pollution Control Board - 5th Respondent, Pune Municipal Corporation - 6th Respondent, City Engineer, Pune Municipal Corporation - 7th Respondent, District Collector, Pune - 8th Respondent, M/s. Goel Ganga Developers India Pvt. Ltd. - 9th Respondent. Amongst all, initially the Respondent No.9-PP resisted the proceedings but we have noticed a very strange conduct of the Secretary of Department of Environment falling in line with the Respondent No.9-PP as could be seen from the conduct.

13. The record would show that all the Respondents have responded to the Notice in this Application as recorded by us on 23rd December, 2015. Certain observations made in the preamble of that Order at paragraph Nos.1 and 2, would itself show that this Tribunal had taken a note of the manner in which the Respondents reacted to initiation of the action by the Applicant. In para No 2-3 at page-2 of the Order and the last para on the same page, we have summarised what we noticed. Ultimately being convinced that the Applicant had made out prima facie case for grant of interim relief, lest, the Respondent No.9-PP emboldened by the inaction on the part of Statutory Authorities as likely to proceed with the construction activity which was shown by the Applicant to be legally impermissible if restrained, orders were passed against Respondent-9 PP. We had also simultaneously directed PMC to ensure that no further construction of whatsoever nature is carried out and called for report from it regarding what is the status of construction at the site within 10 days. As is expected, Respondent No.9-PP entered contest and sought vacating the Interim Order but when confronted with certain factual aspects, made a statement that no construction activity is going on and it has stopped the construction. We feel it will be worth to record that

we have taken into consideration contention urged on behalf of the Respondent No.9-PP to seek vacating of the order but we opined that let the pleadings be completed to allow all stakeholders who virtually prosecute and defend action through this Application. We also see from proceeding, considering the urgency, this Application was initially heard on merit in part. This is exactly what the Respondent No.9-PP also submitted on 16th March, 2016 persuading us to expedite the hearing.

14. We have thus heard substantially the learned Counsel for the Applicant, Respondent Nos.1 to 8 and the learned Senior Counsel Mr. Mishra assisted by Mr. Sachin Bhalerao for the Respondent No.9-PP.

15. We have given our careful consideration to all the legal and factual contentions urged by learned Advocates. While the learned Counsel for the Applicant relies mainly on the original EC dated 4th April, 2008 and present factual aspect showing there is marked difference in the project itself and the project has virtually changed from what it was originally conceived in terms of increase of number of buildings, plinth area, shops and other commercial activities. We have summarized the contentions of the Applicant and would like to repeat it as the same is relied upon by the Applicant.

16. Now, we need to refer to contentions of Mr. Mishra, the learned Senior Counsel for Respondent No.9-PP who in his persuasive eloquence asserted that project as conceived itself was legally permissible and during construction activity they have ensured there is absolutely no violation of any statutory regulations. He would contend that present construction activity, in terms of the FSI i.e BUA, is within the legally permissible limit and thus, refers to the numerical numbers by which the extent is measured. The affidavit filed in this case by Mr. Atul Jaiprakash Goel representing Respondent No.9-PP contains a statement in para-14 to the fact that EC dated 4th April, 2008 issued by MoEF was to allow construction activity comprising of the utilization of the F.S.I (Floor Space Index)/BUA, to the extent of 57,658.42 sq.mtrs., based on the conceptual plan prepared by Respondent No.9. He further states that granting of permission to utilize FSI to the extent of 57,658.42 sq.mtrs was will within the EC limits.

17. On the basis of such statement, Mr. Mishra would submit that at any stretch of imagination, the contention of the Applicant cannot be sustained because he is trying to allege violation when the constructed structure is well within sanctioned FSI/BUA of 57,658.42 sq.mtrs.

18. He would further rely on an order passed by Secretary, Department of Environment on 31st May, 2016 No.C.A.-2015/CR-6/TC-3 which is produced before this Tribunal after this case was reserved for judgment on 23rd May 2016. Relying on it, he would submit that SEIAA who had issued direction on 30th August, 2015 to stop construction activity had referred the matter to Department of Environment for considering explanation of Respondent No.9-PP and pass appropriate order. He submitted that such an exercise by DOE/SEIAA was in terms of the Order passed by this Tribunal on 23rd February, 2016 in M.A. No.21/2016 to the following effect:

"Heard. Perused record.

Service of Notice is waived on behalf of MoEF&CC. Replies have been filed by Respondent Nos. 2, 3, 4, 5, 6, 7 & 9. Law Officer appearing on behalf of Respondent No. 8 submits that reply filed by Respondent No. 5 MPCB is adopted as the reply of Respondent No. 8. Rejoinder dated 22nd February, 2016 to the reply of Respondent No. 9 is tendered. Copies of the rejoinder have been furnished to the Respondents.

M.A. No.21/2016

This Application has been moved for a mandate not to issue ex-post facto environmental clearance to Project Proponent Respondent No. 9. Learned Counsel appearing on behalf of Authorities Respondent Nos.2 and 3 makes a statement that they will be dealing with the application moved by Respondent No. 9 for grant of

environmental clearance strictly in accordance with law. In view of the statement made, we do not wish to interfere in the process of law.

Learned Counsel appearing for the Applicant submits that the Application be disposed of in terms of the statement made by the concerned Authorities Respondent Nos.2 and 3. Accordingly, this Applications stands disposed of with no order as to costs.

M.A. No.21/2016 thus stands disposed of.

E.A. No. 5/2016

As regards Execution Application No. 5/2016, learned counsel appearing on behalf of Applicant seeks liberty to carry out amendment in the Application so as to bring into focus the violation of the interim order dated 23rd December 2015, in relation to specific building construction and remedy available under the National Green Tribunal Act, 2010, before this Tribunal. Liberty granted to the Applicant to make necessary amendment in E.A.. Amendment shall be made within a week. Copies of the amended Application shall be furnished to the learned counsel appearing on behalf of Respondents. Respondents may file replies to the amended Application within a week thereafter. Advance copies of the replies be furnished to the Applicant who may file re-joinder thereto, if any, within three (3) days thereafter.

List this case for further consideration on 16th March 2016."

19. Thus he contends that this Tribunal itself had directed the SEIAA to consider request of the Respondent No.9-PP for modification of the EC and thus SEIAA being competent authority in that process thought fit to refer the case of the Respondent No.9-PP to Environment Department to take a decision about the violation before considering the request of the Respondent No.9-PP for modification of the EC to allow a larger construction activity.

20. He would submit that extent of 57,658.42 sq.mtrs structure cannot be described as being in excess of the permissible limit of the EC dated 4th April, 2008.

21. With reference to what transpired later, he would submit that Respondent No.9-PP having satisfied the PMC has received the Completion Certificate in respect of part of the building that itself is sufficient to establish its project is assessed as valid, permitting grant of Completion Certificate.

22. At this juncture, we would emphasise that the Applicant had seriously challenged the order passed by Secretary, Environment Department on 31st May, 2016 describing the order as a result of direct collusion between the officer concerned and Respondent No.9-PP to defeat any order that would be passed in this proceedings. He had through his Counsel sought opportunity to file an affidavit against the affidavit of the Respondent No.9-PP who wanted this Tribunal to take note of the order dated 31st May, 2016.

23. We have perused the proceedings with reference to the relevant date on which the arguments were heard on merit and date of posting of case reserved for judgment. The application was heard on merit on 23rd May, 2016 and reserved for judgment. During such period the order dated 31st May, 2016 has been passed by the Officer referred to above. Besides, the Learned Counsel Mr. Misra on behalf of project proponent requested us to take on record the order dated 31st May, 2016 before passing the Judgment. We took notice of the said order. In these circumstances the Learned Counsel for the applicant took opportunity to file counter to the affidavit filed by the project proponent producing the order dated 31st May, 2016. It is quite evident that the officer concerned who has passed the order in question is representing the respondent no. 2 in this case. Thus, he is deemed to have knowledge of all the stages which this case has passed and the fact that the case was reserved for judgment by the Tribunal. It is in this context the order dated 31st May, 2016 passed during the

period case is pending final decision generates questionable circumstances. Further, it is seen that this order i.e. 31st May, 2016 has been passed several months after the DoE issued directions to the project proponent to stop constructions activity on the basis that the project activity is contravening the conditions of EC dated 4th April, 2008. In these circumstances we have heard the case again on merit with reference to order passed by Principal Secretary, DoE dated 31st May, 2016 as desired by the project proponent himself.

24. We had allowed sufficient opportunity to Respondent No.9-PP and also Department of Environment and PMC represented by Mr. D.M.Gupte, learned Counsel respectively.

25. It is material to incorporate the relevant portion of the order dated 31st May, 2016 passed by - Secretary DoE, Government of Maharashtra for clarity which reads thus:

We also refer to the clarification issued by the MoEF, G.O.I. by amendment in EIA Notification 2006 dtd. 4-4-2011, wherein the BUA was defined. Prior to the amendment in EIA Notification 2006 dtd. 4-4-2011 there was an ambiguity in definition of BUA. The EC granted by the MoEF, GOI vide letter dtd. 4-4-2008 for construction of total BUA 57658.42 sq.m. at site was prior to clarification issued by the MoEF, GOI dtd. 4-4-2011 and on the basis of the conceptual plan. Therefore, the same will apply prospectively and not with the retro-prospective effect.

Therefore, it reveals that even though you have constructed 18 buildings at site instead of 12 buildings by changing configuration of buildings, the total BUA (ie.FSI) constructed at site is 48617.14 sq.m. which is within E.C. limit. It also reveals from the inspection report of the Pune Municipal Corporation dtd. 2-1-2016 that the actual construction carried out at site is 99416.72 sq.m. at plot No.1 and 2 (i.e. FSI-48617.14 sq.m. + Non-FSI - 50799.58 sq.m.) but the FSI constructed at site is 48617.14 sq.m. which is less than the total BUA admeasuring 57658.42 sq.m. permitted in the previous EC granted by the MoEF, GOI dtd. 4-4-2008. Hence, it is hereby concluded that there is no case of violation as prescribed in the EIA Notification, 2006 and accordingly the Proposed Directions issued vide above referred (1) is hereby withdrawn."

26. From the extracted portion of the order it is clear that Secretary, DOE as virtually declared the activity of the Respondent No.9-PP has wholly legal, permissible and in support thereof has virtually granted a clean chit and certified the project as of now to be well within the permissible limits. It is material to note that the officer concerned has referred to FSI and BUA being same synonym of one aspect. How far this assertion in the order of the officer is legal and factually correct. Hence it needs to be dealt with in detail for the reason, the decision as to whether the construction activity of the Respondent No.9-PP is legal or contravenes any of the environment clearance depend upon clear definition of FSI and BUA in terms of its extent. We had thus called upon PMC to file a statement explaining the distinction between the extent of area covered under BUA (built-up area). We are dismayed at the fact that neither the PMC nor the Environment Department has seriously examined what is F.S.I and BUA. Thus, we gave one more opportunity to which PMC responded through its affidavit dated 17th August, 2016 to which we shall refer.

27. The Deputy Engineer, PMC report which has been relied by Principal Secretary, DOE contains the present level of construction, the comparison of the F.S.I and Non F.S.I area gives startling factual information. It needs reference and as is extracted herein:

PMC report. Dy. Engineer (BP) dated. 19-12-2015.	PMC Report dt. 17-08-2016
Total BUA (i.e. FSI) = 48617.14 sq.m.	Built-up Area

Plot	F.S.I.	Non F.S.I
1 2	48424.66 630.55	46088.47 4858.57

28. We shall now refer to what the term Built-up area and Floor Spacing Index (F.S.I.) would mean in the domain of assessment of permissibility of the project activity with reference to the environment clearance certificate granted. It would be therefore pertinent to refer to the provisions of Development Building Rules of PMC and the project activity approved by the EC of 2008.

29. The Environment Clearance dated 4th April 2008, has clear project description which unambiguously set the project limits.

The project proponent is proposing for construction of group housing project at S.No. 35 to 40. Village Vadgaon Budruk, Singhad Road, Pune, Maharashtra at a cost of Rs.10,737.14 lakh. The project involves construction of 12 building with Stilt, basement plus 11 floors for 502 flats, 50 shops and 34 offices. The total plot area is 79,100.0 sq.m. Total built up area as indicated is 57,658.42 sq. m. Total water requirement will be 745 KLD and 400 KLD of waste water will be generated from the buildings which will be treated in Sewage Treatment Plant. The treated wastewater will be used for landscaping, DG set cooling and Horticulture purpose. The solid waste generated from the buildings will be 1500 kg./day and disposed as per the MSW Rules, 2000. The parking space is proposed for parking of 1072 cars. (Emphasis provided)

30. It is manifest from the above referred EC that while granting the EC, the authority had appraised the project with certain configuration and more pertinently, the Total Built up area. There is no reference to the term FSI area i.e. floor space index area. There is no ambiguity in the contents of EC and therefore, what can be seen from the plain reading of the EC is that the EC granted is circumscribed by the project description including its configuration and the Total built up area.

31. The term built up area has been well established in the parlance of Civil Engineering and Town Planning. The MRTTP Act, which regulate Regional and Town Planning in the state, authorise Municipal Corporation to have its own Rules, and PMC has notified the development control rules under the MRTTP act in order to regulate the development activities in the corporation area. In order to clarify the existing position and the understanding of the terms, Built-up area and F.S.I., it would be pertinent to refer to the 'Development Control Rules of the PMC, Pune, 1982'. Undoubtedly, both Respondent No.9-PP and PMC are required to comply with the Environment Clearance Regulations in terms of the building permissions granted by PMC to Respondent No.9-PP under the powers conferred upon PMC by the above said rules. The said Rules define 'built up area' and FAR/FSI and the relevant definitions from these rules are abstracted below:

2.1.3 : Built up area - Area covered immediately above the plinth level by the building or external area of upper floor whichever is more accepting the areas covered by Rule 15.4.2.

2.39 : Floor area Ratio (F.A.R.) - The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule No.15.4.2 by the area of the plot.

Note : The term F.A.R. is synonymous with floor Space Index (F.S.I.)

32. From these definitions it is manifestly clear that the terms "built up area" and FSI/FAR are distinct and have different interpretation altogether. This would further negate the contention of Respondent No.9-PP that the term "built up area" was not clarified until the clarification issued by MoEF on 4th April, 2011. There could be ambiguity in calculation of built up area as per earlier Environment Clearance

Regulations, but this cannot be stretched under any circumstances to take a plea that the built up area and FSI are synonymous and interchangeable terminologies. We cannot accept but reject in totality the submissions made by PMC and the Respondent No.9-PP in this regard.

33. Though, much has been claimed by Respondent No.9-PP regarding the clarificatory notification of MoEF dated 4th April 2011, wherein the term built up area has been clarified, we do not find any confusion or contradiction in definition of terms BUA and FSI. The Respondent No.9-PP is a major developer and must be well versed with these terminologies.

34. From the material referred to above, it leaves no scope for doubt that F.S.I. and BUA are two terms which apply with a distinction defining different extent of area.

35. It will shake the conscious of all concerned when we see a deliberate attempt on the part of DoE, SEAC and SEIAA to confuse the issue virtually falling in line with misleading statements of Respondent No.9-PP and Deputy Engineer, PMC. It is astonishing that both Respondent No.9-PP and Deputy Engineer, PMC refer to BUA as F.S.I. Despite such clear distinction in definitions and interpretations of BUA and FSI, they had attempted to mislead DoE, SEAC and SEIAA in believing that BUA and F.S.I are same. We expect an officer conferred with professional duty as 06 an engineer in the Department of Building Permission of PMC to be very meticulous in at least understanding the terms which make lot of difference to the fact of construction. We least expected 06 him as to know the distinction between BUA and FSI, as administration of Corporation would depend upon his professional advice and technical expertise to take action against the erring parties who contravene the mandate of law for safeguarding the interest of citizens which the Corporation is required to protect. We are also constrained to observe that the higher authorities of Building permission department had closed their eyes even when such incorrect affidavits are filed before the Tribunal and such misleading reports are sent to state authorities like DoE, SEAC and SEIAA.

36. Therefore, un-hesitatingly we could observe that the report dated 19th December, 2015 of the Deputy Engineer is a compromised statement to paint a wrong picture of the project firstly to suppress deviation and secondly to create ambiguity in definition of the terms of F.S.I. and BUA to help Respondent No.9-PP to obtain orders from the other authorities. This is unveiled from the affidavit filed by PMC dated 17th August, 2016 in pursuance to our Order dated 2nd August, 2016. The details mentioned therein are as follows:

Plot	Built-up Area	
	F.S.I.	Non F.S.I
1	48424.66	46088.47
2	630.55	4858.57

37. We have also taken a judicial note of the fact that considering such complexity in Environment issues, MoEF had constituted Multi-disciplinary SEAC/SEIAA and had authorised it to take action against violation. SEAC and SEIAA have the necessary experience and expertise to identify violations independently by expert advice and application of mind, based on inputs from field authorities. What we observe here is that Principal Secretary of DoE just relied upon a report filed by junior most official of PMC and without any independent appraisal PS, DoE has held that construction of 18 buildings at site instead of 12 buildings, is allowed within the allowable BUA as per Environment Clearance. We do not find any environment impact appraisal or reasoning for such a finding. When openly excavation of the soil and damage to underground water is being impating the environment. No independent assessment or appraised is done.

38. We are, therefore clear in our mind that Applicant has substantiated that the

original project conceived by Respondent No.9-PP had to confine to what was sanctioned under the EC dated 4th April, 2008 and any extra construction or increase in building, plinth commercial structures, shops and flats should have support of modified EC. As of now, since no modified EC has been granted, the extent of project activity cannot increase beyond the limit circumscribed by EC dated 4th April, 2008. Any such activity or construction beyond permissible limits cannot be saved by jugglery of words, misinterpreting against the statutory definition of F.S.I. and BUA.

39. We are further satisfied that the Principal Secretary, Environment Department who has authored the order dated 31st May, 2016 has lot to explain for the reason the ultimate declaration made by him in the order declaring construction activity of Respondent No.9-PP to be in permissible limit of F.S.I. is result of his mis-interpretation of the terms F.S.I. and BUA and reflects non-application of mind.

40. The prime issue that arises for consideration in this case is as to whether the construction activity of Respondent No.9-PP, is exceeding the sanction accorded by the EC. Could the Respondent No.9-PP proceed with construction without obtaining modified EC. The answer is obviously No.

41. For the reasons aforesaid, we answer the above issue in the negative hold that the construction activity of Respondent No.9-PP to the extent it exceeds the permissible limits as per EC cannot be saved and shall stop, subject to the grant of modified EC by competent authority.

42. From the extracted portion of the order dated 31st May, 2016 of Principal Secretary, Environment Department, it is seen that he has declared construction of 18 buildings on the site instead of 12 buildings is permissible which, according to him, only a changes on configuration of buildings. This opinion undoubtedly is based on his erroneous conclusion that total BUA which is nothing but F.S.I. consumed i.e. 48617.14 sq.mts which is within the EC limit as against the actual construction activity which has exceeded over 100000 sq.mtrs BUA. Hence we set aside that order/communication dated 31st May, 2016.

43. Besides, another issue which confronts us based on these violations is what should be the consequence of such violation. Un-hesitatingly, it can be held that the consequences of such contravention and illegal construction will be adverse on the environment and ultimately it will lead to several incidental causes of action. That will follow if the Respondent No.9-PP is allowed to continue the illegal activity as has been done by order dated 31st May, 2016. The complexity in environmental issues therefore requires a meticulous examination and dispassionately conclusion and finding.

44. Apart from the legal issues, we further notice that if not illegality in the order of PS DoE in question, it is certainly impropriety because the officer is deemed to have been informed of the fact that this Tribunal is seized of the matter and has reserved the case for judgment on 23.5.2016 after giving full opportunity to Department which the officer in question represents as Respondent No.2. Hence, he cannot plead ignorance of the fact that the case was posted for judgment in the circumstances he should have allowed adjudication by the Tribunal to take final decision on the main issue about the violation of the EC conditions based on the alleged enlarged construction activity. We also do not find merit in contention of learned Sr. counsel Shri. Mishra that such an order is line with the liberty given to SEIAA by Tribunal on 23.2.2016 to deal the application of PP for expansion of project on merit because the order in question is not related to EC but a decision of the proceedings of proposed directions under Environment (Protection) Act, 1986, which were issued by department in August 2015.

45. With these findings, it is now necessary to consider the reliefs sought by the Applicant in this Application. He has sought demolition of the illegal structures and other consequential reliefs. Learned counsel appearing for the Applicant has

strenuously argued that all these violations have been done by the respondent-9 PP in total connivance with the authorities mainly the PMC and DoE. He has even cited a visit report of SEAC expert committee to suggest the gross inadequacy in the visit report the committee.

46. It is now a matter of record that the construction of the project in question is near completion and even the occupancy certificate is granted partially. We need to consider the fact that the project in question is primarily a residential project and many individuals have invested their money in the project for meeting need for residential accommodation by having a house in city like Pune. Any order to demolish structure would also adversely affect them. The Respondent-9 has already created 3rd party rights. Though the Respondent-9 has blatantly violated the conditions of EC, we also note the total lack of supervision and enforcement at PMC level has resulted in such illegal activity.

47. The Tribunal is expected to apart on the principles of Sustainable Development and Polluter pays principle. We are conscious of the fact that Polluter pays Principle shall not be construed as 'pay and pollute principle', and the payment has therefore to be exemplary and deterrent in order to pass a clear message that environmental compliance is supreme and the party which is non-complying the environmental standards shall be at economic disadvantage.

48. In this regard, we would like to refer to approach taken by the Hon'ble Principal Bench of National Green Tribunal, New Delhi in Original Application No.24/2011 "*Samir Mehta v. Union of India*" Where the Bench has noted that:

"The Supreme Court of India, in the case of Sterlite Industries India Ltd. v. Union of India (2013) 4 SCC 575 had held that where the industry had violated the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and had operated without obtaining consent, it was liable to pay damages of Rs.100 crores for the default period. The Court applied the Rule of Strict Liability but did not strictly compute the damages with exactitude. It only enforced the liability on general principle for awarding of damages for non-compliance to the law in force. In fact, any other approach would run contra to the Principle of Strict Liability. This judgment has been followed by the Tribunal in a large number of cases. Reference can be made to the cases of S.P. Muthuraman 2015 All (I) NGT Reporter (2) (Delhi) 170, Krishan Kant Singh v. National Ganga River Basin Authority (2014) ALL (I) NGT Reporter 3 (Delhi) 1 and M.C. Mehta v. Kamal Nath, (2002) 3 SCC 653 : AIR 2002 SC 1515. Thus, we are of the considered view that the determined damages of Rs.100 crores should be paid by and recovered from Respondents No. 5, 7 and 11, jointly and severally while Respondent No.6 is held liable to pay Rs. 5 crores as environmental compensation for dumping of the cargo in the sea and then failing to take any precautionary or preventive measures. The consignment of 60054 MT of coal has caused marine pollution and continues to be a cause and concern for environmental pollution. The Respondents are defaulting entities which have not complied with law and have adopted a most careless and reckless attitude in relation to protecting the marine environment."

49. We also refer to the judgment of Hon'ble Principal Bench in the matter of *Krishnlal Gera Vrs. State of Haryana* (Appeal No.22 of 2015 dated 25th August 2015) wherein the Tribunal has dealt with a matter regarding construction activities without the necessary prior environmental clearance. In para 58 and 59 of the judgment after discussing the legal framework, the Tribunal has imposed environmental compensation cost of 5 % (percent) of the total cost for restoration and restitution of the environment, in addition to payment of Rs.5 crores for violating the Law and starting and completing the project without obtaining environmental clearance, on the project proponent. These directions were issued in consonance with the dictum of Hon'ble

Supreme Court.

"Since the Project Proponent may not be directed to demolish the structure at this stage, but, shall strictly comply with the directions that we propose to pass in the present case. The scope and ambit of such directions has to be in terms of the Act of 1986 circumscribed by the statutory jurisdiction of this Tribunal. Upon detailed discussion of the laws in force, the Tribunal in the case of S.P. Muthuraman (supra) has clearly held that such directions can be issued by the Tribunal."

50. The Principal Bench in "Appeal No.7/2015 in the matter of *Jalbiradari v. MoEF*" pronounced on 31st May 2016, has also considered the legal consequences in case of quashing the environmental clearance for construction project, particularly with regard to the "fate accompli" situation.

16. -----The inevitable consequence could be the Tribunal has dealt with quashing of the Environmental Clearance and set the project at in or they be directed to maintain status quo as on the date of determination. The Tribunal has dealt with large number of cases filing under the category "fate-accompli situation". There are large numbers of projects which have started their construction activity or other activities without even complying Environmental Clearance and the projects were largely completed and then either Environmental Clearance was granted or their cases for granting Environmental Clearance were delisted. In those cases following the principle of Sustainable Development and Polluter Pays Principal, the Tribunal imposed Environmental Compensation on the project proponent for degrading/damaging the environment for starting the project without complying with the provisions of law and for violating the orders and directions. The works of those projects were stopped and a Committee was appointed to revisit for grant/consideration of the Environmental Clearance and fresh Environmental Clearance orders were issued. Even where demolition was required the same was directed. All these cases have been decided by the larger bench of the Tribunal and clearly state the binding precedent. References can be made to *S.P. Muthuraman v. Union of India*, 2015 All (I) NGT Reporter (2) (Delhi) 170; *Krishan Lal Gera v. State of Haryana*, Appeal No. 22 of 2015 (pronounced on 25th August, 2015) & *Forward Foundation v. State of Karnataka*, O.A. No. 222 of 2014 (pronounced on 7th May, 2015). In these judgments, various judgments of the Hon'ble Supreme Court have been considered by the Bench. The purpose and object of the law including CRZ Notification, Environmental Clearance is to strictly regulate the development so as to prevent causing of damage of the nature and ecology. The cases are not the cases of irreparable or irreversible situations. Largely, the 90 per cent of the projects were has already been completed except some other parts of the project. There can be proper regulations on these projects, as otherwise it will only lead to colossal waste of public funds. It will result in dual disadvantage, firstly, wastage of public funds and secondly, and more importantly the demolition of the project itself would generate so much of waste and other materials that this will become a huge environmental hazard itself. The cases are not one, which are incapable of reprisal or re- appreciation. Damage to the environment and ecology to some extent has already been caused. It will be more useful to take remedial and restorative steps. They have acted in breach of the law and carried on with their activity in an unauthorized and illegal manner.-----

51. We are also inclined to adopt the approach taken by the Bench in the interest of justice and fair play and based on the facts and circumstances of the case. The construction activity is not a prohibited activity in the subject, but a regulated activity. We also take a judicial note of the fact that the demolition of structures in question would also result in further environmental damage and generation of construction

waste. Other option which could have been explored is asking the government to take over the additional construction and use it for public purpose but as noted above, already third party rights have been created, may be partially.

52. The purpose and object of the law including Environmental Clearance is to strictly regulate the development so as to prevent causing of damage of the environment and ecology. Though in the present case substantial damage has been caused to the environment and ecology, it will be more useful to take remedial and restorative steps.

53. The Respondent-9 is a defaulting entity which has not complied with law and has adopted a most careless and reckless attitude in relation to protecting the environment. The other Respondents, particularly the PMC and DoE have been the either the mute spectator or have not performed their statutory duties. However, we would note with appreciation that it is only MPCB that has acted on the complaints of the Applicants and have diligently taken legal actions besides bringing on record the non-compliances by Respondent-9 PP.

54. For the aforesaid reasons, the Applicant succeeds in his legal pursuit to challenge the noncompliance of EC conditions by the Respondent-9 and obtain certain directions. Hence the Application is allowed and we issue following directions:

1. The Respondent No.9-PP shall pay environmental compensation cost of Rs.100 crores or 5 % (Five percent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs. 5 crores for contravening mandatory provision of several Environment Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.
2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent No.9-PP by the officer of PMC, we impose fine of Rs.5 Lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs. 5 Lakh shall be paid within one month.
3. We direct the Chief Secretary, State of Maharashtra and the competent authority to take notice of the conduct of the officers concerned who have misled the Department of Environment in the matter relating to interpretation of F.S.I. and BUA in terms of which order dated 31st May, 2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31st May, 2016
4. PMC, DoE and SEIAA are directed to pay cost of Rs. 1 lakh each to the Applicant within 4 weeks.

55. The Application alongwith connected Misc. Applications and Execution Application is therefore disposed accordingly.

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA

257

(2018) 18 Supreme Court Cases 257

a (BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)
GOEL GANGA DEVELOPERS INDIA PRIVATE
LIMITED ... Appellant;

Versus

b UNION OF INDIA THROUGH SECRETARY MINISTRY OF
ENVIRONMENT AND FORESTS AND OTHERS ... Respondents.

Civil Appeals No. 10854 of 2016 with Nos. 10901 of
2016 and 5157-58 of 2018[†], decided on August 10, 2018

c **A. Environment Law — Environmental Clearance/NoC/Environment
Impact Assessment (EIA) — Specific Clearances — Development Projects —
Environment Impact Assessment (EIA) Notification, 2006 — Construction
in violation of the environmental clearance (EC), as in the present case, in
violation of the clearance granted under Noti. dt. 4-4-2011 — Establishment
and Effect of — “Built-up area” under Notis. dt. 4-4-2011 and 14-9-2006 —
Concept of floor space index (FSI)/floor area ratio (FAR) — Non-relevance of,
for computation of “built-up area” for which EC is granted**

d **— Imposition of damages of Rs 100 crores or 10% of project cost,
whichever was higher, for violation of environmental clearance in addition
to Rs 5 crore damages imposed by NGT, instead of directing demolition —
Detailed coercive directions issued to ensure deposit of these damages within
six months**

e **— Held, the concept of FSI or non-FSI may be relevant for the purposes
of building plans under municipal laws and regulations but it has no linkage
or connectivity with the grant of EC and both will have an equally deleterious
effect on the environment — When EC is granted for a particular construction
it includes both FSI and non-FSI areas — Held, the built-up area under the
Noti. dt. 14-9-2006 means all constructed area which is not open to the sky and
the built-up area under the Noti. dt. 4-4-2011 means all covered area including
basement and service areas**

f **EC dt. 4-4-2008 was granted to the project proponent for construction
of built-up area 57,658.42 sq m, whereas the total construction raised by it was
1,00,002.25 sq m — Rejecting the contention of project proponent that while
calculating the built-up area the constructions mentioned in Rr. 15.4.1.1(a), (b)
and (c), 17.7.3 and 15.4.2 of the Pune Municipal Corporation Development
Control Rules, 1982 were to be excluded, held, the construction raised
by the project proponent was in violation of the environmental clearance
granted to it — However, considering that the project proponent had already
taken money and a large number of flats and shops had already been**

h [†] Arising from the Judgment and Order in *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC
OnLine NGT 4213 [National Green Tribunal, (Western Zone) Pune Bench, Application No. 184
of 2015 (WZ), dt. 27-9-2016] and *Tanaji Balasaheb Gambhire v. Union of India* [National Green
Tribunal, (Western Zone) Pune Bench, Review Application No. 35 of 2016, dt. 8-1-2018]

occupied and persons belonging to the middle class had invested their life's earnings, demolition not ordered/directed — However, inter alia, damages of Rs 100 crores or 10% of the project cost, whichever was higher, in addition to Rs 5 crores as levied by NGT, imposed on the project proponent

a

Words and Phrases “Built-up area” Pune Municipal Corporation Development Control Rules, 1982, Rr. 15.4.1.1(a), (b) & (c), 17.7.3 and 15.4.2 (Paras 14, 17, 53, 58.2, 66.1, 66.2 and 66.9)

B. Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Review petition — Who can hear and where — Held, the powers of review which NGT exercises are akin to those of a civil court — In terms of Or. 47 R. 5 CPC, a review petition should normally be heard by the same Bench which passed the original order

b

Further, this normal rule should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter — Further, under sub-rule (2) of R. 22 of 2011 Rules the matter should ordinarily be heard at the same place of sitting where it was originally decided, however, this is not a mandatory direction — National Green Tribunal (Practices and Procedure) Rules, 2011 — Rr. 22(2) and 22(3) — Civil Procedure Code, 1908 — Or. 47 R. 5 — Practice and Procedure — Review (Paras 36, 38 and 40)

c

C. Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Exercise of power of review — Impermissibility of, when appeal already pending

d

Statutory appeal was pending in the Supreme Court against the original order when the respondent's review application, inter alia, praying for demolition of the illegal structures and enhancement of compensation, was taken up for hearing by NGT — In the present case, held, project proponent/appellant had not only challenged original order of NGT on the ground that he had not violated EC but also on the ground that the damages awarded were highly excessive — Therefore, the Bench hearing the review application erred in holding that review application was maintainable — Civil Procedure Code, 1908 — Or. 47 R. 1(2) — Practice and Procedure — Review (Paras 7, 45 and 47)

e

f

D. Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Damages for carrying out construction in violation of environmental clearance (EC) — Quantification of — Carbon footprint as basis

g

Rejecting the contention that damages should be assessed on the basis of “carbon footprint”, held, the courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles — However, in a case where expert evidence is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, court may rely upon

h

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA

259

a such data — Evidence Act, 1872 — S. 45 — Words and Phrases — “Carbon footprint” (Paras 59 to 63)

E. Environment Law — Environment (Protection) Rules, 1986 — Rr. 3 to 5 — EIA Notifications issued under — Cannot be varied/abrogated by officials of MoEF — Environment (Protection) Act, 1986, S. 4

b **F. Public Accountability, Vigilance and Prevention of Corruption — Corruption/Abuse of Power — Environmental Clearance/NoC — Improper grant of — Fine imposed upon the PMC and direction given by NGT to PMC to take appropriate action against the erring officials, and directions to enquire into conduct of other officials concerned, also upheld**

c The project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m.

d The project proponent applied for environmental clearance (EC) for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. EC was granted to the project proponent on 4-4-2008.

e The original applicant filed an application before the National Green Tribunal (“NGT”, for short) claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance (“EC”, for short) granted for the project and also in violation of the various municipal laws.

f The case of the project proponent was that the term “built-up area” is synonymous with “floor space index” or FSI and that the constructed area, which is exempted from FSI area, or is a non-FSI area, is not a part of the “built-up area”. The project proponent contended that while calculating the built-up area, the constructions mentioned in Rules 15.4.1.1(a), (b) and (c) and Rule 17.7.3 of the Pune Municipal Corporation Development Control Rules, 1982 (“DCR”, for short), in addition to the areas specifically exempted under Rule 15.4.2 are to be excluded. It was contended that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008. The stand of the Union of India and the original applicant was that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006.

g The issues involved in this appeal were:

1. Whether the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance.

2. Whether NGT could have entertained a review application/reviewed its order dated 27-9-2016, when an appeal against the same was already pending before the Supreme Court?

h

260

SUPREME COURT CASES

(2018) 18 SCC

Held :

Under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as “built-up area”. There is no exception for non-FSI area. (Para 16)

a

Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. (Para 17)

b

c

Notification dated 4-4-2011

It is not at all necessary to decide whether the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests is clarificatory or is in substitution of the original notification of 2006. There is no ambiguity with regard to the definition of “built-up area” even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. (Para 19)

d

Clarification dated 7-7-2017

The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. Since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by the office memorandum dated 7-7-2017 issued by the Joint Director, Ministry of Environment, Forests and Climate Change. (Para 22)

e

f

Common Cause v. Union of India, (2017) 9 SCC 499, relied on

Environmental clearance (EC) for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017

SEIAA has laid down general conditions for pre-construction phase and the first condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. (Para 27)

g

In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to grant EC by treating the project as falling under Category B-2. Furthermore, the EC

h

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA

261

- a dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. (Para 28)

Allegations made by the original applicant against various officials

- b The law is well settled that no person can be condemned unheard. It would, therefore, not be fair to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. (Para 30)

However, as far as their official capacity is concerned, NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and therefore, directions given by NGT in its order dated 27-9-2016 in this regard, upheld. (Para 31)

- c Prima facie, the Principal Secretary, Environment Department, Government of Maharashtra has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. His actions need to be looked into and, therefore, direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned, upheld. (Paras 32 and 66.8)

- d *Challenge to the order dt. 8-1-2018 passed in Tanaji Balasaheb Gambhire, 2018 SCC OnLine NGT 302*

- e Section 19(4)(f) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT. (Para 34)

- f A review petition should normally be heard by the same Bench which originally decided the matter. A review petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. (Para 38)

- g Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of the Supreme Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. (Para 39)

- h According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall "ordinarily" be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to

the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. (Para 40)

Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2 SCC 167 : 1980 SCC (Tax) 222, referred to

In terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. (Para 43)

Malthesh Gudda Pooja v. State of Karnataka, (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, relied on

Malthesh Gudda Pooja v. State of Karnataka, 2009 SCC OnLine Kar 919; *Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 918, referred to

As far as the facts of this case are concerned, the original applicant could have raised all issues which he raised in the review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in the Supreme Court as he has done now. In this context, once the Supreme Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application. (Para 45)

The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before the Supreme Court. (Para 47)

Tanaji Balasaheb Gambhire v. Union of India, 2016 SCC OnLine NGT 4217; *Tanaji Gambhire v. Union of India*, 2017 SCC OnLine NGT 1954, referred to

On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter. (Para 51)

Tanaji Balasaheb Gambhire v. Union of India, 2016 SCC OnLine NGT 4201; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4204; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4205; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4206; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4219; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4203; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4207; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4208; *Tanaji Balasaheb Gambhire v. Union of India*, 2015 SCC OnLine NGT 838; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 1330; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4215; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4210; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4211; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4202; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4212; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4214, referred to

Is demolition the only answer?

Now there are 807 flats and 117 shops which are either constructed or under construction. Keeping in view the interest of these third parties who were not parties before NGT, in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. (Para 53)

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA

263

a The project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse. (Para 54)

b The project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. (Para 64)

c The base year has been fixed as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws. (Paras 64 and 66.9)

e The project proponent is granted six months' time to deposit the amount of damages imposed above in the Registry of the Supreme Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to the project proponent to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of the Court. (Para 66.13)

f *Whether the original applicant is entitled to special damages?*

This litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted. (Para 57)

Tanaji Balasaheb Gambhire v. Union of India, 2016 SCC OnLine NGT 4213, partly reversed
Tanaji Balasaheb Gambhire v. Union of India, 2018 SCC OnLine NGT 302, reversed

h

VN-D/61010/S

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b

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on page(s)

1. 2018 SCC OnLine NGT 302. *Tanaji Balasaheb Gambhire v. Union of India (reversed)* 266e-f, 266h, 267a, 276f, 277g h, 283e f, 286b c, 287g h
2. (2017) 9 SCC 499. *Common Cause v. Union of India* 273g
3. 2017 SCC OnLine NGT 1954. *Tanaji Gambhire v. Union of India* 281d, 281d e c
4. 2016 SCC OnLine NGT 4219. *Tanaji Balasaheb Gambhire v. Union of India* 282b c
5. 2016 SCC OnLine NGT 4217. *Tanaji Balasaheb Gambhire v. Union of India* 281c
6. 2016 SCC OnLine NGT 4215. *Tanaji Balasaheb Gambhire v. Union of India* 283b
7. 2016 SCC OnLine NGT 4214. *Tanaji Balasaheb Gambhire v. Union of India* 283c, 283d e d
8. 2016 SCC OnLine NGT 4213. *Tanaji Balasaheb Gambhire v. Union of India (partly reversed)* 265e-f, 266e, 266e-f, 267a, 275a-b, 275c, 275f-g, 276a, 283c, 284d, 287g, 288a, 288b-c
9. 2016 SCC OnLine NGT 4212. *Tanaji Balasaheb Gambhire v. Union of India* 283c e
10. 2016 SCC OnLine NGT 4211. *Tanaji Balasaheb Gambhire v. Union of India* 283b-c
11. 2016 SCC OnLine NGT 4210. *Tanaji Balasaheb Gambhire v. Union of India* 283b c
12. 2016 SCC OnLine NGT 4209. *Tanaji Balasaheb Gambhire v. Union of India* 282f g, 283d e
13. 2016 SCC OnLine NGT 4208. *Tanaji Balasaheb Gambhire v. Union of India* 282d, 282f g f
14. 2016 SCC OnLine NGT 4207. *Tanaji Balasaheb Gambhire v. Union of India* 282b-c
15. 2016 SCC OnLine NGT 4206. *Tanaji Balasaheb Gambhire v. Union of India* 282b c
16. 2016 SCC OnLine NGT 4205. *Tanaji Balasaheb Gambhire v. Union of India* 282b-c g
17. 2016 SCC OnLine NGT 4204. *Tanaji Balasaheb Gambhire v. Union of India* 282b-c
18. 2016 SCC OnLine NGT 4203. *Tanaji Balasaheb Gambhire v. Union of India* 282b-c
19. 2016 SCC OnLine NGT 4202. *Tanaji Balasaheb Gambhire v. Union of India* 283c
20. 2016 SCC OnLine NGT 4201. *Tanaji Balasaheb Gambhire v. Union of India* 282b h

	GOEL GANGA DEVELOPERS (INDIA) (P) LTD. v. UNION OF INDIA (<i>Deepak Gupta, J.</i>)	265
a	21. 2016 SCC OnLine NGT 1330. <i>Tanaji Balasaheb Gambhire v. Union of India</i>	282e, 282e-f
	22. 2015 SCC OnLine NGT 838. <i>Tanaji Balasaheb Gambhire v. Union of India</i>	282d-e
	23. (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473. <i>Mallesh Gudda Pooja v. State of Karnataka</i>	279a
	24. 2009 SCC OnLine Kar 919. <i>Mallesh Gudda Pooja v. State of Karnataka</i>	279a-b
	25. 2009 SCC OnLine Kar 918. <i>Mallesh Gudda Pooja v. State of Karnataka</i>	279b-c
b	26. (1980) 2 SCC 167 : 1980 SCC (Tax) 222. <i>Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi</i>	278g h

The Judgment of the Court was delivered by

DEEPAK GUPTA, J. Applications for intervention/impleadment are allowed. Application for amendment of grounds of appeal in Civil Appeal No. 10854 of 2016 is allowed.

c 2. These matters are being decided by one judgment since they all arise out of one original application filed by Shri Tanaji Balasaheb Gambhire (hereinafter referred to as “the original applicant”) before the National Green Tribunal (“NGT”, for short) being Application No. 184 of 2015.

d 3. The original applicant filed an application before NGT claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance (“EC”, for short) granted for the project and also in violation of the various municipal laws. It was prayed that the illegal structures be demolished; the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board be directed to initiate appropriate action against the project proponent for violation of the Environment Impact Assessment (EIA) Notification, 2006; the Union of India be directed to take action against SEIAA; and lastly, it was prayed that the project proponent be directed to pay/deposit a heavy amount of compensation in the environment relief fund. NGT vide its order dated 27-9-2016¹ allowed the application in the following terms: (*Tanaji Balasaheb case*¹, SCC OnLine NGT para 54)

“54. For the aforesaid reasons, the applicant succeeds in his legal pursuit to challenge the non-compliance of EC conditions by Respondent 9 and obtain certain directions. Hence the Application is allowed and we issue following directions:

g 1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition

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1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several Environmental Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.

2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent 9-PP by the officer of PMC, we impose fine of Rs 5 lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs 5 lakhs shall be paid within one month.

3. We direct the Chief Secretary, State of Maharashtra and the competent authority to take notice of the conduct of the officers concerned who have misled the Department of Environment in the matter relating to interpretation of FSI and BUA in terms of which order dated 31-5-2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31-5-2016.

4. PMC, DoE and SEIAA are directed to pay cost of Rs 1 lakh each to the applicant within 4 weeks.”

4. Aggrieved by the aforesaid order of NGT, the project proponent filed Civil Appeal No. 10854 of 2016. Pune Municipal Corporation (“PMC”, for short) also challenged the said order insofar as it adversely affects PMC by filing Civil Appeal No. 10901 of 2016.

5. Review application being Application No. 35 of 2016 was filed by the original applicant before NGT. This application was partly allowed on 8-1-2018² and Direction 1 in the original order dated 27-9-2016¹ was modified and substituted as under: (*Tanaji Balasaheb case*¹, SCC OnLine NGT para 54)

“54. ...‘1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC, whichever is less, for restoration and restitution of environment damage and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several environment laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.’ ”

6. Thereafter, the project proponent filed IA No. 8000 of 2018 for permission to amend its appeal permitting it to challenge the order passed in review application dated 8-1-2018², which we have allowed.

² *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

¹ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA (*Deepak Gupta, J.*)

267

- a 7. Appeal being Diary No. 3911 of 2018 was filed by the original applicant challenging the original order dated 27-9-2016¹ as well as the order dated 8-1-2018² passed in review application praying that demolition of the illegal structures be ordered and the compensation be enhanced to Rs 500 crores.

The factual matrix

- b 8. The facts briefly stated are that the project proponent purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m. From the documents placed on record, it is apparent that as per the Development Control Plan for the city of Pune, 3 roads of the width of 36 m, 30 m and 18 m bisected this plot into two which for the sake of convenience were referred to as Plot c No. 1 and Plot No. 2. As per the Development Plan, there are certain statutory reservations in addition to the roads and some land has to be left out or reserved for schools, cultural centres, open areas, etc. The remaining area is referred to as the “balance plot area” which in this case works out to 46,993.79 sq m. Out of this “balance plot area” 15% is to be reserved for amenity space and another 10% area is to be compulsorily left out as open space leaving “net d plot area” of 41,455.21 sq m. Prima facie these calculations do not appear to be correct. However, this will not impact the merits of the case. Be that as it may, the undisputed fact is that FSI has to be calculated on the “net plot area”. We may, at this stage, point out that the aforesaid figures are based on the written submissions submitted on behalf of the Union of India by the learned Additional Solicitor General and these figures have not been disputed before us.
- e 9. On 12-3-2007, the project proponent applied for sanction of layout and building proposal plan on an area of 15,141.70 sq m, originally depicted as Plot No. 3 and the sanctioned FSI was 15,313.16 sq m. Thereafter, on 5-9-2007, revised layout plan was submitted for an area measuring 28,233.23 sq m and the sanctioned FSI was 39,526.54 sq m. The project proponent applied for EC for the project and in the proposal dated 27-6-2007, he had shown that he f would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. The EC was granted to the project proponent on 4-4-2008. Paras 2 and 3 of the communication granting EC read as under:

- g “2. The project proponent is proposing for construction of group housing project at Sl. Nos. 35 to 40, Village Vadgaon Budruk, Singhad Road, Pune, Maharashtra at a cost of Rs 10,737.14 lakhs. The project involves construction of 12 buildings with stilt, basement plus 11 floors for 552 flats, 50 shops and 34 offices. The total plot area is 79,100.00 sq m. Total built-up area as indicated is 57,658.42 sq m. Total water requirement will be 745 KLD and 400 KLD of waste water will be generated from

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1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213
2 *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

the buildings which will be treated in sewage treatment plant. The treated waste water will be used for landscaping, DG set cooling and horticulture purpose. The solid waste generated from the buildings will be 1500 kg/day and disposed as per the MSW Rules, 2000. The parking space is proposed for parking of 1072 cars.

a

3. EAC after due consideration of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observations have recommended the grant of environmental clearance for the project mentioned above subject to compliance with EMP and other stipulated conditions. Accordingly, the Ministry hereby accords necessary environmental clearance for the project under Category 8(a) of the EIA Notification, 2006 subject to the strict compliance with the specific and general conditions mentioned below:"

b

10. EC was granted, subject to certain conditions. We may refer to certain relevant conditions which read as under:

c

"Part A Specific conditions

I. Construction phase

* * *

v. Permission to draw and use groundwater for construction work shall be obtained from competent authority prior to construction/operation of the project.

d

* * *

5. In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry."

Concept of "built-up area" under the Notification dated 14-9-2006

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11. It is not disputed that EC was granted for built-up area of 57,658.42 sq m. The main dispute is with regard to the interpretation of the term "built-up area". The case of the project proponent is that the term "built-up area" is synonymous with "floor space index" or FSI and that the constructed area, which is exempted from FSI area or is a non-FSI area is not a part of the "built-up area". On the other hand, the submission made by the original applicant as well as by the learned Additional Solicitor General appearing for the Ministry of Environment, Forests and Climate Change is that the built-up area will cover all constructed area and the concept of FSI area or non-FSI area is totally alien to environmental laws.

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12. The learned Senior Counsel for the project proponent has drawn our attention to the Development Control Rules for Pune Municipal Corporation, Pune, 1982 ("DCR", for short). Under DCR, no building can be constructed without grant of building permission/commencement certificate by Pune Municipal Corporation. There is a detailed procedure for obtaining the building permission/commencement certificate wherein layout plans, building plans, etc. have to be submitted. The main emphasis was on Rule 2.13 of DCR, which defines "built-up area" as follows:

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GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
 v. UNION OF INDIA (*Deepak Gupta, J.*)

269

- a* **"2.13. Built-up area.** Area covered immediately above the plinth level by the building or external area of any upper floor whichever is more excepting the areas covered by Rule 15.4.2."

Rule 2.39 defines "floor area ratio" as follows:

- b* **"2.39. Floor area ratio (FAR).** The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule 15.4.2 by the area of the plot.

$$\text{FAR} = \frac{\text{Total covered area on all floors}}{\text{Plot area}}$$

Note. The term FAR is synonymous with floor space index (FSI)."

13. Strong reliance is placed on Rule 15.4.2, which reads as under:

- c* **"15.4.2.** In addition to Rules 15.4.1.1(a), (b) and (c) and 17.7.3, the following shall not be included in covered area or FAR and built-up area calculations:

- d* (a) A basement or cellar space under a building constructed on stilts and used as parking space, and air conditioning plant rooms used as accessory to the principal use;
- e* (b) Electric cabin or substation, watchman's booth of maximum size of 1.6 sq m with minimum width or diameter of 1.2 m, pump house, garage shaft, space required for location of fire hydrants, electric fittings and water tanks;
- (c) Projection as specifically exempted under these Rules;
- (d) Staircase room and/or lift rooms above the topmost storey, architectural features, chimneys, elevated tanks of dimensions as permissible under these Rules;
- f* *Note.* The shaft provided for lift shall be taken for covered area calculations only on one floor up to the minimum required as per these Rules;
- (e) One room admeasuring 2 m × 3 m on the ground floor of cooperative housing societies or apartment owners/cooperative societies buildings and other multi-storeyed buildings as office-cum-letter box room;
- g* (f) Rockery, well and well structures, plant, nursery, water pool, swimming pool, (if uncovered) platform round a tree, tank fountain, bench, chabutra with open top and unenclosed sides by walls, ramps, compound wall, gate, slide, swing, overhead water tank on top buildings;
- (g) (*Deleted*);
- (h) Sanitary block subject to provision of Rule 15.4.1(a) and built-up area not more than 4 sq m."

- h* **14.** The contention of the learned Senior Counsel appearing for the project proponent is that while calculating the built-up area the constructions mentioned in Rules 15.4.1.1(a), (b) and (c) and Rule 17.7.3 in addition to the

areas specifically exempted under Rule 15.4.2 are to be excluded. He submits that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008.

15. On the other hand, the stand of the Union of India and the original applicant is that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006. The building/construction projects are covered by Item 8 of the schedule to the EIA Notification dated 14-9-2006. Construction of a project which is covered under the schedule can be commenced only after obtaining EC in terms of Para 2 of the said notification. The schedule itself categorises the various projects and activities into two categories being "Category A" and "Category B". "Category A" projects require clearance by the Central Government in the Ministry of Environment, Forests and Climate Change on the recommendation of the Expert Appraisal Committee to be constituted by the Central Government whereas those activities which form "Category B" of the schedule including modernisation and expansion of such projects require EC from the State/Union Territory Environment Impact Assessment Authority (SEIAA) and such authority is required to base its decision on the recommendation of the State/Union Territory Level Expert Appraisal Committee (SEAC). There is further division of "Category B" into B-1 and B-2. B-1 projects require Environmental Impact Assessment (EIA) Report to be prepared and scoping to be done whereas B-2 projects do not require any Environmental Impact Assessment Report. Item 8 of the schedule, with which we are concerned, reads as follows:

(1)	(2)	(3)	(4)	(5)
8		<i>Building/Construction projects/Area development projects and townships</i>		
(a)	Building construction projects and		≥20,000 sq m and <1,50,000 sq m of built-up area#	#(built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
(b)	Townships and area development projects		Covering an area >50 ha and or built-up area >1,50,000 sq m ++	++All projects under Item 8(b) shall be appraised as Category B-1."

16. From a bare perusal of the two hashtags (#) in Columns 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines "built-up area" to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as "built-up area". There is no exception for non-FSI area.

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA (*Deepak Gupta, J.*)

271

- 17.** Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14-9-2006.

Notification of 4-4-2011

18. Our attention has been drawn to the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests. By means of this notification, the words of Column 5 against Item 8(a) have been replaced and substituted as under:

- “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’.”

This notification clearly defines “built-up area” as all constructed area including basement and service areas without any exception.

- 19.** The learned Senior Counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of “built-up area” even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasise that this definition also is in consonance with the concept of grant of EC for construction as explained

272

SUPREME COURT CASES

(2018) 18 SCC

above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws.

Clarification dated 7-7-2017

20. Strong reliance has been placed by the project proponent on the office memorandum dated 7-7-2017 issued by Dr Ashish Kumar, Joint Director, Ministry of Environment, Forests and Climate Change. The said office memorandum reads as follows:

F. No. 22-35/2017-1A.III

Government of India

Ministry of Environment, Forests and Climate Change
(Impact Assessment Division)

Indira Paryavaran Bhawan
Jor Bag Road, Aliganj,
New Delhi - 110 003
Dated 7-7-2017

OFFICE MEMORANDUM

Sub.: Clarification on the date of applicability of Notification No. S.O.(E) 695 dated 4-4-2011 issued by MoEF & CC defining "built-up area" of the project.

The Ministry is in receipt of a reference dated 3-4-2017 from Confederation of Real Estate Developers Association of India (CREDAI) seeking clarification on the abovementioned subject. CREDAI has requested that the definition of built-up area (BUA) given vide Notification No. S.O. 695(E) dated 4-4-2011 should have prospective effect.

2. The matter has been examined in the Ministry. BUA defined in Notification No. S.O. 1533 (E) dated 14-9-2006 mentions at Item 8(a) Columns 4 and 5 "built-up area for covered construction, in the case of facilities open to sky, it will be the activity area".

3. The Ministry has further defined BUA vide its Notification No. S.O. 695 (E) dated 4-4-2011 which reads as, "the built-up or covered area on all the floors put together including its basement and other service areas, which are proposed in the building or construction project".

4. The definition provided in the Ministry's notification will have its effect from the prospective date of the notification only. The projects which are not covered in the period of above notifications should be assessed as per the definition of built-up area provided in the building bye-laws or Development Control Regulation (DCR) of the local authorities in the States.

5. This issues with approval of competent authority.

sd/-

(Dr Ashish Kumar)

Joint Director Ph: 011-24695474

Email: ashish.k@nic.in

All States/UTs/SIEAAs/MoEF & CC Divisions

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA (*Deepak Gupta, J.*)

273

a 21. It is urged on the basis of the aforesaid memorandum that prior to the Notification dated 4-4-2011, the built-up area had to be calculated and assessed as per the building bye-laws or the Development Control Regulations of the local authorities in the States. On behalf of the original applicant, it has been urged that this memorandum is meaningless and that it has been issued when the matter was pending before NGT, at the instance of one of the Directors of the project proponent, Shri Atul Goel, who was Joint Secretary of Confederation of Real Estate Developers Association of India (CREDAI), Pune.

b 22. Without going into this aspect of the matter, we are clearly of the view that such an office memorandum could not and should not have been issued. The Notification dated 14-9-2006 is a statutory notification issued in terms of Rule 5(3) of the Environment (Protection) Rules, 1986 which provides that before such a notification is issued, the Central Government has to give notice of its intention of issuing a notification and objections to the same are invited. c No doubt the Central Government is empowered in public interest to dispense with the requirement of notice but this obviously has to be done in exceptional cases. The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011 to d which we have adverted above. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. We are of the view that since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by this office e memorandum.

f 23. We are also of the view that the so-called office memorandum is not at all clarificatory in nature. As held by us above, the notification of 2006 with regard to "built-up area" was absolutely clear and needed no clarification. We fail to understand how the concept of built-up area as understood in the building bye-laws or DCR could be introduced into the notification of 2006 by this office memorandum which virtually made the notification of 2006 totally redundant. Therefore, we quash the office memorandum dated 7-7-2017.

g 24. This is not the first time that we have noticed such clarificatory communications being issued by the officials of the Ministry of Environment, Forests and Climate Change, which virtually have the effect of nullifying the statutory provisions and notifications. We have adverted to some of these communications in our judgment in *Common Cause v. Union of India*³. We expect the officials of the Ministry of Environment, Forests and Climate Change to take a stand which prevents the environment and ecology from being damaged, rather than issuing clarifications which actually help the project proponents to flout the law and harm the environment.

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25. In view of the above, we are clearly of the view that the EC granted to the project proponent on 4-4-2008 was for constructing a total built-up area of 57,658.42 sq m and this would include all covered construction not open to the sky. No artificial division on the basis of FSI and non-FSI area can be made. Therefore, NGT was fully justified in coming to the conclusion that the construction raised by the project proponent was in total violation of the EC granted to it.

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Environmental clearance dated 20-11-2017

26. The project proponent has drawn our attention to the EC for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017. We may note that this clearance indicates that the existing construction comprises of 738 flats and 115 shops which have been completed, 69 flats and 2 shops which are under construction, meaning thereby that 807 flats and 117 shops are already in existence and in addition thereto 454 more flats and cultural centre are sought to be constructed. This will take the total number of flats to 1261 and number of shops to 117. We may also notice that SEIAA has laid down general conditions for pre-construction phase and the first condition is as follows:

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“(1) This environmental clearance (EC) is issued for total built-up area of 1,47,219.45 m² as approved by local planning authority. It is noted that the total proposed construction area is 1,47,219.45 m² which includes the area of previous EC (dated 4-4-2008) 57,658.42 m² and the proposed expansion area of 89,561.03 sq m. However, the above area of 1,47,219.45 sq m is notional as the non-FSI area component of the previous EC is not included in 1,47,219.45 m². After considering the non-FSI area of the previous EC, the total built-up area becomes 1,81,230.94 m². SEIAA has also taken note of the clarification issued by MoEF and CC vide office memorandum dated 7-7-2017, stating the definition of built-up area will be assessed as per the building bye-laws or DCR of the local authorities in the States.”

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e

27. The aforementioned condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. The project proponent has raised construction in Plot No. 1 of an FSI area measuring 48,424.66 sq m, and non-FSI area measuring 46,088.47 sq m. Therefore, the total construction raised in Plot No. 1 is 94,513.13 sq m. In Plot No. 2, the construction raised on an FSI area is 630.55 sq m and on the non-FSI area is 4,858.57 sq m and, therefore, the total construction already raised in Plot No. 2 is 5489.12 sq m. The total construction raised by the project proponent is 1,00,002.25 sq m against the built-up area of 57,658.42 sq m mentioned in the EC of 4-4-2008. This could not have been ignored by SEIAA.

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28. In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to

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GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA (*Deepak Gupta, J.*)

275

- a grant EC by treating the project as falling under Category B-2. Furthermore, the EC dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. The EC completely lost sight of the fact that the order dated 31-5-2016 was quashed and set aside by NGT in its order dated 27-9-2016¹. We may note that the official who
- b passed the order on 31-5-2016 was the same official, who held the office of Member-Secretary of SEIAA, which granted environmental clearance on 20-11-2017. Therefore, the EC dated 20-11-2017 was beyond the authority of SEIAA and was granted under a totally false assumption and the same is therefore quashed and set aside.

Allegations made by the original applicant against various officials

- c 29. NGT in its order dated 27-9-2016¹, has found that there was suppression of facts by the officers of PMC. NGT also directed the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers who were misleading the Department of Environment. Costs were imposed on PMC, Department of Environment and SEIAA. This has been challenged before us by
- d PMC.
- e 30. The original applicant, both in his original application filed before NGT and in appeal filed before us as well as in other proceedings, has made serious allegations against individual officers of PMC as well as SEIAA and specially the Principal Secretary, Environment Department, Government of Maharashtra. However, for reasons best known to the original applicant, none of these individuals has been made a party in personal capacity in these proceedings. The law is well settled that no person can be condemned unheard. It would, therefore, not be fair on our part, to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. Therefore, we refrain from commenting on the conduct of the officials in their individual capacity.
- f 31. However, as far as their official capacity is concerned, we are of the view that NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and we, therefore, uphold the directions given by NGT in its order dated 27-9-2016¹ in this regard. In view of what we have discussed above, it is more than apparent that despite notifications of 2006 and 2011 being clear and unambiguous, the
- g officials of PMC have given an interpretation which was tailor-made to suit the project proponent. This was being done even before the clarification of 7-7-2017 was issued. This clearly indicates that some officials of PMC were espousing the case of the project proponent at the cost of the environment.

- h 32. We may also observe that prima facie we are of the view that the Principal Secretary, Environment Department, Government of Maharashtra

1 *Tanaji Balasubh Chavhan v. Union of India*, 2016 SCC OnLine NGT 4213

has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. In the original order dated 27-9-2016¹, NGT held as follows: (*Tanaji Balasaheb case*¹, SCC OnLine NGT para 42)

"42. From the extracted portion of the order dated 31-5-2016 of Principal Secretary, Environment Department, it is seen that he has declared construction of 18 buildings on the site instead of 12 buildings is permissible which, according to him, only a changes on configuration of buildings. This opinion undoubtedly is based on his erroneous conclusion that total BUA which is nothing but FSI consumed i.e. 48,617.14 sq m which is within the EC limit as against the actual construction activity which has exceeded over 1,00,000 sq m BUA. Hence, we set aside that order/communication dated 31-5-2016."

The official holding the post of Principal Secretary must have been aware of these directions because he was a party to the proceedings before NGT. Despite that, while granting fresh EC on 20-11-2017, this official noticed that reference to the Environment Department for verification of files was withdrawn vide letter dated 31-5-2016 and the matter has been considered afresh. When the letter dated 31-5-2016 had been quashed the obvious result would be that action had to be taken in accordance with the earlier directions in the 27th meeting of SEAC III (Non-MMR) held from 10-3-2015 to 13-3-2015 and the 87th meeting of SEAAA held on 10-8-2015 to 12-8-2015. This was not done. His actions need to be looked into and, therefore, we uphold the direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned. We further direct the Chief Secretary to file detailed report in respect of the conduct of the then Principal Secretary, Department of Environment to NGT within 3 months which will thereafter pass appropriate directions in the matter.

***Challenge to the order dated 8-1-2018 passed in Tanaji Balasaheb Gambhire v. Union of India*²**

33. This order has been challenged both by the project proponent by amending the appeal and by the original applicant by filing a separate appeal.

34. Section 19(4)(f) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT.

35. Rule 22(2) of the National Green Tribunal (Practices and Procedure) Rules, 2011 provides that a review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by

¹ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

² 2018 SCC OnLine NGT 302

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
 v. UNION OF INDIA (*Deepak Gupta, J.*)

277

a the Tribunal sitting at any other place. Sub-rule (3) of Rule 22 provides that ordinarily review application shall be disposed of by circulation.

36. Since the powers of review which NGT exercises are akin to those of a civil court, it would be pertinent to refer to the relevant portions of Order 47 of the Civil Procedure Code, 1908, which read as follows:

b "1. *Application for review of judgment.* (1) Any person considering himself aggrieved

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

c and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.

d (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

* * *

e 5. *Application for review in court consisting of two or more Judges.*—

f Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the court shall hear the same."

g 37. The project proponent has urged various grounds to challenge the order passed in the review application. The first ground is that whereas the original order was passed by a Bench comprising of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, the review application was heard and decided by a Bench comprising of Justice U.D. Salvi and Dr Nagin Nanda. It has been urged that Dr Justice Jawad Rahim continues to be a Judicial Member of NGT and, in fact, was sitting in the Western Bench at Pune on 8-1-2018 when the impugned judgment² in review was pronounced by NGT.

h 38. We are clearly of the view that a review petition should normally be heard by the same Bench which originally decided the matter. A review

2. *Tanaji Balasubh Chavhan v. Union of India*, 2018 SCC OnLine NGT 302

petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. In the present case, the review application was based mainly on the contention that the affidavit dated 18-5-2016 was not taken into consideration by the Bench.

39. It is well known that parties raise various contentions in their pleadings or in their evidence. On many occasions when arguments are heard many of the pleas are not urged. Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of this Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. If a party urges that some of the contentions urged by it have not been taken into consideration then it has to file a review application and it is but obvious that such review application should be heard by the same Bench which had originally heard the matter.

40. Sub-rule (3) of Rule 22 of the National Green Tribunal (Practices and Procedure) Rules, 2011 clearly lays down that a review application shall be disposed of by circulation. If the review application is to be disposed of by circulation then there is no problem in the matter being circulated before the very same Bench which had earlier heard the matter. This can be done even at a place which may be different from the original place of hearing. It is only if the Bench decides to give oral hearing in the review application and notice is issued to the opposite party that sub-rule (2) of Rule 22 will come into operation. According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall "ordinarily" be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. The normal rule that the same Bench should hear the review application should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter.

41. In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by V.R. Krishna Iyer, J., "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon"⁴. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another

⁴ *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*, (1980) 2 SCC 167, p. 173, para 14 : 1980 SCC (Tax) 222

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
 v. UNION OF INDIA (*Deepak Gupta, J.*)

279

a Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency.

b **42.** We may refer to the judgment of this Court in *Matihesh Gudda Pooja v. State of Karnataka*⁵. In that case, a writ appeal was disposed⁶ of by a Division Bench comprising of Hon'ble V. Gopala Gowda and L. Narayana Swamy, JJ., at the Dharwad Circuit Bench of the Karnataka High Court. Thereafter, a review petition was filed before a Bench comprising of Hon'ble K. Sreedhar Rao and Ravi Malimath, JJ. An objection was raised that the review petition should be heard by the same Judges who had originally heard the matter but this objection was overruled and the review petition was allowed⁷ and the appeal was ordered to be listed afresh before the Division Bench. This appeal was listed before the Dharwad Circuit Bench consisting of Hon'ble D.V. Shailendra Kumar and N. Ananda, JJ. This Bench held that the order of review passed was a nullity since *c* the Judges who had heard the review should not have heard the same especially when the Judges of the original Bench were available. The matter came to this Court and this Court after referring to Order 47 Rule 5 CPC and Rule 5 of the High Court of Karnataka Rules, 1959 and taking note of the fact that the Chief Justice of the Karnataka High Court had passed an order that the review petition be listed as per roster held as follows: (SCC pp. 341-42, paras 18-20)

d “18. Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules require, and in fact mandate that if the Judges who made the order in regard to which review is sought continue to be the Judges of the Court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the Court for a period of six months from the date of the application. An *e* application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to hear the application for review is simple. Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered. They will be able to appreciate the point in issue, when the *f* grounds for review are raised. If the matter should go before another Bench, the Judges constituting that Bench will be looking at the matter for the first time and will have to familiarise themselves about the entire case to know whether the grounds for review exist. Further, when it goes before some other Bench, there is always a chance that the members of the new Bench *g* may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case.

h ⁵ (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473

⁶ *Matihesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 919

⁷ *Matihesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 918

19. Benjamin Cardozo's celebrated statement in *The Nature of Judicial Process* (pp. 12-13) is relevant in this context:

'There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions ... In this mental background every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eye except our own.'

20. Necessarily, therefore, when a Bench other than the Bench which rendered the judgment, is required to consider an application for review, there is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore the rule of consistency and finality of decisions, makes it necessary that subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter or if one of them is not available, at least by a Bench consisting of the other Judge. It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgment, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with."

43. A perusal of the above judgment leaves no manner of doubt that this Court has held that in terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. We may reiterate the reasons given by this Court. These are:

43.1. The Judges who heard the matter originally have applied their mind and would know best the facts and legal position;

43.2. They will be in the best position to appreciate the matter in issue when a review is filed;

43.3. If the matter goes before another Bench that Bench will have to virtually hear the matter afresh;

43.4. Most importantly, when the matter goes to a new Bench the members of the new Bench may go by their own perspective and philosophy which may be totally different to that of the Bench which originally heard the matter.

44. We may again re-emphasise that judicial discipline, judicial traditions and consistency in pronouncements require that the Bench which heard the matter originally should hear the review petition unless it is virtually impractical for the original Bench to hear the matter, or where the members of the original Bench recuse.

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA (*Deepak Gupta, J.*)

281

a 45. Another ground raised is that the statutory appeal was already pending in this Court against the original order when the review application was taken up for hearing. It is contended, on the basis of Order 47 Rule 1(2) CPC, that review application should not have been taken up for hearing because the original applicant could have before this Court taken up all the points which he had taken in his review application. It is also contended that this is not a case where there is an error apparent on record and as such the power of review could not have been exercised. As far as the facts of this case are concerned, we are clearly of the view that the original applicant could have raised all issues which he raised in review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in this Court as he has done now. In this context, once this Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application.

c 46. We may add that on 21-12-2016⁸, the review application itself was listed before the Bench of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, which adjourned the matter to 25-1-2017 to hear it regarding maintainability of the review application in view of the statutory appeal provided under the National Green Tribunal Act, 2010. However, the matter got listed before the other Bench and on 25-7-2017⁹, the said Bench considered this objection raised by the project proponent in terms of Order 47 Rule 1 CPC and the Bench held as follows: (*Tanaji Gambhire case*⁹, SCC OnLine NGT)

e “Having perused the record, we find that the appellant is seeking quashing of the order of compensation in totality and the review applicant is seeking enhancement of the compensation granted by the Tribunal. We do not see any commonality in the grounds resorted to by the applicant and appellant in the said appeal. Exception to sub-clause (2) of Order 47 Rule 1 of the Code of Civil Procedure, therefore, does not come to the help of Respondent 9. We are, therefore, of the considered opinion that the review application is maintainable. Plea of non-maintainability of the review application is rejected.”

f 47. We are of the view that the aforesaid finding is incorrect. The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before this Court. We are, therefore, clearly of the opinion that the Bench hearing the review application erred in holding that the review application was maintainable despite the appeal pending before this Court.

g 48. We may also note that the Bench which heard the review has rejected all other grounds of review mainly on the ground that there is no error apparent on the face of the record but has only dealt with the issue of enhancement

h ⁸ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4217

⁹ *Tanaji Gambhire v. Union of India*, 2017 SCC OnLine NGT 1954

of damages to be imposed on the basis of “carbon footprint” relying on the affidavit dated 18-5-2016. The Bench noted that this affidavit had not been taken into consideration by the earlier Bench. How could the latter Bench hearing the review application know whether any reference was made to this affidavit at the time of original hearing or not? In fact, the project proponent urges that this affidavit was never filed on 18-5-2016.

49. Here, it would be pertinent to mention that according to the original applicant he was given oral permission by the Bench to file such an affidavit on 23-2-2016. We have perused the order dated 23-2-2016¹⁰ and find that it makes no mention of any such request being made. If there is no such request then the question of issuing an oral direction to file such an affidavit does not arise. We may also add that after 23-2-2016, the matter was listed on numerous occasions i.e. 16-3-2016¹¹, 5-4-2016¹², 18-4-2016¹³, 22-4-2016¹⁴, 2-5-2016¹⁵ and 5-5-2016¹⁶ before NGT. In none of the orders there is any reference to carbon footprint or to any affidavit to be filed by the original applicant. If an oral permission had been given, obviously the original applicant would have either filed an application or would have made a request that he wants to file such an affidavit.

50. The affidavit in question is dated 18-5-2016 and it is alleged that it was filed on 18-5-2016. The matter was listed for hearing on 19-5-2016¹⁷ on which date also there is no reference to any such affidavit. It would be pertinent to note that in between the project proponent had filed an MA No. 389 of 2016 before the Principal Bench stating that an interim order dated 23-12-2015¹⁸ had been passed against it and the matter was not being heard and, therefore, it may be heard by a Bench presided over by Dr Justice Jawad Rahim, who apparently was holding Court in the Pune Bench at that time and the Principal Bench allowed the same on 2-5-2016¹⁹ directing that the matter be listed before the Bench presided over by Dr Justice Jawad Rahim. On 19-5-2016, the original applicant sought time stating that he had filed review application against the order dated 2-5-2016¹⁹ before the Principal Bench praying that the matter should be heard by the earlier Bench presided over by Justice U.D. Salvi and, therefore, the matter could not be heard by Dr Justice Jawad Rahim on that day and was further adjourned to 23-5-2016. There is no reference to carbon footprint in the order dated 19-5-2016¹⁷. On 23-5-2016²⁰, the matter was heard by the Bench presided over by Dr Justice Jawad Rahim and the orders reserved.

10 *Taraji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4201

11 *Taraji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4204

12 *Taraji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4205

13 *Taraji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4206

14 *Taraji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4219

15 *Taraji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4203

16 *Taraji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4207

17 *Taraji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4208

18 *Taraji Balasaheb Gambhire v. Union of India*, 2015 SCC OnLine NGT 838

19 *Taraji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 1330

20 *Taraji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
 v. UNION OF INDIA (*Deepak Gupta, J.*)

283

a In this order also there is no reference to the affidavit with regard to carbon footprint. If the filing of the affidavit would have been brought to the notice of the Bench, it would have recorded in the order that some fresh affidavit had been filed. Subsequently, the project proponent, who is the contesting respondent, filed an application on 20-7-2016 praying that in the meantime he had obtained permission of the Environment Department and SEIAA to which we have adverted hereinabove.

b **51.** The original applicant sought time to file counter-affidavit. The matter was adjourned²¹ to 28-7-2016 for rehearing deleting the same from reserved list since there were subsequent developments. On 28-7-2016²², the matter was got adjourned to 2-8-2016 on which date²³ some execution application for implementation of the interim orders was taken up and direction was issued to PMC. The matter was again taken up on 8-8-2016²⁴, 19-8-2016²⁵ and 24-8-2016²⁶ when the hearing was closed and judgment was pronounced through videoconferencing on 27-9-2016¹. In none of these orders any mention was made for carbon footprint or to the affidavit on the basis of which the review application was filed. On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter on 23-5-2016²⁰ or on 24-8-2016²⁶ on which dates the original application was reserved for orders.

e **52.** We are of the considered view that the review application should have been heard by a Bench headed by Dr Justice Jawad Rahim who was admittedly available and in fact continues to be a member of NGT. Therefore, we are constrained to set aside the order passed in *Tanaji Balasaheb Gambhire v. Union of India*² dated 8-1-2018.

f ***Is demolition the only answer?***

53. The next issue which arises is that what we should do with the construction. A large number of flats are already occupied and a large number of persons have paid money for occupying these flats. The learned counsel appearing for those persons who have purchased the flats urged that the flats should not be demolished otherwise they shall be put to great monetary loss.

g ²¹ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4215

²² *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4210

²³ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4211

²⁴ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4202

²⁵ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4212

²⁶ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4214

h ¹ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

²⁰ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209

² 2018 SCC OnLine NGT 302

As pointed out above, now there are 807 flats and 117 shops which are either constructed or under construction. These flats are 1, 1.5 and 2 BHK flats and small shops and offices. The project proponent has already taken money from these persons and a large number of flats and shops have already been occupied and even where the remaining flats and shops are not occupied, persons belonging to the middle class have invested their life's earnings in this project. Keeping in view the interest of these third parties who were not parties before NGT, we are of the view that in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. Normally, this Court is loath to legalise illegal constructions but in the present case we have no option but to do so.

54. We hasten to clarify that the project proponent cannot be permitted to build any more flats. What we are permitting him to do is to only complete construction of 807 flats, 117 shops/offices and cultural centre including the clubhouse. We make it clear that he shall not be allowed to build the two buildings in which he was to construct 454 tenements, and will obviously have to return the money with interest @ 9% p.a. to the individual(s) who have invested in the same. There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of NGT dated 27-9-2016¹ that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse.

Whether the original applicant is entitled to special damages?

55. On behalf of the original applicant various issues were raised before us which had not been raised before NGT and find no mention either in the original order or even in the order under review. We are not considering those issues. It was urged that the project proponent has reduced the area of cultural centre. This averment is not correct as pointed out by the Senior Counsel appearing for the Union of India. The development plan is not only for the area under the project but covers a much larger area where more than one builder and projects may be involved. It is not the responsibility of only one builder to provide the entire community services and these have to be provided pro rata by all developers of projects in the area. It was also alleged that the builder had built 3 basements which are illegal.

56. On the other hand, it was contended by the learned Senior Counsel for the project proponent that one of the basements has already been blocked and the other two basements shall also not be put in use and would be completely blocked off. We make it clear that PMC and SEIAA will ensure that the project proponent blocks the basements in such a manner that they can never be put to any use. Another argument raised by the original applicant was that the project proponent had stated that though he would not use any groundwater, however, it has utilised the groundwater and violated the condition of the EC. Reliance

¹ *Tanaji Balasubh Chavhan v. Union of India*, 2016 SCC OnLine NGT 4213

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA (*Deepak Gupta, J.*)

285

a is placed on certain photographs showing water being pumped. On the other hand, on behalf of the project proponent it has been urged that this water was being pumped out from the excavated area when the building was built and the water level had risen. We cannot decide this disputed question of fact in these proceedings.

b 57. We may also point out that in this case the original applicant has tried to project the case as if he is filing the case in the public interest and has prayed for certain general directions. He has also claimed special damages for himself. The main grievance of the original applicant is with regard to the violation of the EC and according to him these violations started in the year 2009. The original applicant had applied for a flat in the project in question and had issued notice to the project proponent on 21-10-2011 about deficiency in service. This notice was replied to on 17-11-2011. Thereafter, the original applicant filed Consumer Complaint No. 95 of 2012 on 22-2-2012. This complaint was decided on 20-11-2014. Thereafter, the order of the District Consumer Disputes Redressal Forum was challenged before the State Consumer Disputes Redressal Commission both by the project proponent and original applicant in February 2015. It appears that thereafter there were complaints and counter-complaints filed by the parties against each other and the project proponent filed a civil suit for defamation against the original applicant on 2-12-2015 and it was only thereafter on 7-12-2015 an application was filed in NGT by the original applicant. We are highlighting these facts only to emphasise the fact that this litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted.

e *Quantification of damages*

58. We need to decide and re-assess the issue of damages since the original applicant has also challenged the original order of NGT. While assessing the damages we may note certain facts:

f 58.1. The EC was granted on 4-4-2008 but construction commenced after issuance of consent to establish dated 20-6-2009 and the EC would be valid for a period of 5 years from the date of such consent i.e. up to 19-6-2014;

58.2. The EC dated 4-4-2008 was granted for construction of built-up area of 57,658.42 sq m, whereas admittedly, as of now the constructed built-up area is 1,00,002.25 sq m. Therefore, there is clear-cut violation of the terms of the EC;

g 58.3. Any construction raised after 19-6-2014 is without any EC especially since we have held that EC granted on 20-11-2017 is invalid.

Carbon footprint

h 59. The main case of the original applicant is that the damages should be assessed on a scientific basis by calculating the damage caused to the environment by the project proponent on the basis of "carbon footprint". In the

absence of detailed submissions, we find ourselves totally unequipped to go into this aspect of the matter.

60. In the original application filed by the original applicant before NGT, there is no reference to carbon footprint. Even when evidence was initially led, no reference was made to the same. The concept of carbon footprint was introduced by the original applicant only in his affidavit dated 18-5-2016. In fact, according to the project proponent, this affidavit was not even filed on 18-5-2016. It appears to us that there is no order of NGT specifically permitting the original applicant to file such an affidavit. The submission of the original applicant is that he was orally permitted to file the same. These disputed questions would have been only decided by the Original Bench and, therefore, we have already set aside the order passed in *Tanaji Balasaheb Gambhire v. Union of India*² dated 8-1-2018.

61. The courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. We find that no such principles have been accepted or established in the present case. When there are no pleadings in this regard we fail to understand how the concept of carbon footprint can be introduced after evidence has been closed, at the stage of arguments. We cannot assess the impact in actual terms and, therefore, we can only impose damages or costs on principles which have been well settled by law.

62. We may also note that the method to which the original applicant referred to is not part of any law, rule or executive instructions. This method is no doubt used to compensate and impose damages on nations but we cannot apply this method while imposing damages on a person who violates the EC. We may also add that the calculation made by the original applicant in his affidavit dated 18-5-2016 filed before NGT are based on assumptions some of which we have not found to be correct, namely — (1) use of groundwater; (2) reduction of cultural centre space; (3) construction of basements, etc.

63. We may make it clear that we are not laying down the law that damages cannot be assessed on the basis of carbon footprint. In a case where expert evidence in this behalf is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, the Court may, in the facts and circumstances of the case, rely upon such data but, in the present case, there is no such reliable material.

64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA (*Deepak Gupta, J.*)

287

- a and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.
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65. Normally, this Court is not inclined to grant ex post facto EC. However, in the peculiar facts of this case, we direct that once the project proponent deposits the amount of damages as directed by us then the project proponent may approach the appropriate authority for grant of EC. The authority may impose such conditions for grant of EC as it deems necessary.

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Findings and directions

66. We summarise our findings and directions as follows:

- 66.1. That built-up area under the notification of 14-9-2006 means all constructed area which is not open to the sky.
- 66.2. Built-up area under the Notification of 4-4-2011 means all covered area including basement and service areas.
- 66.3. The communication dated 7-7-2017 is totally illegal and accordingly quashed.
- 66.4. The original application cannot be treated as a public interest litigation.
- 66.5. We are not taking note of the allegations levelled against the individuals who have not been arrayed as parties.
- 66.6. That the order dated 27-9-2016¹ of NGT is upheld except insofar as Direction 1 is concerned.
- 66.7. The order in review application passed by NGT on 8-1-2018² is held to be totally illegal and is accordingly set aside.
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¹ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

² *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

66.8. We uphold the original order dated 27-9-2016¹ holding that the construction raised by the project proponent was in violation of the environmental clearance granted to it on 4-4-2008. We uphold the fine imposed upon PMC and the direction given to PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra and in addition, direct that the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27-9-2016 and will submit his report to NGT within three months from today.

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66.9. We impose damages of Rs 100 crores or 10% of the project cost, whichever is higher, on the project proponent and in addition thereto, project proponent will pay Rs 5 crores as levied by NGT in its order dated 27-9-2016¹.

66.10. Project proponent shall not be permitted to raise construction of two buildings having 454 tenements.

66.11. We direct that the project proponent shall only be permitted to complete construction of a total 807 flats, 117 shops/offices and cultural centre including clubhouse.

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66.12. The project proponent will only be permitted to seek environmental clearance for completion of the project subject to payment of costs in the aforesaid terms and it may be granted ex post facto environmental clearance in the peculiar facts of the case, on such terms and conditions as the environmental authority deems fit and proper.

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66.13. The project proponent is granted six months' time to deposit the amount of damages imposed in terms of Direction 66.9 supra in the Registry of this Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to M/s Goel Ganga Developers India Pvt. Ltd. to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of this Court.

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66.14. The matter be listed on 22-10-2018 for issuing appropriate directions as to how the amount of damages are to be utilised;

67. All the appeals are disposed of in the aforesaid terms. Pending application(s), if any, shall also stand disposed of.

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1 *Tanaji Balasubh Chavhan v. Union of India*, 2016 SCC OnLine NGT 4213

494 SUPREME COURT CASES (2019) 18 SCC
3-Judge Bench
2019
March 5
(2019) 18 Supreme Court Cases 494
(BEFORE DR A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.)

MANTRI TECHZONE PRIVATE LIMITED . . . Appellant; *a*

Versus

FORWARD FOUNDATION AND OTHERS . . . Respondents. *b*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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496

SUPREME COURT CASES

(2019) 18 SCC

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

Disposing of the appeals, the Supreme Court

Held :

Appeal to Supreme Court

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

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

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

Jurisdiction of Tribunal

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

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

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

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

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

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

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

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

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

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

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

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

Limitation

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

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

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

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

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

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

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

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

SS-D/62061/S

Advocates who appeared in this case :

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

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

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

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

The Judgment of the Court was delivered by

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

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

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

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

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

500

SUPREME COURT CASES

(2019) 18 SCC

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

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

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

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

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

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MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 501

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

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

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

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

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

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MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 503

- technology park, residential apartments, retail, hotel and office buildings with a total built-up area of 13,50,454.98 sq m. The Project was conceived as a zero waste discharge project. The Project is located one-and-a-half kilometres away from the southern side of Bellandur Lake. Towards the north, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the east, lies the project of Respondent 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 4-7-2007 which was renewed from time to time.
- a* **12.** Respondent 9 claims that it has obtained NOC from Airport Authority of India on 9-4-2010. Bharat Sanchar Nigam Ltd., vide its communication dated 16-4-2010, granted clearance for the project construction. BWSSB, vide its communication dated 26-4-2011 issued NOC for portion of the proposed construction to be built. Bangalore Electricity Supply Co. Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental clearance was granted by SEIAA vide communication dated 17-4-2012. The Director General of Police has issued NOC and KSPCB vide order dated 4-9-2012 accorded its consent for construction of the said Project subject to the conditions stated therein. It was further stated that after grant of the environmental clearance on 17-9-2012, the same was published in the leading newspapers *Kannada Prabha* and *The Indian Express* on 12-3-2012 and 14-3-2014 respectively.
- c* **13.** It submitted a modified building plan which was approved by KIADB vide its letter dated 30-8-2012, which was valid up to 10-8-2014. It started the construction of the Project in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the environmental clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs 306.73 crores on the Project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.
- f* **14.** Respondent 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and mala fides. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31-8-2007 with an investment of Rs 179.22 crores. The State High-Level Committee had cleared the project which was communicated to it on 25-1-2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains
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504

SUPREME COURT CASES

(2019) 18 SCC

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

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

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

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MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 505

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

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

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

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

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

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

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

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

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

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

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

(c) Chief Town Planner of BBMP, Bangalore.

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

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

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

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

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

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

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

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

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

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

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

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

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

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MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 507

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

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

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

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

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

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

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

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

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

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

508

SUPREME COURT CASES

(2019) 18 SCC

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

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

4. With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject-matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment¹ can also be raised. b
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5. The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties.” d

20. In relation to Issue 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 6-4-2016¹ on these applications as under: (*Forward Foundation case*¹, SCC OnLine NGT) e

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

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

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

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

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

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

¹ *Forward Foundation v. State of Karnataka*, 2016 SCC OnLine NGT 637

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MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 509

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

a **“General conditions or directions**

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

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

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

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

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

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

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

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

510

SUPREME COURT CASES

(2019) 18 SCC

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

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

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

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

Specific conditions/directions for Respondent 9

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

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

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

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

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

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MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 511

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

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

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

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

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

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

f **General directions**

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

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

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

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

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

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

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

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

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

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

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MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 513

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

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

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

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

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

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

514

SUPREME COURT CASES

(2019) 18 SCC

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

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

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

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

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

MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 515

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

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

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

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

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

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

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

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

36. It is settled that there is no vested right of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate appellate court can exercise jurisdiction, the court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein.

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

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

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

⁵ 1962 Supp (3) SCR 519 : AIR 1962 SC 1314

MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 517

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

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

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

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

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

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

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

518

SUPREME COURT CASES

(2019) 18 SCC

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

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

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

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

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

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

MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 519

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

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

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

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

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

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520

SUPREME COURT CASES

(2019) 18 SCC

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

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

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

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

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

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

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

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

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

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

MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 521

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 523

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

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

b

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

c

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

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

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

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

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

63. There will be no order as to costs.

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

288

SUPREME COURT CASES

(2019) 9 SCC

(2019) 9 Supreme Court Cases 288

(BEFORE DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.)

GOEL GANGA DEVELOPERS INDIA PRIVATE
LIMITED

.. Appellant;

Versus

UNION OF INDIA THROUGH SECRETARY, MINISTRY OF
ENVIRONMENT AND FORESTS AND OTHERS

.. Respondents.

IA No. 64665 of 2019[†] in Civil Appeal No. 10854
of 2016, decided on September 11, 2019

Environment Law — Development vis-à-vis Ecology: National, Urban and Rural Development — Constructed area which is to be treated as “built-up area” for reckoning environmental impact — Ruling in *Goel Ganga Developers*, (2018) 18 SCC 257, that municipal building laws regarding FSI and FAR are irrelevant for reckoning “built-up area” for environmental impact, held, not only does not in any way violate judgment of three-Judge Bench in *Okhla Bird Sanctuary case*, (2011) 1 SCC 744, but rather furthers the spirit of the law laid down therein — Concern of three-Judge Bench in *Okhla Bird Sanctuary case*, was not to reduce the ambit of “built-up area”, but rather to enhance it

— Concern of Bench in *Okhla Bird Sanctuary case* was that not only constructed area which is not open to the sky be treated as “built-up area”, but additionally that constructed area which is open to the sky should in appropriate circumstances be treated as “built-up area” due to its environmental impact, and not as “activity area” — Environment Impact Assessment (EIA) Noti. dt. 14-9-2006 — Item 8(a) Columns (4) & (5) — Interpretation — Thus, held, ruling in *Goel Ganga Developers*, (2018) 18 SCC 257 that all constructed area, which is covered and not open to sky has to be treated as built-up area and that there is no exception for non-FSI area, and that municipal laws regarding FSI and FAR have no relevance, affirmed Words and Phrases “Built-up area” (Paras 2 to 7)

Noma Memorial Complex Near Okhla Bird Sanctuary, In re. (2011) 1 SCC 744. explained and followed

Goel Ganga Developers (India) (P) Ltd. v. Union of India, (2018) 18 SCC 257. affirmed

IA dismissed

SS-D/63084/C

Advocates who appeared in this case :

A.N.S. Nadkarni, Additional Solicitor General, Mukul Rohatgi, Ranjit Kumar and Ms Sonia Mathur, Senior Advocates (Venkita Subramoniam T.R., Rahat Bansal, Mehul Gupta, V. Mudgal, Rohit Raj, Shankey Agrawal, Mukesh Verma, Pawan Kr. Shukla, Yash Pal Dhingra, Makarand D. Adkar, Vijay Kumar, Ms Aparna Jha, Nitin Lonkar, Ms Sonali Suryawanshi, Shankey Agrawal, D.L. Chidananda, Ms Suhasini Sen, G.S. Makker, Dr Nishesh Sharma, Ranjan Kr. Chaurasia, Nishant Sharma, Nishant Ramakantrao Katneshwarkar and Aman Verma, Advocates) for the appearing parties.

[†] Arising from the Judgment and Order in *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213 [National Green Tribunal, Application No. 184 of 2015 (WZ), dt. 27-9-2016]

GOEL GANGA DEVELOPERS (INDIA) (P) LTD. v. UNION OF INDIA 289

Chronological list of cases cited on page(s)

1. (2018) 18 SCC 257, *Goel Ganga Developers (India) (P) Ltd. v. Union of India* 289e f, 290e, 291d e
- a 2. (2011) 1 SCC 744, *Noida Memorial Complex Near Okhla Bird Sanctuary, In re* 289b, 290d, 290e, 290f, 291a-b, 291c, 291d, 291e

ORDER

1. The only issue involved in this application is whether non-consideration of a judgment delivered by a three-Judge Bench in *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*¹, hereinafter referred to as “*Noida Park case*”, has led to wrong conclusions by this Court with regard to the interpretation of built-up area in terms of Item 8 of the Schedule of the Environment Impact Assessment (EIA) Notification dated 14-9-2006. The relevant portion of the notification reads as follows:

c		“(1)	(2)	(3)	(4)	(5)
		8		<i>Building/Construction projects/Area development projects and Townships</i>		
d		(a)	Building and construction projects		>20,000 sq m and <1,50,000 sq m of built-up area#	#(built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
e		(b)	Townships and area development projects		Covering an area ≥50 ha and or built-up area ≥1,50,000 sq m ++	++All projects under Item 8(b) shall be appraised as Category B-1.”

2. While interpreting this clause, one of us (Deepak Gupta, J.) held as follows: (*Goel Ganga Developers case*², SCC pp. 270-71, paras 16-17)

- “16. From a bare perusal of the two hashtags (#) in Columns 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines “built-up area” to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as “built-up area”. There is no exception for non-FSI area.

17. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority

¹ (2011) 1 SCC 744

² *Goel Ganga Developers (India) (P) Ltd. v. Union of India*, (2018) 18 SCC 257

which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14-9-2006."

3. The contention raised on behalf of the applicant is that since the three-Judge Bench had in para 84 of the judgment in *NOIDA Park case*¹ observed that the EIA Notification dated 14-9-2006 calls for a close second look by the authorities concerned especially in respect of the projects/activities falling within the ambit of Items 8(a) and 8(b) of the Schedule to the Notification which need to 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, the two-Judge Bench which delivered the judgment² was bound by this judgment¹ of the three-Judge Bench and could not have held that the Notification dated 14-9-2006 clearly shows that all constructed area which is covered and not open to the sky, has to be treated as built-up area.

4. Though the observations in para 84, at first blush, support the contention of the applicant, one has to appreciate the factual background in which these observations were made. In *NOIDA Park case*¹, this Court was asked to intervene and halt a project in which a huge park was being constructed. As far as Item 8(a) of the Schedule to the EIA Notification, 2006 is concerned, the contentions in this regard start from para 38. MoEF took the stand that no environmental clearance was required because the project area was 33.43 ha, which was less than 50 ha and the built-up area was 9542 sq m, which was less than 20,000 sq m.

5. It was contended on behalf of the petitioners and the Amicus Curiae that the project would fall under Section 8(a) because though the covered construction of the project was only 6999.50 sq m, the project by its very nature provided facilities open to the sky and the whole of this open area, which

¹ *NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744

² *Goel Ganga Developers (India) (P) Ltd. v. Union of India*, (2018) 18 SCC 257

GOEL GANGA DEVELOPERS (INDIA) (P) LTD. v. UNION OF INDIA

291

a was activity area, should be treated as the built-up area. The park consisted of certain constructed structures like pathways, walkways, statues, fountains, etc. which were open to the sky and treated as activity area. The contention of the Amicus Curiae and the petitioners who were objecting to the project was that the construction which was open to the sky and was to be treated as activity area should also be considered as part of the built-up area.

b 6. The main dispute in *NOIDA Park case*¹ was whether the project was a building and construction project or a township and area development project. This Court held that this was a township and area development project. While considering this dispute the Court felt that there was some ambiguity. This issue did not arise in the case in hand. The second point urged before the Court was that the facilities open to the sky i.e. the activity area should also be included in the built-up area and it was this confusion which the Court wanted the Central Government to settle. No party had raised any contention in *NOIDA Park case*¹ about the covered area being built-up area. All the parties were ad idem that covered construction was built-up area and the Court also held so.

c 7. This Court in this judgment has only held that all covered construction shall be deemed to be built-up area and that the municipal laws regarding floor space index (FSI) or floor area ratio (FAR) have no relevance. This issue did not arise in *NOIDA Park case*¹. Therefore, in our opinion, the earlier judgment will have no impact on the present case.

d 8. Reference was also made to the Notification dated 4-4-2011 and the Clarification dated 7-7-2017. These have already been dealt with in the judgment dated 10-8-2018² and those were not points of issue in *NOIDA Park case*¹. Therefore, we find no merit in the application and the same is dismissed accordingly.

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1 *NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744

2 *Goel Ganga Developers (India) (P) Ltd. v. Union of India*, (2018) 18 SCC 257

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA

401

(2019) 15 Supreme Court Cases 401

(BEFORE DR D.Y. CHANDRACHUD AND HEMANT GUPTA, JJ.)

a

Civil Appeal No. 12251 of 2018[‡]

HANUMAN LAXMAN AROSKAR . . . Appellant;

Versus

UNION OF INDIA . . . Respondent.

b

With

Civil Appeal No. 1053 of 2019

FEDERATION OF RAINBOW WARRIORS . . . Appellant;

Versus

UNION OF INDIA AND OTHERS . . . Respondents.

c

Civil Appeals No. 12251 of 2018 with
No. 1053 of 2019, decided on March 29, 2019

d **A. Environment Law — Development vis-à-vis Ecology: National, Urban and Rural Development — Development Projects — Prerequisites for/ Environmental clearance/viability — Development of greenfield airport project in State of Goa — Environmental clearance (EC) — Flaws in environmental impact assessment (EIA) process — Suspension of environmental clearance (EC) and directions issued for proper EIA — Expert Appraisal Committee (EAC) constituted under EIA Notification, 2006 directed to revisit recommendations made by it for grant of EC having regard to specific concerns highlighted in this judgment**

e

One month's time given for this — Till then EC granted by Ministry of Environment, Forests and Climate Change (MoEFCC) on 28-10-2015 shall remain suspended — No other court or tribunal shall entertain any challenge to report that is to be submitted before Court by EAC in compliance with the present order — MoEFCC and State Government given liberty to file report of EAC before Court to facilitate passing of appropriate orders

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thereon (Paras 162 to 166)

— Concerns highlighted in judgment:

g (1) Flaws in EIA process — (a) Non-disclosure of vital information, suppression of material facts by project proponent, (b) non-application of mind by EAC as an expert body and its failure to give cogent reasons, while recommending for grant of EC, and (c) failure of NGT as an adjudicatory body to carry out a merits review

h

[‡] Arising from the Judgment and Order in *Hanuman Laxman Aroskar v. Union of India* (National Green Tribunal, Principal Bench at New Delhi, Appeal No. 6 of 2018, 21 8 2018 sub nom *Federation of Rainbow Warriors v. Union of India* [National Green Tribunal, Principal Bench at New Delhi, Appeal No. 5 of 2018 (earlier Appeal No. 61/2015/WZ), dt. 21 8 2018] 2018 SCC OnLine NGT 831

(2) Airport operations — Collection of baseline data — Guidance Manual for Airports specifically requires collection of baseline data on (i) land environment, (ii) water environment, (iii) air environment, (iv) noise environment, (v) biological environment, (vi) socioeconomic environment, and (vii) solid waste — As airport operations might have possible impact on biological environment, collection of baseline data on sensitive habitats and wild or endangered species in project area is contemplated — Baseline data of environmental parameters aid in preparation of an environment management plan (EMP) (Paras 63 to 69)

a

b

(3) EAC shall have due regard to assurance furnished by concessionaire to Court that it is willing to adopt and implement necessary safeguards bearing in mind international best practices governing greenfield airports (Para 163.5)

(4) Duty and onus of project proponent — It is duty of project proponent to make full, complete and candid disclosure of all environmental aspects — Burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of environment — However, in present case project proponent failed to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1 of EIA Notification, 2006 — Duty to disclose about forest does not mean only reserve forest as contemplated within S. 20(2) of Forest Act, 1927 or forest as understood in any statutory enactment — Expression “forest” must receive its ordinary and natural connotation — The effort must not be to overlook and destroy forests but to notice and protect them — A failure to disclose information in Form 1 impairs the functioning of EAC in preparation of ToR and in consequence, leads to preparation of a deficient EIA report — There has been a patent failure on part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law (Paras 70 to 82)

c

d

e

— (5) EIA report defective — EIA report failed to notice existence of Ecologically Sensitive Zones (ESZs) within buffer distance of 10 km of project site — EIA report must encompass all aspects of environmental concern which render area ecologically sensitive i.e. wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests (Paras 91 and 92)

f

(6) Data collection incomplete — Allegedly, no primary data with regard to environmental parameters like air quality, water quality, noise quality and flora and fauna were collected from State of Maharashtra and related only to State of Goa (Paras 93 to 101)

g

(7) Incorrect information about trees — EIA report incorrectly stated that area required for proposed airport has only few trees but evidently permissions were granted for felling 54,676 trees — Issues pertaining to vegetational cover must be taken seriously in the EIA process (Paras 102 to 109)

h

- (8) Issues raised in public consultation not included in EIA — Intrinsic and instrumental value of public consultation — Stages of public consultation — Project proponent's duty to address all material environmental concerns raised during public consultation and make appropriate changes in draft EIA and EMP — Though only seven out of sixty-eight issues dealt with issue of unemployment, project proponent observed that major issue was unemployment — Duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC, which it failed in doing (Paras 110 to 117)
- (9) EAC as an expert body failed to apply mind — Duty to apply mind to documents like EIA report, outcome of public consultation and public hearing proceedings — EAC is under a mandate to conduct process of appraisal in "a transparent manner" — And make a categorical recommendation about grant of EC on stipulated terms and conditions or rejection of EC — Recommendations made by EAC to regulatory authority must be based on "reasons" — Said recommendations constitute substantive material which ultimately affects decision-making process and also might form subject-matter of challenge before Tribunal — However, minutes indicate non-application of mind by EAC with reference to 15 ESZs in study area — In absence of critical analysis EAC failed in discharging its duties under 2006 Notification (Paras 118 to 129)
- (10) NGT as an expert adjudicatory body on environment failed in its duty to exercise the jurisdiction entrusted to it under S. 16(h) r/w S. 20, NGT Act, 2010 by merely deferring decision to recommend and grant an EC — Though several important submissions were urged before it, entire analysis by NGT is contained in one paragraph and next para only deals with requirement of data collection — This does not fulfil requirement of merits review by the expert adjudicatory body like NGT (Paras 130 to 141)
- (11) In environmental governance, means are as significant as ends, process of decision is as crucial as ultimate decision — However, there has been a failure of due process commencing from non-disclosure of vital information by project proponent to non-application of mind by EAC and failure of merits review by NGT — Thus in present case neither decision-making process nor ultimate decision of granting EC can be said to be valid — Bearing in mind that there is an urgency for setting up a new airport to tackle with increasing volume of passengers and at the same time protect environment, time bound directions were issued (Paras 142 to 167)
- Infrastructure Laws — Carriage of Goods and Persons by Air, Land and Sea — Carriage by Air/Aircraft and Airports — Airport Development — EIA Guidance Manual for Airports, 2010 — Forests, Wildlife and Zoos — Demarcation/Determination/Identification of Forest Land — Forest Act, 1927 — S. 20 — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 — Form I — Regulatory Framework, Bodies and Judicial Intervention — Expert Appraisal Committee (EAC) — Duties of and manner of exercise of power while conducting EIA in grant of EC — National Green Tribunal Act, 2010 — Ss. 16(h) and 20 — Duties of and proper

exercise of power — Doctrine of proportionality must be applied to matters concerning the environment as part of judicial review — Words and Phrases — “Forest”

a

B. Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court against orders of Tribunal — Maintainability — Locus standi, bona fides, plea of personal agenda — Approach of Court — Doctrine of proportionality must be applied to matters concerning the environment as part of judicial review

b

— In cases concerning environmental governance, courts should decide case on merits — Such cases involve present and future generations, sustainable development for today and tomorrow — If a court comes to finding that appeal before it lacks bona fides, it may issue directions which it thinks appropriate in that case — Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment — Regulatory Framework, Bodies and Judicial Intervention

c

Generally — Environmental adjudication — Approach to — Constitution of India, Arts. 21 and 19(1)(g) & (g) (Para 164)

C. Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 distinguished from 1994 Notification (Para 41)

d

D. Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 — Procedure for grant of environmental clearance (EC) under — Four stages of obtaining EC, discussed, that is, screening, scoping, public consultation and appraisal by EAC — Importance and objectives of 2006 Notification

— In laying down a detailed procedure for the grant of an EC, 2006 Notification attempts to bridge perceived gap between environment and development — Development vis-à-vis Ecology: National, Urban and Rural Development — Development Projects — Prerequisites for/Environmental clearance/viability (Paras 45 to 62)

e

E. Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 — Procedure for grant of environmental clearance (EC) under — Rejection of application for EC for missing and misleading information provided in Form 1 by project proponent

f

— Information provided by project proponent in Form 1 serves as the base upon which EAC or the State Expert Appraisal Committees (SEAC) to prepare comprehensive Terms of Reference (ToR), which applicant is required to address during course of preparation of EIA — ToR so prepared addresses all possible environmental concerns — Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and process stipulated under the notification — For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately — Development vis-à-vis Ecology: National, Urban and Rural

g

h

Development Projects — Prerequisites for/Environmental clearance/viability (Paras 45 to 62)

a F. Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — Objectives of EIA process

To ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available

This will determine what conditions be imposed for grant of EC

b EC is required before any construction work, or preparation of land (except for securing the land) is started on the project or activity listed in the schedule to 2006 Notification — Development vis-à-vis Ecology: National, Urban and Rural Development — Development Projects — Prerequisites for/Environmental clearance/viability (Paras 34 to 62)

c The present appeal under Section 22 of the NGT Act, 2010 was filed to challenge the grant of environmental clearance (EC) for the development of a greenfield international airport at Mopa in Goa. The allegation was that project proponent (the State Government) did not disclose the material facts required by the 2006 Notification. And that the project proponent did not appraise the EAC about important issues raised during public consultation. And that the EAC as an expert body abdicated its duty to apply mind and give cogent reasons for grant of EC. And **d** that NGT, an expert adjudicatory body also failed to carry out a merits review of grant of EC. NGT approved EC granted with certain additional conditions. Hence, the present appeals.

Allowing the appeals and setting aside EC granted and remanding matter back to EAC for proper application of mind with other directions, the Supreme Court

e Held :

C. Scheme of the 2006 Notification and the Guidance Manual for Airports

C.1. EIA Process

The objective of the EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available. (Para 34)

f The salient objective which underlies the 2006 Notification is the protection, preservation and continued sustenance of the environment when the execution of new projects or the expansion or modernisation of existing projects is envisaged. It imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless prior EC has been granted by the authority concerned. **g** EC is required before any construction work, or preparation of land (except for securing the land) is started on the project or activity listed in the schedule to the notification. (Para 42)

h The 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. In laying down a detailed procedure for the grant of an EC, the 2006 Notification attempts to bridge the perceived gap between the environment and development. (Para 56)

It is for this reason that EAC and SEAC comprise experts in the field of environmental law. Given that these bodies comprise experts in the field of environmental law, the recommendation of EAC or SEAC to grant EC to an applicant or reject the application is *normally* accepted by the regulatory authority. (Paras 57 and 58)

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Given the environmental consequences of a proposed project, no difference of opinion is provided for in the grant of an EC at the State level. It is further mandated that the project management submit half-yearly compliance reports to the regulatory authority in respect of EC and conditions. (Para 59)

b

Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1-A. Crucial information regarding the particulars of the proposed project is sought to enable EAC or SEAC to prepare comprehensive Terms of Reference (ToR) which the applicant is required to address during the course of the preparation of the EIA. The ToR so prepared addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment. (Paras 60 and 61)

c

The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 Notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. (Para 62)

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C.2. Guidance Manual for Airports

In February 2010, MoEF brought out its Guidance Manual for Airports. The need for a sector-specific manual arose because the 2006 Notification "re-engineered the entire EC process" under its earlier avatar of 1994 and new sectors were incorporated into the ambit of EC process. The 2006 Notification noted that as many as 39 developmental sectors require prior ECs. Sector-specific manuals, it was hoped, would bring about standardisation in the quality of appraisal and obviate potential inconsistencies between the work performed by SEIAAs and SEACs. (Para 63)

f

Baseline data of environmental parameters which may be affected by airport activities is collected through primary monitoring in the study area and through secondary sources. The baseline data facilitates the evaluation of the predicted impact on environmental attributes in the study area by using scientific analysis and EIA methodologies. The object is to also aid in the preparation of an EMP that would outline measures for improving environmental quality as well as retain the scope for future expansions in a sustainable manner. The Guidance Manual specifically requires collection of baseline data on the following: (i) land environment; (ii) water environment; (iii) air environment; (iv) noise environment;

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(v) biological environment; (iv) socioeconomic environment; and (vi) solid waste. (Para 64)

- a The Guidance Manual brings into focus the biological environment. It acknowledges that airport operations may alter ecosystems, threaten endangered species and disturb the movement and breeding patterns of wildlife. In this context, the collection of baseline data on sensitive habitats and wild or endangered species in the project area is contemplated. (Para 68)

- b It is in the backdrop of the 2006 Notification and the Guidance Manual that it becomes necessary to assess the process that was adopted in the present case and its outcome. (Para 69)

D. Forests

- c The court cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1. (Paras 70 to 73)

- d It cannot be accepted that the disclosure required was of reserved forests comprehended within a notification under Section 20(2) of the Forest Act, 1927. The expression “forests”, means a forest as commonly understood, without reference to a notification under the Forest Act, 1927 or any other statutory enactment. Such an interpretation will subserve the purpose of an EIA. The purpose is to ensure that all relevant facets of the environment are noticed, that baselines are documented, and that the potential impact of a project or activity on the environment is assessed. Forests are forests without reference to recognition in a statutory form devised for a specific purpose. (Para 74)

In the context of the 2006 Notification and the underlying purpose of facilitating an EIA report, the expression “forests” must receive its ordinary and natural connotation. The effort must not be to overlook and destroy forests but to notice and protect them. (Para 77)

- f *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267; *Noida Memorial Complex Near Okhla Bird Sanctuary, In re.* (2011) 1 SCC 744, *distinguished*
Federation of Rainbow Warriors v. Union of India, 2017 SCC OnLine NGT 1964; *Federation of Rainbow Warriors v. Union of India*, 2017 SCC OnLine NGT 1962; *Federation of Rainbow Warriors v. Conservator of Forests*, 2018 SCC OnLine Bom 329 : (2018) 3 Mah LJ 424; *Hanuman Laxman Aroskar v. Union of India*, 2019 SCC OnLine SC 500, *referred to*

- g **Alternative submission that disclosure about forests was made not tenable**

- h The alternate submission that the EIA report does, as a matter of fact, consider the prevalence of forested areas both in Goa and in Maharashtra within the study area is not tenable. Though the EIA report adverts to the presence of forests within the study area in Goa and Maharashtra, it has to be considered whether this by itself warrants the grant of an EC in spite of the fact that there has been a patent failure on part of the project proponent to make a transparent and candid disclosure of material facts in Form 1. A failure to disclose information in Form 1 impairs

408

SUPREME COURT CASES

(2019) 15 SCC

the functioning of EAC in the preparation of ToR and in consequence, leads to preparation of a deficient EIA report. (Paras 78 to 81)

The failure on the part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment: a "heads I win, tails you lose" approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law. (Para 82)

E. Ecologically Sensitive Zones (ESZs)

The glaring deficiency which emerges from the EIA report is its failure to notice the existence of ESZs within a buffer distance of 10 km of the project site. The EIA report fails to meet a classical requirement of administrative law: to take into account a relevant consideration, namely, that within the study area which has to be considered, there is the presence of ESZs. (Para 91)

The EIA report must factor in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests. The deficiency of the EIA report emanates from its failure to notice that the purpose of the study was not only to determine whether the project site is ecologically sensitive. Confining itself to this aspect, the EIA report failed to consider a crucial and relevant consideration. (Para 92)

F. Sampling points

The submission of the appellants is that the Guidance Manual requires the collection of primary data through measures and field studies in the study area within 10 km radius from the ARP. Secondary data has to be collected within a 15 km aerial distance for the parameters mentioned in Column 9(III) of Form 1 of the 2006 Notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra. (Para 93)

The grievance is that no data has been collected from the State of Maharashtra and all secondary data collected by the project proponent related only to the State of Goa. There is substance in the submission which has been urged on behalf of the appellant. A reading of the counter-affidavit filed by the State of Goa would seem to support the appellant's submission. (Paras 93 to 101)

F.5. Felling of trees

The Court expresses its serious displeasure with the manner in which the EIA report made an attempt to gloss over the existence of trees. The EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The State of Goa would have the court gloss over the felling of trees by submitting that 54,676 trees over a project area of 2133 ac averages out to 25 trees per acre or one tree over an area of 160 sq m. This is a fallacious approach to the issue. Mathematical averages cannot displace factual

a data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinised the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented. (Paras 102 to 108)

b The purpose of prescribing an EIA report is precisely to undertake a baseline study on all aspects of the environment and to anticipate the impact of a projected activity on the environment. Ignoring *any* component of the environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance. (Para 108)

c Issues pertaining to vegetational cover must be taken seriously in the EIA process. The formula of planting a set number of trees for every existing tree felled must be alive to the fact that the survival of new plantations is replete with uncertainty. The survival of transplanted trees is equally a matter of uncertainty. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 Notification must be transparent, candid and robust. A regulatory regime for environmental governance is based on the hypothesis that all stakeholders will act with rectitude. Hiding significant components of the environment from scrutiny is not an acceptable modality to secure project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy. (Para 109)

G. Public consultation

e The importance of public consultation is underscored by the 2006 Notification. Public consultation, as it states, is "the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate". This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. (Paras 110 to 112)

f Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. (Para 113)

g Crucial objections and environmental concerns which were raised during the consultative process were reduced to a single issue by the project proponent before EAC: the need for employment opportunities. The project proponent failed in its duty to inform EAC. The record does not indicate a critical appraisal or analysis by EAC. EAC was duty-bound to apply its mind to the environmental

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410

SUPREME COURT CASES

(2019) 15 SCC

concerns raised by stakeholders. The duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC. The minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 Notification in this regard. (Paras 113 to 117)

Utkarsh Mandal v. Union of India. 2009 SCC OnLine Del 3836. approved

H. Appraisal by EAC

Appraisal by EAC is structured and defined by the 2006 Notification. The process of appraisal is defined to mean “a detailed scrutiny” by EAC of the application and other documents like EIA report and the outcome of the public consultation, including the public hearing proceedings, submitted by the applicant to the regulatory authority for the grant of an EC. EAC is under a mandate to conduct the process of appraisal in “a transparent manner”. On the conclusion of these proceedings, EAC has to make “categorical recommendations” to the regulatory authority either for:

(i) the grant of a prior environmental clearance on stipulated terms and conditions; or

(ii) the rejection of the application.

The recommendations made by EAC to the regulatory authority must be based on “reasons”. (Para 118)

EAC has failed to consider relevant circumstances bearing on the environmental impact of the project and has instead considered circumstances extraneous to its function. That the project proponent, according to EAC, has not concealed facts and circumstances is not reason enough to warrant a grant of an EC. Moreover, even this hypothesis is incorrect. There is no analysis of the EIA report. EAC has failed to answer to the call to its expertise. (Paras 119 to 125)

EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA report. It is duty-bound to analyse the EIA report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required. The reasons which are furnished by EAC constitute a live link between its processes and the outcome of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated. (Para 127)

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

be accepted. Consequently, a failure of due process before EAC, as in the present case, must lead to the invalidation of EC. (Para 129)

a I. The appellate jurisdiction of NGT: the requirement of a merits review

The failure to consider materials on a vital issue and indeed the non-consideration of vital issues raises a substantial question of law leading to the invoking of the jurisdiction of the Supreme Court under Section 22 of the NGT Act, 2010. The failure of process in the present case has been compounded by the absence of a merits review by NGT. (Paras 132 to 136)

b *Save Mon Region Federation v. Union of India*, (2013) 1 All India NGT Reporter 1; *Sreeranganathan K.P. v. Union of India*, 2014 SCC OnLine NGT 15, approved

The doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. (Para 140)

Lafarge Union Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338, *relied on*

c EAC as an expert body abdicated its obligations to make an expert determination based on reasons. NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it under Section 16(h) read with Section 20 of the NGT Act, 2010 by merely deferring to the decision to recommend and grant an EC. The parameters in regard to the existence of substantial questions of law have hence been established in the classical or conventional sense of that expression. (Paras 130 to 141)

d *Mantri Techzone (P) Ltd. v. Forward Foundation*, (2019) 18 SCC 494 : 2019 SCC OnLine SC 322; *Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 : AIR 1962 SC 1314; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647; *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388; *M.C. Mehta v. Union of India*, (1997) 2 SCC 353; *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718; *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664; *Indian Council for Enviro Legal Action v. Union of India*, (2011) 8 SCC 161 : (2011) 4 SCC (Civ) 87, *relied on*

e J. Environmental rule of law

Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement—both in developed and developing countries alike. The environmental rule of law seeks to address this gap. (Paras 142 to 155)

f United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y>; Brundtland definition of Sustainable Development, referred to

g In the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive. (Paras 156 and 157)

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412 SUPREME COURT CASES (2019) 15 SCC

In the present case, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form I. (Para 159)

EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. (Para 160)

In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Bearing in mind the need to bring about a wholesome balance between the development of infrastructure of an airport and the preservation of the environment, time-bound directions should be issued. Bearing in view the necessity to maintain a balance between the need for an airport and environmental concerns, it would be appropriate if EAC is directed to revisit the conditions subject to which it granted its EC on the basis of the specific concerns which have been highlighted in this judgment. (Paras 158 and 161 to 167)

Federation of Rainbow Warriors v. Union of India. 2018 SCC OnLine NGT 831. *reversed*

SS-D/62216/S

Advocates who appeared in this case :

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HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 413

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The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.

INDEX

<i>Sl. No.</i>	<i>Heading</i>	<i>Page No.</i>
A.	Introduction	413
B.	Submissions	417
C.	Scheme of the 2006 Notification and the Guidance Manual for Airports	425
	C.1. EIA process	425
	C.2. Guidance Manual for Airports	434
D.	Forests	437
E.	Ecologically Sensitive Zones (ESZs)	441
F.	Sampling points	444
	F.1. Air quality	444
	F.2. Water quality	445
	F.3. Noise quality	445
	F.4. Flora and fauna	445
	F.5. Felling of trees	447
G.	Public consultation	450
H.	Appraisal by EAC	453
I.	The appellate jurisdiction of NGT: the requirement of a merits review	457
J.	Environmental Rule of Law	462
K.	Directions	468

A. Introduction

1. An appeal was filed before the Principal Bench of the National Green Tribunal (NGT) at New Delhi challenging the grant of an environmental clearance (EC) for the development of a greenfield international airport at Mopa in Goa. NGT, by its judgment dated 21-8-2018¹ came to the conclusion that the present case “is not a case where the project compromises with the environment”. While affirming EC, NGT came to the conclusion that “further safeguards for environmental protection need to be incorporated”. NGT, accordingly, proceeded to formulate additional conditions, while affirming the grant of EC.

¹ *Federation of Rainbow Warriors v. Union of India*, 2018 SCC OnLine NGT 831

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

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

3.1. A project report prepared by Engineers and Management Associates, Spain in 1997.

3.2. A preliminary technical feasibility study prepared by the Airports Authority of India in May 1998. c

3.3. A final feasibility report for the proposed airport at Goa prepared by the International Civil Aviation Organisation, Montreal, Canada in August 2005.

3.4. A Goa dual airport study prepared by the International Civil Aviation Organisation in August 2007. d

3.5. A report of a Six-member Committee chaired by the Chief Minister of Goa in 2008 to “look into all aspects relating to construction of an international airport at Mopa, Goa”.

3.6. A document styled as the “Airport Master Plan” dated 10-2-2012, submitted to the Public Private Partnership (PPP) cell of the Government of Goa by Ammann & Whitney, USA envisaging: “consultancy services for preparation of master plan, preliminary project report, tender document and project management services for the proposed greenfield airport and commercial/industrial and allied development near Mopa in the State of Goa”. e

4. On 1-5-2000, the Government of India communicated its approval for the setting up of an airport at Mopa and for the closure of the existing airport for civilian operations on the commissioning of the new airport. Subsequently, on 1-7-2010, the earlier decision was modified to allow for the continuation of civilian aircraft operations at Dabolim even after the commissioning of the new airport. The process of land acquisition commenced in 2008 under the Land Acquisition Act, 1894. Originally, the land area anticipated for the development of the project was pegged at 4500 ac. During the pendency of project appraisals, the area required for the proposed airport stood reduced to 2271 ac. f

5. On 14-9-2006, the Government of India in the Ministry of Environment and Forests (MoEF, later renamed as MoEFCC in 2014) issued a notification [No. S.O. 1533 (the 2006 Notification)] mandating a prior EC for Category ‘A’ projects (specified in the Schedule) by the Union Government and for Category ‘B’ projects at the State level by the State Level Environment Impact Assessment Authority (SEIAA). Following the 2006 Notification, MoEF placed an EIA Guidance Manual for Airports (the Guidance Manual) in the public g

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HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 415

domain in February 2010. The stages of scoping, public consultation and appraisal, leading up to the grant of EC for the proposed airport are governed by the express terms of the 2006 Notification.

a 6. In March 2011, the State of Goa, as the project proponent submitted Form I as stipulated in the 2006 Notification to MoEF. On 8-3-2011, the State of Goa applied for terms of reference (ToR) to MoEF. ToR were finalised on 11-5-2011 and 12-5-2011 by the Expert Appraisal Committee (EAC) constituted under the 2006 Notification. On 1-6-2011, MoEF issued ToR for the preparation of the Environmental Impact Assessment (EIA) report. ToR was valid for a period of two years until 31-5-2013. On 22-11-2012, the Government of Goa revised the project boundary by decreasing the project area from 4500 ac to 2271 ac. At its meetings on 28-1-2013 and 29-1-2013, EAC recommended an amendment to ToR as requested by the State Government and granted an extension to the validity of ToR until 31-5-2014. On 19-6-2013, MoEF communicated its approval for the amendment of ToR and for the extension of its validity.

d 7. On 3-10-2014, the State Government floated a tender for the development of a greenfield international airport project on a PPP basis. On 20-10-2014, the Directorate of Civil Aviation, Government of Goa submitted a draft EIA report to the Goa State Pollution Control Board, requesting it to initiate steps to conduct a public hearing. A public hearing was conducted at the project site on 1-2-2015. EAC, at its meetings held on 9-3-2015 to 11-3-2015, recommended an extension of the validity of ToR for another year ending on 31-5-2015.

e 8. On 20-5-2015, the State of Goa submitted a final EIA report to MoEFCC, seeking the grant of an EC for the project. On 29-5-2015, MoEFCC communicated its approval for extending the validity of ToR until 31-5-2015. Between 24-6-2015 and 26-6-2015, EAC, at its 149th meeting, deliberated on the EIA report and sought additional information from the project proponent, inter alia, on:

- “• 10 years’ data regarding rainfall in the area;
- f • Drawing of traffic circulation plan for smooth circulation of traffic in the area;
- Minimum 20% energy conservation measures should be adopted in incorporating provisions for use of LED, star rated ACs, and a revised energy conservation plan to be submitted;
- g • Measures taken to comply with the CPCB guidelines formulated for noise pollution control in airport area to be submitted.”

In the meantime, a representation was submitted by the Federation of Rainbow Warriors, one of the appellants before this Court to EAC. EAC, at its 151st meeting held on 7-9-2015 to 9-9-2015, deliberated upon the representation and sought a clarification from the project proponent on the issues raised. On 28-9-2015, the project proponent submitted its reply to the representation. h EAC, at its 152nd meeting on 20-10-2015, sought a further clarification from

416

SUPREME COURT CASES

(2019) 15 SCC

the project proponent on the reply submitted by the Federation of Rainbow Warriors. At that meeting, BEAC recommended the grant of an EC for the project.

9. On 28-10-2015, MoEFCC, as the regulatory authority under the 2006 Notification for Category 'A' projects, communicated its approval for the grant of an EC. Following the grant of EC, the tender process which had been initiated on 3-10-2014 was concluded on 26-8-2016. Consequent to the opening of the final bids, a technical scrutiny, evaluation coupled with pre-bid meetings, deliberations on the draft concession agreement and other required steps, GMR Goa International Airport Ltd. (GGIAL) was awarded the contract on a revenue sharing of 36.99% to the State of Goa. On 8-11-2016, the concession agreement was executed between the Government of Goa and GGIAL for the development and operation of the airport with the concession period of 40 years. Upon financial closure, the three-year period for the construction of the airport commenced on 4-9-2017. The target date for the commissioning of the first phase of the project is 3-9-2020.

10. The grant of EC was challenged before the Western Zonal Bench of NGT (Appeal No. 61 of 2015) by the Federation of Rainbow Warriors. Hanuman Laxman Aroskar also filed an appeal (Appeal No. 1 of 2016) before the Western Zonal Bench of NGT. These appeals were subsequently renumbered (Appeals Nos. 5 and 6 of 2018) before the Principal Bench of NGT at New Delhi. On 7-11-2017², NGT issued an ad interim order restraining the cutting or felling of trees in the area designated as the site of the proposed airport. On 22-11-2017³, the order of restraint was modified on the statement of the Advocate General of Goa that the State shall not cut or fell any trees, nor allow it to take place without valid permission from the lawful authority for a fortnight thereafter in order to enable the appellants to pursue their remedies. On 6-2-2018, the Deputy Conservator of Forests granted permission for felling 21,703 trees at the airport site. The appellate authority under the Goa, Daman and Diu Preservation of Trees Act, 1984 (6 of 1984) dismissed the appeal on 7-3-2018.

11. On 8-3-2018⁴, the High Court of Judicature at Bombay at its seat at Goa set aside the order of the Deputy Conservator of Forests and remanded the matter to be heard by the Principal Chief Conservator of Forests. On 2-4-2018, the Principal Chief Conservator of Forests stipulated several conditions for the cutting and the felling of trees at the site of the airport including: (i) enumeration of trees; and (ii) the plantation of ten times the number of trees felled. Upon being moved in a public interest litigation (PIL), the High Court by its order dated 25-4-2018 allowed the exercise of enumeration to be carried out. As a result, 54,676 trees were enumerated, including the 1548 trees which had been

² *Federation of Rainbow Warriors v. Union of India*, 2017 SCC OnLine NGT 1964

³ *Federation of Rainbow Warriors v. Union of India*, 2017 SCC OnLine NGT 1962

⁴ *Federation of Rainbow Warriors v. Conservator of Forests*, 2018 SCC OnLine Bom 329 : (2018) 3 Mah LJ 424

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 417

a felled earlier in terms of the order dated 6-2-2018 of the Deputy Conservator of Forests. On 13-1-2018, the High Court issued final directions in the PIL directing the State of Goa to approach NGT seeking permission for felling and cutting trees. The State was directed to carry out the cutting and felling of trees only after prior permission was granted by NGT.

b 12. A miscellaneous application (MA No. 975 of 2018) was filed by the State of Goa before NGT on 2-7-2018 seeking permission for the felling of trees. By its judgment dated 21-8-2018¹, NGT disposed of both the appeals and the miscellaneous application filed by the State of Goa, upholding EC and imposing additional conditions to safeguard the environment. This Court has been informed that the felling of trees was initiated on 3-9-2018 and completed on 14-1-2019. Assailing the judgment of NGT, two appeals have been filed before this Court: one by Hanuman Laxman Aroskar (Civil Appeal No. 12251 of 2018) and the other by the Federation of Rainbow Warriors (Civil Appeal No. 1053 of 2019).

c 13. On 18-1-2019⁵, notice was issued in the appeals and an order of status quo was passed by this Court. The appeals were admitted for hearing and final disposal.

B. Submissions

d 14. We have heard Ms Anitha Shenoy, learned counsel appearing on behalf of the appellants. Mr K.K. Venugopal, learned Attorney General (AG) for India appeared on behalf of the State of Goa. Mr Atmaram S. Nadkarni, learned Additional Solicitor General (ASG) of India appeared on behalf of MoEFCC. Mr Parag P. Tripathi, learned Senior Counsel and Ms Aastha Mehta, learned counsel appeared on behalf of the concessionaire.

e 15. Ms Anitha Shenoy, learned counsel appearing on behalf of the appellants urged that the EIA report which is carried out under the terms of the 2006 Notification is a tool to evaluate the environmental consequences of a proposed activity. The proposed international airport, being a Category 'A' project, is governed by the second, third and fourth stages of scoping, public consultation and appraisal respectively envisaged under the 2006 Notification. In addition to the 2006 Notification, the Guidance Manual furnishes a significant signpost in the procedure envisaged prior to the grant of an EC. The project proponent is required to submit Form I complete with relevant details of the proposed project and the status of the environment. ToR which is finalised by EAC is founded on the disclosures which are made by the project proponent.

f 16. In this backdrop, the principal submissions urged by the appellants before the Court are as follows:

g 16.1. There were material concealments by the project proponent in failing to disclose that as many as 54,676 trees were required to be felled. Form I, which was submitted by the project proponent, was silent in regard to the

h ¹ *Federation of Rainbow Warriors v. Union of India*, 2018 SCC OnLine NGT 831
⁵ *Hanuman Laxman Aroskar v. Union of India*, 2019 SCC OnLine SC 500

418

SUPREME COURT CASES

(2019) 15 SCC

number of trees required to be felled. The final EIA report, while dealing with the biological environment in Clause 2.1.5 contains the following statement:

“2.1.5. Biological environment

Construction phase

Impacts (Significance-Medium)

The area acquired for proposed airport has only few trees, mainly bushes. These will be cleared during site preparation.”

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

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

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

16.2. There was a concealment of Ecologically Sensitive Zones (ESZs) in the State of Maharashtra. In terms of the Guidance Manual, primary data through measures and full surveys; and secondary data from secondary sources have to be collected. Primary data includes the study area within 10 km radius from the Aerodrome Reference Point (ARP) and covers one season other than the monsoon. Secondary data includes data collected within an aerial distance of 15 km for the parameters which are specifically mentioned in Column 9(III) of Form I of the 2006 Notification and covers one full year. In the present case, while furnishing details of ESZs falling within an aerial distance of 15 km, the EIA report stipulates that there were none in the State of Maharashtra. The State of Goa has also averred in its counter that there are no ESZs within a radius of 15 km from ARP and that there are no reserve forests in that radius. After hearings had begun before NGT, a letter was addressed by the Principal Chief Conservator of Forests on 12-2-2018 to the Director of Civil Aviation stating that a list of reserved forests had been notified under Section 20 of the Forest Act, 1927 in Sawantwadi Forest Division of Sindhudurg District in Maharashtra which was obtained from the working plan of Sawantwadi Forest Division

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 419

(2014-15 to 2023-24). The letter stated that there was no reserved forest notified under Section 20 of the Forest Act, 1927 in the Sawantwadi Forest Division, within a radius of 15 km from the ARP. On this aspect, it was urged on behalf of the appellants that restrictions come into force as soon as a notification under Section 4 of the Forest Act, 1927 is issued. Under the Forest Conservation Act, 1980, any use of forest land for non-forest purposes requires prior permission of the Union Government, as elaborated in the judgment of this Court in *T.N. Godavarman Thirumulpad v. Union of India*⁶ (*Godavarman*). The purpose of elucidating forest areas which fall within an aerial distance of 15 km from the project site is to enable an assessment to be made of the impact of the project on forested areas. Failure to mention forests in the State of Maharashtra was a significant omission in the EIA report.

16.3. Form 1 requires a disclosure of the details of ESZs within an aerial distance of 15 km of the project boundary. The EIA report rests content in stating that Pernem Taluka is not included in an ESZ by the High Level Working Group (HLWG) constituted under the Chairmanship of Dr K. Kasturirangan, Member (Science), Planning Commission (Kasturirangan Report). The project proponent, in response to the disclosures required for areas which are important or sensitive for ecological reasons — wetlands, water sources or other water bodies, coastal zone, biospheres, mountains and forests, left the required details blank. In this context, it was urged by the appellants that the purpose of the EIA report was not only to make an assessment of the project site but also of an area surrounding the project site within an aerial distance of 15 km. HLWG recognised that there were ESZs. In the present case, several villages are situated at a bare distance of 1.5 km from the project site in Maharashtra. Yet, there was no disclosure of this fact and the EIA report merely recorded that Pernem Taluka is not included in an ESZ.

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

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

17. Apart from the above submissions, Ms Shenoy has urged that the stages of public consultation and appraisal under the 2006 Notification are crucial to the assessment process. As far as the public consultation is concerned, the draft EIA is given before the hearing. During the course of the public consultation, as many as 70 persons spoke, 1150 representations were received and 1586 persons are stated to have participated. The range of concerns expressed during

⁶ (1997) 2 SCC 267

420

SUPREME COURT CASES

(2019) 15 SCC

the course of the public consultation covered a variety of environmental issues. Amongst them was the presence of perennial springs, the porous nature of the laterite plateau where permeation is a source of drainage for water collection and the existence of cashew plantations on which the livelihood of the local residents depends. Under the 2006 Notification, the State Pollution Control Board (SPCB) was required to collate the issues raised and the response of the project proponent, before submitting required documents to EAC. Before EAC, the project proponent in its presentation, indicated that the objections were only about employment opportunities. The project proponent clearly failed in its duty to appraise EAC about serious environmental concerns which were raised during the course of the public consultation.

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

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

20. Mr A.N.S. Nadkarni, learned Additional Solicitor General appearing on behalf of MoEFCC, urged that the EIA report, besides dealing with environmental concerns, addresses the impact of the project during both the phases of construction and operation. EAC is sourced from experts from outside the Government. The airport project was conceived in 1996; consultants were appointed and three sites were initially shortlisted. It was in 2011 that ToR were sought by and given to the project proponent by EAC. The draft EIA

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 421

a was placed for public consultation in 2014 and the final EIA report came to be submitted in 2015. EAC deferred consideration of the EIA report on three occasions, including among them to consider the representation filed by the Federation of Rainbow Warriors.

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

b 21.1. The submission of the appellants was not raised either in the public hearing or in the grounds urged before NGT, but was addressed in the written submissions filed before NGT and when a map of the Surveyor General of India was produced.

c 21.2. Table 2.1.5 of the EIA report states that there is no reserved forest in the State of Maharashtra while delineating ESZs within 15 km from the project boundary. The report proceeded on the plain meaning of the Forest Act, 1927 according to which it is only upon the issuance of a notification under Section 20 that a reserved forest is declared.

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

d 21.4. The decision in *Godavarman*⁶ which adopts the ordinary meaning of the expression “forest” is site specific; MoEFCC follows it scrupulously even if there is a notification under Section 4 while considering the diversion of forest land for non-forest uses. The decision in *Godavarman*⁶ has also been explained in the decision of this Court in *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*⁷ (*Okhla Bird Sanctuary*).

e 21.5. The Guidance Manual notices that environmental facets which have to be considered in relation to airport development are categorised into seven groups: (a) land use; (b) water quality; (c) air quality; (d) noise pollution; (e) biological environment; (f) socioeconomic changes and occupational health; and (g) solid waste management. Baseline data of these environmental facets is ascertained through primary data extending to one season while secondary data extending to a year is gathered in terms of the Guidance Manual and the distance specified in Para 4.1.

g 21.6. The EIA report records that the surrounding land use of the airport site is predominantly forest land. Land use and land cover specifically for a 10 km radius from the airport site in Maharashtra is also set out in Chapter II of the EIA report, which indicates a reference to the forest area. Annexure IX of the EIA report incorporates land use with land cover maps, both for Goa and Maharashtra in the 10 km radius, which includes forested areas within the State of Maharashtra; Annexure X of the EIA report elucidates surface water bodies both in Maharashtra and in Goa in the radius of 10 km while Annexure XI provides a hydrogeomorphological map of Goa and Maharashtra. In other

h ⁶ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267
⁷ (2011) 1 SCC 744

words, it was urged that: (i) a legally designated forest under the Forest Act, 1927 requires a notification under Section 20; however, at the same time, (ii) the EIA report contains a clear disclosure of the presence of forest areas in both the States of Goa and Maharashtra within a radius of 10 km including areas of dense forest.

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

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

24. On the issue of ESZs, the learned ASG urged that there is a specific reference to the Kasturirangan Report, under the heading of “Environmentally Sensitive Zones” in Chapter IV of the EIA report. The EIA report notices that the proposed airport site falls in Pernem Taluka of North Goa which has not been included in the ESZs mapped by HLWG. Annexure XVI of the EIA report is a notification dated 13-11-2013 (the 2013 Notification) of MoEF, which contains a list of villages (State, district and taluk-wise) identified by HLWG. Para 9 of the 2013 Notification which has been issued under Section 5 of the Environment (Protection) Act, 1986 specifies the categories of new and expansion projects which are prohibited in ESZ. The proposed airport notification project does not fall within the prohibited category. Moreover, since the site of the proposed airport was not included in an ESZ, the prohibition imposed by the 2013 Notification had no application.

25. The learned ASG has also urged that the report of HLWG on Western Ghats, submitted on 15-4-2013, stipulates certain development restrictions in ESZs which are as follows:

25.1. A complete ban on mining, quarrying and sand mining.

25.2. A complete ban on thermal power projects while hydro power projects may be permitted subjected to conditions.

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 423

25.3. A strict prohibition on “red category” industries.

25.4. A prohibition on building and construction projects of 20,000 sq m.

a **25.5.** All other infrastructure and development projects/schemes would be subject to the grant of an EC as Category ‘A’ projects under the 2006 Notification.

25.6. All development projects within 10 km of the Western Ghats ESZ and requiring ECs shall be regulated in accordance with the 2006 Notification.

b **26.** Based on the above recommendation of IILWG, it was submitted that the proposed airport project, which falls under Category ‘A’ projects as delineated by the 2006 Notification, is regulated by it and does not attract a blanket prohibition.

c **27.** The submission that EAC had failed to apprise the environmental consequences of the project and should have applied its mind to environmental concerns has been countered by relying on the minutes of the meetings conducted by EAC.

27.1. At its 149th meeting held on 26-6-2015, EAC sought additional information on six distinct aspects upon receiving the presentation by the project proponent.

d **27.2.** At its 151st meeting held on 7-9-2015 to 9-9-2015, EAC took note of a representation filed by the Federation of Rainbow Warriors and deferred further consideration of proposal for the grant of EC. The project proponent was called upon to submit a response to the issues raised in the representation.

e **27.3.** At its 152nd meeting held on 20-10-2015, EAC dealt with clarifications issued by the project proponent to the concerns raised by Rainbow Warriors and proceeded to recommend the project for the grant of an EC subject to the stipulated conditions.

28. On 28-10-2015, EC was granted by the Union Government. On the basis of the procedure which was followed by EAC, the following submissions have been urged:

f **28.1.** The application of mind by EAC can be inferred and seen from the record.

28.2. Where considered necessary, EAC sought information outside the EIA report.

28.3. Having appraised the EIA report, EAC imposed site specific conditions.

g **28.4.** EAC consists of experts in the field and once it has been shown that all relevant considerations were borne in mind, this Court must give due deference to their view.

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

h **29.1.** The proposed project for setting up an international airport at Mopa has been on the drawing board for nearly two decades. Successive studies were

424

SUPREME COURT CASES

(2019) 15 SCC

commissioned to assess the feasibility of the project from diverse sources, both within and outside the Government. This includes studies by private organisations as well as reports by Airports Authority of India, the International Civil Aviation Organisation and the six-member Committee constituted by the State Government under the auspices of the Chief Minister.

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

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

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29.4. Objections primarily based on a defect in procedure should not be sufficient to quash a project conceived in public interest with vast benefits for the development of the State and for the members of the travelling public. It was urged that there was no major environmental objection and the challenge to the EIA report is not substantial enough to overcome the interests of three million passengers. The expected inflow is anticipated to reach 30 million in 2030.

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30. On the aspect of the *felling of trees*, the learned AG submitted that following the order of the Bombay High Court, the Principal Chief Conservator of Forests passed an order on 2-4-2018 providing for:

- (i) enumeration of all trees covered by the project site;
- (ii) issuance of tree felling permission by the Deputy Chief Conservator of Forests; and
- (iii) plantation of ten times the number of trees felled under the supervision of the Forest Department.

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Thereafter, when the High Court was moved in a PIL., an order was passed on 13-6-2018 that the grant of permission for felling trees and the actual felling of trees will be carried out only after NGT granted permission in the pending proceedings. A miscellaneous application seeking permission for the felling of trees was instituted before NGT. In its final order dated 21-8-2018¹, NGT disposed of both the appeals as well as the miscellaneous application. Moreover, NGT has specifically dealt with the felling of trees in the course of its distinction.

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31. On behalf of the concessionaire, Mr Parag P. Tripathi, learned Senior Counsel and Ms Astha Mehta, learned counsel urged that upon the grant of an EC, a concession agreement was executed by it with the State of Goa on 8-11-2016. Possession of the project site was handed over on 4-9-2017 and work commenced on 3-3-2018. The indicative capital for Phase I of the development is Rs 1900 crores while the cost of the entire project is likely to

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¹ *Federation of Rainbow Warriors v. Union of India*, 2018 SCC OnLine NGT 831

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 425

a be Rs 3000 crores. The State of Goa has incurred a total expenditure of Rs 240 crores for land acquisition, rehabilitation, road widening, consultancy and other related aspects while the concessionaire has thus far incurred an expenditure of Rs 230 crores as on 18-1-2019. 14.06% of the project work has been completed and a manpower consisting of 1500 persons has been mobilised at the site together with plant and machinery.

b **32.** The concessionaire has stated that it has tied up with a consortium of banks and the servicing of the loans is linked to project milestones. As on 18-1-2019, the major works in progress included:

(i) site preparation and earth works such as excavation and filling up of runways, taxiways, aprons and parking bays;

(ii) PTB-foundations and column works; and

(iii) excavation of the foundations for the ATC building.

c The concessionaire has submitted that apart from the plantation of ten trees for every single tree which has been felled, the Forest Department identified about 500 trees for transplantation, which process is being carried out. In this background, it has been submitted that the project should not be interdicted. The concessionaire, it has been urged, is committed to the completion of the project which accords with all the approvals that have been received.

d **33.** The rival submissions now fall for our consideration.

C. Scheme of the 2006 Notification and the Guidance Manual for Airports

C. 1. EIA Process

e **34.** The objective of the EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available.

f **35.** The Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from 3-1-1977, inserted Article 48-A to the Constitution which mandates that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51-A(g) of the Constitution places a corresponding duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm (the Stockholm Conference) in June 1972 in which India participated, Parliament enacted the Environment (Protection) Act, 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

g **36.** On 27-1-1994, MoEF, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the 1986 Act read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, issued a notification, S.O. 60(E) (the 1994 Notification) imposing restrictions and prohibitions on the expansion and modernisation of any activity

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426

SUPREME COURT CASES

(2019) 15 SCC

or new project unless an EC was granted under the procedure stipulated in the notification. Under the notification, any person undertaking a new project or expanding and modernising an existing project was required to submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

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37. The application, which was to be made in accordance with the schedule provided in the notification was to be submitted with a project report which included with it an EIA report, an Environment Management Plan (EMP) and the details of a public hearing which had been carried out in accordance with guidelines issued by the Central Government from time to time. Limited exceptions to the public hearing process and the submission of an EIA were provided.

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

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39. The 1994 Notification was amended to reflect the growing protection accorded to the environment.

40. On 14-9-2006, MoEF released another notification, S.O. 1533 (the 2006 Notification) in supersession of the previous notification. The 2006 Notification directed thus:

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“...on and from the date of its publication the required construction of new projects or activities or the expansion or modernisation of existing projects or activities listed in the schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.”

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41. There are significant differences between the 1994 Notification and the 2006 Notification. They are:

41.1. The 2006 Notification categorically states that an EC must be granted by the regulatory authority prior to the commencement of any construction work or preparation of land.

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HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 427

41.2. The 2006 Notification divides all projects into Category 'A' and Category 'B' projects. MoEFCC continues to regulate projects of large scale (Category 'A'), while SEIAAs regulate comparatively smaller projects (Category 'B').

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

41.4. The 2006 Notification stipulates the creation of a regulatory body at the State level — SEIAA comprising members with expertise in the field of environmental laws which is charged with granting ECs for Category 'B' projects.

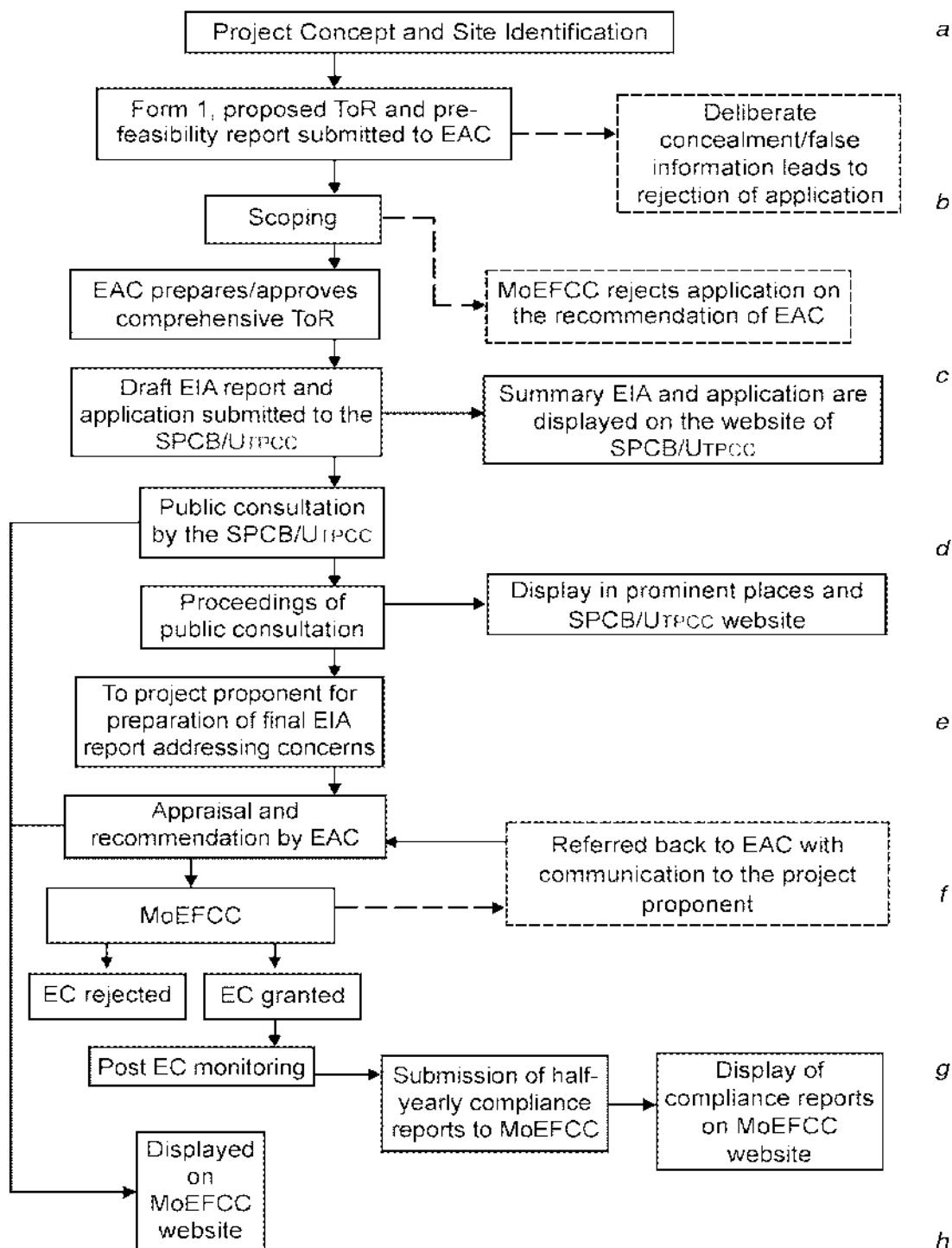
41.5. Under the 1994 Notification, the final approval was granted by IAA. Under the 2006 Notification, though the final regulatory approval is granted by MoEFCC or SEIAA, as the case may be, the approval is to be based on the recommendations of EAC functioning in MoEFCC or the State Expert Appraisal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

41.6. Under the 2006 Notification, the application can be rejected by the regulatory authority on the basis of the recommendation of EAC or SEAC, as the case may be, at the preliminary stage itself, prior to public consultation.

41.7. Under the 1994 Notification, the public hearing process was overseen by the State Pollution Control Boards (SPCB) which would constitute a public hearing panel for the purpose. Under the 2006 Notification, the public consultation process is expanded to include the receipt of written comments from persons concerned. The public hearing component was to be overseen by SPCBs or the Union Territory Pollution Control Committee (UTPCC).

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

EIA Process for Category 'A' projects



HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 429

- 43.** Based on the spatial extent of the potential impact and the potential impacts on human health and natural and man-made resources, the 2006 Notification categorises all projects into Category 'A' and Category 'B' projects. MoEFCC in the Central Government and SEIAA at the State level constitute the regulatory authorities for the purposes of the notification. Category 'A' projects require prior environmental clearance from MoEFCC, based on the recommendation of EAC constituted by the Central Government for this purpose. Category 'B' projects will require prior environmental clearance from SEIAA, based on the recommendations of SEAC. Where no SEIAA or SEAC has been constituted, Category 'B' projects are treated as Category 'A' projects.

- 44.** Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1-A⁸, if applicable. The application must be submitted prior to the commencement of any construction activity, or preparation of the land at the site. A pre-feasibility report must also be submitted with the application except in the cases of construction projects in Item 8 of the Schedule, for which a conceptual plan must be submitted. The significance of the information furnished by the applicant in Form 1 shall be explored shortly.

- 45.** The process to obtain environmental clearance as stipulated by the notification for *new* projects⁹ comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the notification:

1. Screening;
2. Scoping;
3. Public Consultation; and
4. Appraisal.

Screening

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

- ⁸ Only for construction projects listed under Item 8 of the Schedule.
- ⁹ Applications for EC for expansions or modernisation of *existing* units as stipulated under the notification are made in Form 1 and shall be considered by EAC or SEAC within 60 days, which will decide on the due diligence necessary including the preparation of the EIA and public consultations and the application shall be appraised accordingly for the grant of environmental clearance.

430

SUPREME COURT CASES

(2019) 15 SCC

Scoping

47. At this stage, EAC or SEAC, as the case may be, formulates detailed and comprehensive terms of reference which address all relevant environmental concerns for the preparation of the EIA. Amongst other things, the information furnished by the applicant in Form I/Form I-A along with the proposed ToR by the applicant form the basis for the preparation of ToR. ToR must be conveyed to the applicant within 60 days of the receipt of Form I, failing which, ToR proposed by the applicant shall be deemed as approved. Significantly, applications for EC may be rejected by the regulatory authority at this stage itself on the recommendation of EAC or SEAC, as the case may be, and the decision along with reasons is to be communicated to the applicant within 60 days of receipt of application.

Public Consultation

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

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

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

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

50. Within seven days of receiving a written request to initiate the public consultation process, SPCB or UTPCC shall place the summary EIA and the application on their website and invite responses. The authority concerned may also make use of other appropriate media in addition to publication on their website to ensure wide publicity of the project. On a written request from any person concerned, the authority will make available a hard copy of the draft

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 431

a EIA for inspection at a notified place during office hours till the date of the public hearing. A duty is placed on the authority to forward all responses and comments received at this stage to the applicant through the quickest available means.

b **51.** After the public consultation process, the applicant is duty-bound to address all the material environmental concerns expressed during the process and make appropriate changes to the draft EIA and EMP. The applicant shall then forward the final EIA report to the regulatory authority to initiate the next stage. Alternatively, the applicant may submit a supplementary report to the summary EIA and EMP.

Appraisal

c **52.** This stage involves detailed scrutiny by EAC or SEAC of all the documents submitted by the applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which the applicant shall be invited for furnishing clarification in person or through an authorised representative. Appendix V stipulates that the following documents are also submitted to the regulatory authority:

- d (i) Final EIA report
(ii) A copy of the video tape or CD of the public hearing proceedings
(iii) A copy of the final layout plan
(iv) A copy of the project feasibility report.

e **53.** The regulatory authority must examine the documents “strictly with reference to ToR” and communicate any inadequacy to EAC or SEAC, as the case may be, within 30 days of receipt of the documents. Within sixty days of the receipt of all the documents, EAC or SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. Within the next fifteen days, EAC or SEAC shall make categorical recommendations to the regulatory authority concerned to either grant EC on the stipulated terms and conditions or reject the application, together with reasons. The appraisal of projects which are not required to undergo the public consultation process or the submission of an EIA is to be carried out on the basis of the prescribed application Form 1 or Form 1-A, as applicable.

g **54.** MoEFCC or SEIAA shall thereafter consider the recommendations of EAC or SEAC and convey its decision to the applicant within 45 days of receipt of the recommendations. The regulatory authorities shall *normally* accept the recommendations of EAC or SEAC, as the case may be. Where there is a disagreement, the regulatory authority shall ask for a reconsideration of the recommendation within 45 days of the receipt of the recommendations. This decision shall be conveyed to the applicant. EAC or SEAC shall then reconsider its recommendation within a further period of 60 days and make its recommendations to the regulatory authority. The regulatory authorities shall then take a decision after considering the views communicated to it and convey the decision to the applicant within the next 30 days.

432

SUPREME COURT CASES

(2019) 15 SCC

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

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

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

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

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

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HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 433

- 60.** Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form I/Form 1-A. Crucial information regarding the particulars of the proposed project is sought to enable EAC or SEAC to prepare comprehensive ToR which the applicant is required to address during the course of the preparation of the EIA. Some of the information sought is produced thus:
- 60.1.** Construction, operation or decommissioning of the project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.).
- 60.2.** Use of natural resources for construction or operation of the project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply).
- 60.3.** Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health.
- 60.4.** Production of solid wastes during construction, operation or decommissioning.
- 60.5.** Release of pollutants or any hazardous, toxic or noxious substances to air.
- 60.6.** Generation of noise and vibration, and emissions of light and heat.
- 60.7.** Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea.
- 60.8.** Risk of accidents during construction or operation of the project, which could affect human health or the environment.
- 60.9.** Environment sensitivity which includes, amongst other things, the furnishing of the following details:
- 60.9.1.** Areas protected under international and national legislation.
- 60.9.2.** Ecologically sensitive areas.
- 60.9.3.** Areas used by protected, important or sensitive species of flora or fauna.
- 61.** Under the 2006 Notification, EC process is based on the information provided by the applicant in Form 1. That the information provided in Form 1 is crucial can be borne from the following circumstances:
- 61.1.** EAC or SEAC, as the case may be, formulates comprehensive ToRs on the basis of the information furnished in Form 1 which addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment.
- 61.2.** At the appraisal stage, the regulatory authority examines the documents submitted by the applicant "strictly with reference to ToR" and communicates any inadequacy to EAC or SEAC.

434

SUPREME COURT CASES

(2019) 15 SCC

61.3. Category B2 projects, which do not require scoping, are evaluated by SEAC on the basis of the information furnished by the applicant in Form I alone.

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61.4. The appraisal of all projects or activities which are not required to undergo public consultation, or submit an EIA report, shall be carried out on the basis of the prescribed application Form I and Form I-A as applicable.

61.5. An application for extension of the validity of EC for certain projects is to be made by submitting a revised Form I within the validity period.

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

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

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C.2. Guidance Manual for Airports

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

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“Primary data through measurements and field surveys; and secondary data from secondary sources are to be collected in the study area within 10 km radius from Aerodrome Reference Point (ARP). Primary data should cover one season other than monsoon and secondary data is to cover one full year. The basis for selection of these criteria is that the aircraft gains

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HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 435

a a height of 1000 ft in this area below which noise and air pollution are generated maximum during its take off stage. Secondary data should be collected within 15 km aerial distance for the parameters as specifically mentioned at Column 9(III) of Form I of the EIA Notification, 2006. Details of secondary data, the method of collection of secondary data, should be furnished. Similarly, the proposed locations of monitoring stations of water, air, soil and noise, etc. should be shown on the study area map.”

b **64.** Baseline data of environmental parameters which may be affected by airport activities is collected through primary monitoring in the study area and through secondary sources. The baseline data facilitates the evaluation of the predicted impact on environmental attributes in the study area by using scientific analysis and EIA methodologies. The object is to also aid in the preparation of an EMP that would outline measures for improving environmental quality as well as retain the scope for future expansions in a sustainable manner. The Guidance Manual specifically requires collection of baseline data on the following: (i) land environment; (ii) water environment; c (iii) air environment; (iv) noise environment; (v) biological environment; (vi) socioeconomic environment; and (vii) solid waste.

d **65.** The importance of collecting data on land environment is emphasised in the following extract:

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

436

SUPREME COURT CASES

(2019) 15 SCC

patterns, which give a guideline while planning the drains in the airport project. The drains help in discharge of storm water from the airport to avoid flooding and waterlogging in the project area.”

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

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

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67. On the aspect of air environment, the Guidance Manual emphasises that:

“Aircraft engines produce emissions that are similar to other emissions resulting from any oil-based fuel combustion. These, like any exhaust emissions, can affect local air quality at ground level. It is emissions from aircraft below 1000 ft, above the ground (typically around 3km from departure or, for arrivals, around 6 km from touchdown) that are chiefly involved in influencing local air quality. These emissions disperse with the wind and blend with emissions from other sources such as emissions from domestic sources, emissions from industries and from surface transport.”

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Local emissions attributed to aircraft operations at airports include oxides of nitrogen (NO_x), carbon monoxide (CO), hydrocarbons (HC), sulphur dioxide (SO₂), and particulate matter (PM 10 and PM 2.5).

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

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

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HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 437

an integral component of the wider landscape scale ecological network. To accomplish this:

- a (i) Baseline data from field observations for various terrestrial and aquatic systems are to be generated.
- (ii) Comparison of the data with authentic past records to understand changes is undertaken.
- (iii) Environmental components like land, water, flora and fauna are characterised and,
- b (iv) The impact of airport development on vegetation structure in and around project site is to be understood.

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

69. It is in the backdrop of the 2006 Notification and the Guidance Manual that it becomes necessary to assess the process that was adopted in the present case and its outcome.

e **D. Forests**

70. The essence of the challenge to EC is twofold:

- f 70.1. Form 1, which was filed by the project proponent, did not contain any disclosure of the name or identity of forests within an aerial distance of 15 km. Item 2 under the heading of “Environmental Sensitivity” requires a clear disclosure of “areas which are important or sensitive for ecological reasons — wetlands, water sources or other water bodies, coastal zone, biospheres, mountains and forests”.

- g 70.2. Table 2.1 of Chapter II of the EIA report delineates ESZs within an aerial distance of 15 km from the project boundary. For the State of Goa, the table indicates the presence of forests but not of protected forests. For the State of Maharashtra, Table 2.1 indicates that there were neither reserved nor protected forests within 15 km from the project boundary.

- h 71. The learned ASG made an earnest effort to support this by urging that a reserved forest is one which is notified under Section 20 of the Forest Act, 1927. The issuance of a notification under Section 4, it was urged, is indicative only of an intent and a forest stands reserved under sub-section (2) of Section 20 only upon the issuance of a notification. The ASG submitted that the reliance which the appellants placed on the Survey of India map is misplaced as, in the absence of a notification under Section 20, a forest cannot be regarded as being

438

SUPREME COURT CASES

(2019) 15 SCC

reserved. In the alternative, it was urged that as a matter of fact, the EIA report (save and except Table 2.1) takes into account the forest cover surrounding the site and within the prescribed aerial distance. As regards Form 1, the learned ASG submitted that at that stage, the project proponent may not be expected to be aware of all the features of the environment and hence, the omission to refer to forests and other areas which are sensitive ecologically should be discountenanced.

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

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

74. We are unable to accept the submission that the disclosure required was of reserved forests comprehended within a notification under sub-section (2) of Section 20 of the Forest Act, 1927. Form 1 requires a disclosure of areas which are important or sensitive for ecological reasons, among them, being "forests". The expression "forests" is used without reference to a statutory or artificial definition and must hence incorporate a meaning which bears upon the ordinary description of the term. The expression "forests", means a forest as commonly understood, without reference to a notification under the Forest Act, 1927 or any other statutory enactment. Such an interpretation will subserve the purpose of an EIA. The purpose is to ensure that all relevant facets of the environment are noticed, that baselines are documented, and that the potential impact of a project or activity on the environment is assessed. Forests are forests without reference to recognition in a statutory form devised for a specific purpose.

75. The need to construe the expression "forests" in a broad and generic sense was emphasised in the decision of this Court in *Godavarman*⁶. This Court held: (SCC pp. 269-70, para 4)

"4. The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation

⁶ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 439

a of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act. The term “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership.”

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76. Subsequently, in *Okhla Bird Sanctuary*⁷, this Court explained the position: (SCC p. 762, para 35)

c “35. Almost all the orders and judgments of this Court defining “forest” and “forest land” for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries.”

d In *Okhla Bird Sanctuary*⁷, trees had been planted with an intent to set up an urban park. This Court found it “inconceivable” that those trees would turn into a forest “within a span of ten to twelve years and the land, which was for agricultural use would be converted into forest land”. Hence, the decision was based on a factually distinguishable situation. The decision emphasises that in construing the term “forest”, courts must have due regard both to text and to context.

e 77. In the context of the 2006 Notification and the underlying purpose of facilitating an EIA report, the expression “forests” must receive its ordinary and natural connotation. The effort must not be to overlook and destroy forests but to notice and protect them.

f 78. Having said this, we must delve into the alternate submission that the EIA report does, as a matter of fact, consider the prevalence of forested areas both in Goa and in Maharashtra within the study area. In this context, Para 2 of the Executive Summary introducing the EIA report acknowledges that the “surrounding land use of the airport site is predominantly forest land”. In the context of land environment, the EIA report records that “forest is the predominant land use in the study area”. The EIA report acknowledges that territories in Maharashtra fall within one kilometre from the proposed greenfield airport. Villages falling in Goa and Maharashtra within the 10 km radius were considered for assessment. Para 2.3.1 of Chapter II deals with land use. Land use/Land cover statistics for a 10 km radius from the Mopa airport in the State of Maharashtra have been tabulated. Among them is the following:

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Sl. No.	Description	Area (sq m)	Area (ha)
5.	Forest-Tree Clad Area-Dense	6,63,41,913.84	6634.19

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⁷ *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744

440

SUPREME COURT CASES

(2019) 15 SCC

Similarly Para 4.4 in Chapter IV, which is titled “description of environment statistically”, provides thus:

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

79. The presence of a “diverse system set as dense and open forest, cultivated lands, sand dune vegetation, wetlands and human habitation” is noticed in Para 4.6 dealing with the biological environment. Annexure IX to the EIA report provides land use/land cover maps for both Goa and Maharashtra in the study area. The maps in Annexure IX cover forested areas in Maharashtra and Goa within an aerial boundary of 10 km from the project site. Annexure XI contains the hydrogeomorphological maps for Goa and Maharashtra.

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

81. The submission that the EIA report deals with the prevalence of forested areas and warrants the grant of an EC cannot be accepted for yet another reason. EACs and SEACs are conferred with the authority to reject applications for the grant of an EC at the stage of scoping itself, prior to the preparation of ToR. The application may be rejected on the basis of the information furnished by the project proponent in Form 1. Claiming an EC as a matter of right merely because the EIA report has assessed parameters that were omitted in Form 1, bypasses the authority of EAC and SEAC to reject an application at the preliminary stage and cannot be countenanced. The regulatory authority is required to assess the final documents submitted to it “strictly with reference to ToR” and communicate to EAC and SEAC any discrepancies between the EIA report and ToR. A deficient ToR on the basis of the non-disclosure of material information in Form 1 impedes this process.

82. The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The 2006 Notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 Notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The

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HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 441

- a terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form I under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment: a “heads I win, tails you lose” approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law.

E. Ecologically Sensitive Zones (ESZs)

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

- c “Ecologically Sensitive Zones, Ministry of Environment and Forests had constituted a High-level Working Group (HLWG) under the Chairmanship of Dr K. Kasturirangan, Member (Science), Planning Commission vide office order dated 17-8-2012 to study the preservation of the ecology, environmental integrity and holistic development of the Western Ghats in view of their rich and unique biodiversity. HLWG submitted its report to MoEF on 15-4-2013. HLWG identified 37% of natural landscape having high biological richness, low forest fragmentation, low population density and containing protected areas, world heritage sites and tiger and elephant corridors as ecologically sensitive areas (ESA). The present proposed airport site is falling under Pernem Taluka of North Goa District. The Pernem Taluka has not been included in the ecologically sensitive areas submitted by HLWG. MoEF order on ESA is attached as Annexure XVI.”

- f 84. According to Ms Shenoy, the EIA report notices the Kasturirangan Report submitted on 15-4-2013. The submission is that the EIA report has conveniently glossed over the areas adverted to by the Kasturirangan Report as an ESZ. This includes those areas which fall within the study area on the ground that Pernem Taluka, where the project site is situated, has not been included as an ESZ. In this context, reliance is placed on a draft notification dated 3-10-2018 issued by MoEFCC under which the Union Government has proposed to notify 56,825 sq m spread across six States — Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu as the Western Ghats ESZ. The preamble to the draft notification adverts to the steps taken by the Union Government between 2013 and 2016 in pursuance of the report of the HLWG. This includes draft notifications issued on 10-3-2014 and 4-9-2015. The draft notification dated 3-10-2018 emphasises the importance of the Western Ghats as a global biodiversity hot spot:

- h “WHEREAS, Western Ghats is an important geological landform on the fringe of the west coast of India and it is the origin of Godavari, Krishna, Cauvery and a number of other rivers and extends over a distance of approximately 1500 km from Tapti River in the north to Kanyakumari

in the south with an average elevation of more than 600 m and traverses through six States, namely, Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu;

AND WHEREAS, Western Ghats is a global biodiversity hotspot and a treasure trove of biological diversity and it harbours many endemic species of flowering plants, endemic fishes, amphibians, reptiles, birds, mammals and invertebrates and it is also an important centre of evolution of economically important domesticated plant species such as pepper, cardamom, cinnamon, mango and jackfruit;

AND WHEREAS, Western Ghats has many unique habitats which are home to a variety of endemic species of flora and fauna such as Myristica swamps, the flat-topped lateritic plateaus, the Sholas and wetland and riverine ecosystems;

AND WHEREAS, UNESCO has included certain identified parts of Western Ghats in the UNESCO World Natural Heritage List because Western Ghats is a centre of origin of many species as also home for rich endemic biodiversity and hence a cradle for biological evolution;"

85. Ms Shenoy has emphasised that sixteen villages in the taluka of Sawantwadi of the district of Sindhudurg which fall within the study area have been mapped as an ESZ in the annexure to the draft notification dated 3-10-2018. They are:

<i>State</i>	<i>District</i>	<i>Taluk</i>	<i>Village Name</i>
Maharashtra	Sindhudurg	Sawantwadi	Tamboli
Maharashtra	Sindhudurg	Sawantwadi	Kumbhayade
Maharashtra	Sindhudurg	Sawantwadi	Degave
Maharashtra	Sindhudurg	Sawantwadi	Banda
Maharashtra	Sindhudurg	Sawantwadi	Padve Majaon
Maharashtra	Sindhudurg	Sawantwadi	Ronapal
Maharashtra	Sindhudurg	Sawantwadi	Padve
Maharashtra	Sindhudurg	Sawantwadi	Dandeli
Maharashtra	Sindhudurg	Sawantwadi	Madura
Maharashtra	Sindhudurg	Sawantwadi	Dingne
Maharashtra	Sindhudurg	Sawantwadi	Aros
Maharashtra	Sindhudurg	Sawantwadi	Galel
Maharashtra	Sindhudurg	Sawantwadi	Kondure
Maharashtra	Sindhudurg	Sawantwadi	Satarda
Maharashtra	Sindhudurg	Sawantwadi	Dongarpal
Maharashtra	Sindhudurg	Sawantwadi	Sateli Tarl Soundal"

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 443

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

87.1. Neither the Mopa Plateau nor Pernem Taluka constitute a part of the Western Ghats.

87.2. The HLWG chaired by Dr Kasturirangan recommended a prohibition of specified activities while for other activities, the 2006 Notification was required to be followed.

87.3. The EIA report, while considering the project, has also adverted to the Kasturirangan Report.

87.4. Infrastructure projects except in the prohibited category are permissible, subject to an EIA.

88. The report of the HLWG dated 15-4-2013 recommends that there should be a complete ban on mining, quarrying and sand mining activity in the ESZ. Similarly, it recommends that no thermal power project should be allowed in ESZs and that all "red category" industries should be strictly banned. Building and construction projects of 20,000 sq m and above should not be allowed. However, all other infrastructure and development projects, which have been recommended, should be subject to the grant of ECs under Category "A" projects of the 2006 Notification.

89. The Union Government issued a Notification on 13-11-2013 in pursuance of Section 5 of the Environment (Protection) Act, 1986 to the effect that from the date of the issuance of those directions, no pending case or fresh case shall be considered by EACs/MoEF or SEACs/SEIAAs covering the following industries:

- (a) Mining, quarrying and sand mining;
- (b) Thermal power plants;
- (c) Building and construction projects of 20,000 sq m area and above;
- (d) Township and area development projects with an area of 50 ha and above and/or with a built-up area of 1,50,000 sq m and above; and
- (e) "Red category" industries.

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

91. The glaring deficiency which emerges from the EIA report is its failure to notice the existence of ESZs within a buffer distance of 10 km of the project site. On one hand, the EIA report takes note of the HLWG report dated 15-4-2013. But, on the other hand, the EIA report ignores the existence of ESZs within the study area on the ground that the *project site* is not situated in an ESZ. That, as we have seen, can never be accepted as an adequate

response. The purpose and object of the EIA report is to map areas, understand their vulnerabilities, and conduct a study on a scientific basis of the impact of the proposed project on an ecologically sensitive terrain. The EIA report fails to meet a classical requirement of administrative law: to take into account a relevant consideration, namely, that within the study area which has to be considered, there is the presence of ESZs.

92. In deducing the impact of a proposed activity on an ESZ, it is not sufficient to take recourse to a generic assessment of a proposed activity on the ecology of the study area. The EIA report must factor in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests. The vulnerabilities of each of them must be studied as distinctive components together with a holistic analysis of their existence in a chain of biodiversity. Where an area is ecologically sensitive because of the presence of flora or fauna requiring protection, that must be specifically adverted to and studied. The deficiency of the EIA report emanates from its failure to notice that the purpose of the study was not only to determine whether the project site is ecologically sensitive. Confining itself to this aspect, the EIA report failed to consider a crucial and relevant consideration.

F. Sampling points

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

F.1. Air quality

94. In order to study the ambient air quality in terms of suspended particulate matter, respirable particulate matter, SO₂, NO_x, CO and HC, ambient air quality monitoring stations were set up at six locations. They are at Sinechaadyin, Katwal, Mopa Village, Pernem, Nagzor and Patradevi. All are in Goa. The location at Patradevi was on the border shared by Goa with Maharashtra. The study area extended to a radial distance of 10 km from the ARP. We accept the submission of the ASG that they would hence cover areas falling within both Goa and Maharashtra. Para 4.1.2 of Chapter IV of the EIA

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 445

- a report sets out the baseline data collected at the monitoring stations. Since the entire study area within a radius of 10 km was considered for monitoring air quality, we accept the submission that the location of the sampling points within Goa did not preclude the monitoring of air quality within the study area.

F.2. Water quality

- b 95. Para 4.2 of the EIA report states that groundwater quality was measured at four locations: Mopa Village, Pernent, Dargal and Patradevi marked within 10 km of the study area. The surface water quality was measured at three locations: Chapora River, TiraiKol River and Nala near Mopa Village within 10 km of the study area. The impact assessment is contained in the EIA report. The Mopa Plateau is at a height of 155 metres above mean sea level and water from the plateau flows down to the rivers in the State of Goa. The laterite plateau is an important source of drainage by providing natural channels for water. The impact of a greenfield airport on the closing of natural channels which feed the water bodies has not been scientifically mapped or studied.

F.3. Noise quality

- d 96. While monitoring the noise quality, the EIA report covered a radius of 10 km. In order to obtain baseline data of noise quality, nine monitoring stations were chosen in the study area. While it is true that all nine locations were situated in the State of Goa, one (Patradevi) was situated on the border shared between Goa and Maharashtra. The EIA report contains an impact study and the study area covered includes both the States.

F.4. Flora and fauna

- e 97. The EIA report indicates that the area surrounding the site for the proposed airport has dense forests¹⁰. These total up to nearly 6634.19 hectares¹¹. Ms Shenoy has urged that it is impossible that the fauna found by the project proponent through both primary sampling and secondary sources was only limited to animals such as: domestic dog, cat and cattle, common house mouse, rat and mongoose, jackal and the three striped palm squirrel. This, in her submission, is a clear indication that the EIA report is faulty and clearly incorrect.

f 98. While dealing with the above submissions, it is necessary to note that the Guidance Manual contains a specific reference to the collection of data of sensitive habitats and wild/endangered species in the project area. The Guidance Manual stipulates thus:

- g “Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolises the functioning efficiency of the entire ecosystem. Just as wild flora needs special treatment for preservation and

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10. See for instance Para 2.0 of the executive summary and Para 2.3.1 of Chapter I.
11. See Para 2.3.1, Chapter II.

growth, wild fauna as well deserves specific conservatory pursuits for posterity.”

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

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

(i) *Birds of Goa* by Heinz Lainer & Rahul Alvares;

(ii) *The Goun Jungle Book* by Nirmal Kulkarni;

(iii) *A Photographic Guide to Butterflies of Goa* by Parag Ragnekar; c

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

(v) *Flora of Goa, Diu, Daman, Dadra and Nagarhaveli* (Vol. 2) by R.S. Rao;

(vi) *Red Data Book* published by Botanical Survey of India; d

(vii) Study materials published in Goa ENVIS Centre were also referred.”

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

“(a) A rapid survey to assess mammal presence at Barazan Plateau, Mopa, Goa, India conducted by Girish Punjabi (Wildlife Biologist) and Atul S. Borker (Full Member of IUCN/SSC Otter Specialist Group) that Schedule I species such as gaur, leopard and Indian Pangolin; Schedule II species such as giant squirrel, common palm civet; Schedule III species such as sambar, wild pig and Schedule IV species such as Indian hare, Indian porcupine. f

The report also mentions the presence of the Sawantwadi — Dodamarg wildlife corridor within the 10 km proposed project site.

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

(c) Report on two days’ survey to find evidence of plant and bird species at Mopa Plateau conducted by Aparna Watve (Ecologist) and Sanjay Thakur (Wildlife Biologist) that found Schedule I species such as the Indian peafowl and the Dipeadi Concanese which is critically h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 447

endangered. The study clearly mentions that the EIA study is entire deficit as it does not accurately consider the flora and fauna of the area as well as the number of trees to be cut.”

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

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

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

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F.5. Felling of trees

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

“*The area required for proposed airport has only few trees, mainly bushes. These will be cleared during site preparation.*” (emphasis supplied)

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103. Similarly, Chapter II which deals with project description specifies in Para 2.3.1 that “*vegetation and trees are sparse at the site*”. That the trees which were required to be felled were far from “few” is evident from the reply filed by the State of Goa in the present proceedings where it has been stated that permissions were granted for the *felling of 54,676 trees*. The EIA report ignored them. The submission in the EIA report that there were only sparse trees is sought to be explained by the State from the perspective of the large area of the land proposed for the project. It is sought to be explained that since the total area is 2133 ac, the number of trees would proportionately work out to about 25 trees in an area of one acre (about one tree in an area of 160 sq m).

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448

SUPREME COURT CASES

(2019) 15 SCC

104. In terms of the order passed by the Bombay High Court in the PIL, to which we have adverted earlier, the Principal Chief Conservator of Forests, Goa passed an order on 2-4-2018 providing for:

104.1. The enumeration of all trees. a

104.2. Exploring the possibility of transplanting existing trees which could be safely transplanted into ground areas.

104.3. Issuance of tree cutting permission by the Deputy Conservator of Forests.

104.4. Planting of ten times the number of trees felled by the concessionaire under the supervision of the Forest Department. b

105. On 6-2-2018, the Deputy Conservator of Forests had granted permission for felling of 21,703 trees. Following the dismissal of an appeal under Section 15 of the Goa, Daman and Diu Preservation of Trees Act, 1984 filed by the Federation of Rainbow Warriors, a writ petition was filed before the Bombay High Court (WP No. 1 of 2018). The High Court set aside⁴ the order of the Deputy Conservator of Forests and remanded the proceedings to the Principal Chief Conservator who passed the order which has been noted above. Following the order of the Principal Chief Conservator, 54,676 trees were enumerated. The competent authority granted permission for the felling of trees thereafter on the following dates:

(i) 1422 trees by an order dated 20-4-2018;

(ii) 18,408 trees by an order dated 24-7-2018; and

(iii) 33,298 trees by an order dated 1-10-2018. d

Following this exercise, the felling of trees was completed on 18-1-2019. The Bombay High Court having directed that the order of the Principal Chief Conservator of Forests shall be subject to the specific permission of NGT in the pending proceedings, a miscellaneous application was moved before NGT. While disposing of the main appeal, NGT also disposed of the miscellaneous application and under the head of "Biological Environment", the following directions have been issued:

"E. Biological environment" f

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

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

3. Concerns have been raised by the appellants with regard to plant species "Dipcadi Concanense" which has been claimed to be a threatened plant. This claim of the appellants has been negated by the respondent by producing a documentation of Botanical Survey of India, Western Regional Centre, Pune, Maharashtra titled as "A

⁴ *Federation of Rainbow Warriors v. Conservator of Forests*, 2018 SCC OnLine Bom 329 : (2018) 3 Mah LJ 424 h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 449

a Note on Occurrence and Distribution of Dipeadi Concanense". By invoking precautionary principle, we direct the project proponent to draw up a conservancy by plan/scheme for "Dipeadi Concanense" in collaboration with Forest Department, State of Goa and Botanical Survey of India and ensure its implementation."

b **106.** We express our serious displeasure with the manner in which the EIA report made an attempt to gloss over the existence of trees. The EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The EIA report states that vegetation and trees are sparse at the site. A photograph and a google map image are put forth as illustrations in Figure 2.3 of Chapter II. To realise later that the project involved the felling of 54,676 trees is indicative of the cavalier approach to the issue and a process of fact finding which is parsimonious with the truth. Post facto explanations are inadequate to deal with a failure of due process in the field of environmental governance. The State of Goa would have us gloss over the felling of trees by submitting that 54,676 trees over a project area of 2133 ac averages out to 25 trees per acre or one tree over an area of 160 sq m. This is a fallacious approach to the issue. Mathematical averages cannot displace factual data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinised the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented.

e **107.** In the written submissions which have been filed by the State of Goa, it has been submitted that of the 54,676 trees which were felled:

- (i)* 32,193 trees representing 59% had a girth of 30 to 50 cm;
- (ii)* 19,903 trees representing 36% had a girth of 50 to 100 cm; and
- (iii)* "only 2580 trees" had a girth exceeding 100 cm.

f **108.** The Goa, Daman and Diu Preservation of Trees Act, 1984 defines the expression "tree" in Section 2(j) in the following terms:

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

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

450

SUPREME COURT CASES

(2019) 15 SCC

environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance.

109. The order of the Principal Chief Conservator of Forests mandating transplantation, where possible, and the plantation of ten trees for every tree felled provides a measure of rectification. But there is a reason why issues pertaining to vegetational cover must be taken seriously in the EIA process. The formula of planting a set number of trees for every existing tree felled must be alive to the fact that the survival of new plantations is replete with uncertainty. The survival of transplanted trees is equally a matter of uncertainty. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 Notification must be transparent, candid and robust. A regulatory regime for environmental governance is based on the hypothesis that all stakeholders will act with rectitude. Hiding significant components of the environment from scrutiny is not an acceptable modality to secure project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy.

G. Public consultation

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

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

112. The 2006 Notification postulates:

112.1. A public hearing at or in close proximity to the project site to ascertain the views of “locally affected persons”.

112.2. Obtaining written responses from “other concerned” individuals having a “plausible stake” in the environmental aspects of the project or the activity.

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 451

112.3. The duty of SPCB to conduct hearings and to forward the proceedings to the regulatory authority within the stipulated time.

- a* **112.4.** Placing on the website of the Pollution Control Board a summary of the EIA report in the prescribed format and the making available of the draft EIA report by the regulatory authority on a written request by any person concerned, for inspection.

112.5. The duty of the applicant to address all material concerns expressed during the process of public consultation.

- b* **112.6.** The making of appropriate changes in the draft EIA and EMP.

112.7. The submission of the final EIA report by the applicant to the regulatory authority for appraisal.

- c* **112.8.** Each of these features is crucial to the success of a public consultation process. Public consultation cannot be reduced to a mere incantation or a procedural formality which has to be completed to move on to the next stage. Underlying public consultation is the important constitutional value that decisions which affect the lives of individuals must, in a system of democratic governance, factor in their concerns which have been expressed after obtaining full knowledge of a project and its potential environmental effects.

- d* **113.** Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. Each of these elements is crucial to the design features of the 2006 Notification. A breach will render the process vulnerable to challenge on the ground that:
- e*

- f* (i) significant environmental concerns have not been taken into account;

(ii) there was an absence of a full disclosure when the EIA report was put up for consultation; and

(iii) concerns which have been expressed by persons affected by the project have not been adequately dealt with or analysed.

- g* **114.** The public consultation was held on 1-2-2015 at Mopa. Nearly 70 persons spoke on the occasion and 1586 persons signed the attendance sheet. 1150 representations were received. Some of the environmental concerns expressed during the public hearing are catalogued below:

114.1. Mopa Plateau has multiple watersheds and the discharge of water goes down to the rivers.

- h* **114.2.** Nearly forty springs would be affected along with flora and fauna.

452

SUPREME COURT CASES

(2019) 15 SCC

114.3. The public hearing had been conducted in an area where the land was barren and with no plantation.

114.4 The impact on River Chapora, which is within a 10 km radius from the project, has not been adequately analysed. a

114.5. Mopa Plateau has a natural mechanism for groundwater recharge.

114.6. Protection of the Western Ghats is necessary, particularly with the view to not disturb flora and fauna.

114.7. The EIA report has not been made available to the affected areas and Gram Panchayats in the buffer zone. b

114.8. Local plantations would be affected.

114.9. The number of trees to be felled by the project proponent has not been specified in the EIA report.

114.10. The Dodamarg Wildlife Sanctuary had been “sanitised” by the High Court. c

114.11. Forest clearance had not been obtained.

114.12. The sacred groves of the area have not been described, including the Barazan which will be lost.

114.13. The slopes sustain cashew plantations with nearly forty lakh cashew trees resulting in an annual income of rupees fifty crores. d

114.14. No study has been carried out in the 10 km radius falling in Maharashtra. e

115. These concerns are at the forefront of the debate in the present case. What is significant, is the manner in which they were projected before EAC at its 149th meeting on 26-6-2015 where the project proponent made a presentation. The minutes of the meeting recorded the following observations of the project proponent: e

“(x) Public hearing was conducted on 1-2-2015 at Simechen Adven, Mopa, Goa. *The major issues raised during public hearing and responses sought from the project proponent related to employment opportunities.*” (emphasis supplied) f

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

116. In *Utkarsh Mandal v. Union of India*¹², the Delhi High Court has succinctly summarised the duty of EAC to apply its mind to the objections raised in the course of public hearings: (SCC OnLine Del para 40) g

“40. ... It is that body that has to apply its collective mind to the objections and not merely MoEF which has to consider such objections at the second stage. We therefore hold that in the context of the EIA Notification dated 14-9-2006 and the mandatory requirement of holding h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 453

a public hearings to invite objections it is the duty of EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negated. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary."

b 117. Crucial objections and environmental concerns which were raised during the consultative process were reduced to a single issue by the project proponent before EAC: the need for employment opportunities. The project proponent failed in its duty to inform EAC. The record does not indicate a critical appraisal or analysis by EAC. EAC was duty-bound to apply its mind to the environmental concerns raised by stakeholders. The duty of the project
c proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC. The minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 Notification in this regard.

d **II. Appraisal by EAC**

e 118. Appraisal by EAC is structured and defined by the 2006 Notification. The process of appraisal is defined to mean "a detailed scrutiny" by EAC of the application and other documents like EIA report and the outcome of the public consultation, including the public hearing proceedings, submitted by the applicant to the regulatory authority for the grant of an EC. EAC is under a mandate to conduct the process of appraisal in "a transparent manner". On the conclusion of these proceedings, EAC has to make "categorical recommendations" to the regulatory authority either for:

- f (i) the grant of a prior environmental clearance on stipulated terms and conditions; or
(ii) the rejection of the application.

The recommendations made by EAC to the regulatory authority must be based on "reasons".

g 119. EAC, at its 149th meeting held on 26-6-2015, considered the EIA report and sought a clarification from the project proponent on the following six aspects:

- "(i) There is a need to superimpose the layout plan showing the drainage pattern including natural drainage, construction in the area on superimposed map showing clear topography of the region;
(ii) 10 year data regarding rainfall in the area;

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454

SUPREME COURT CASES

(2019) 15 SCC

(iii) Justification on sustainability of existing traffic and transportation arrangements especially at intersection points of the approach road to the airport needs to be submitted;

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

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

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

b

120. A representation was received from the Federation of Rainbow Warriors, consequent to which the consideration was deferred and the project proponent was requested to submit a “pointwise reply to the issues raised” in the representation. EAC, at its 152nd meeting held on 20-10-2015, observed that the project proponent had provided “pointwise clarifications to the concerns raised by the ‘NGO’”. EAC noted thus:

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“(i) The EIA report has been updated by the PP after taking into account the issues raised in the public hearing and the same has been put in public domain.

(ii) The project is outside the ESZ delineated by the Dr Kasturirangan Committee and TERI.

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(iii) The project envisages construction of rainwater harvesting pits within the plot area, which would contribute to groundwater recharge. Hence, the objection of NGO in this regard does not hold.

(iv) The biological data in respect of flora and fauna was collected by the functional area experts of M/s Engineers India Ltd. and not by M/s Pragati Labs stationed at Goa during November 2014 to January 2015 for collection of ambient air quality, noise, water quality, soil, socioeconomics.”

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

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

Keeping in view the fact that the project proponent has not concealed facts and circumstances of the case and the project is in the public interest, the Ministry may take an appropriate view on the objection that the public hearing could not have been held, in the absence of valid ToR, though the validity has been extended twice and regularised subsequently. The Committee also noted that the public hearing was attended by about 3000 people and hence, there is substantive and active public participation as required under the law for public consultation.

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HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 455

The PP further provided their reply to the rebuttal by the said NGO on various issues.

a EAC, after deliberations, recommended the project for grant of EC subject to the above and the following:

(i) The project proponent shall ensure availability of adequate land at the junction of Mopa Airport Road and Mumbai/Goa NH 17 for traffic circulation/management and to provide for all the traffic interchanges and proposed cover.

b (ii) The approach and exit roads to the airport would be approved from the NHAI and should be according to IRC norms.

c (iii) A perusal of the topo sheet superimposed on the runway area indicates that the extreme end of the runway is covering the drainage area partly. The drainage area which is under the runway needs to be channelised. The area between the parallel taxi way and runway needs to be handled carefully to drain the water from the area in the outfall."

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

d 122.1. The "peculiar circumstances" of the case.

122.2. The difficulties in land acquisition which led to a delay in the preparation of the EIA report.

122.3. The "larger public interest" involved.

122.4. The project proponent had not concealed facts and circumstances of the case.

e 122.5. The project is in the public interest.

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

f 123. This analysis of the EIA report is, to say the least, sketchy and perfunctory and discloses an abdication of its functions by EAC. The requirement that EAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons:

g 123.1. EAC makes a recommendation to the regulatory authority in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as Para 8(ii) provides, shall normally accept the recommendations of EAC. Where it disagrees, it would request reconsideration, stating the reasons for its disagreement. In turn, EAC will consider the observations of the regulatory authority and furnish its views within a stipulated period.

h 123.2. The grant of an EC is subject to an appeal before NGT under Section 16 of the NGT Act, 2010.

124. The reasons furnished by EAC for its recommendation are a basic link in the ultimate decision of the regulatory authority. They constitute substantive material which will be considered by the Tribunal when it considers a challenge to the grant of an EC. a

125. What, then, do the reasons which have been furnished by EAC tell us? EAC relies on the “peculiar circumstances of the case” as the basis of its recommendation. What the peculiar circumstances are, is left for pure guesswork or surmise. EAC refers to the delay in acquisition proceedings, a larger public interest and the fact that the project proponent “has not concealed facts and circumstances”. Each one of the reasons which has weighed with EAC betrays a lack of comprehension of the true nature of its function under the 2006 Notification. EAC has failed to consider relevant circumstances bearing on the environmental impact of the project and has instead considered circumstances extraneous to its function. That the project proponent, according to EAC, has not concealed facts and circumstances is not reason enough to warrant a grant of an EC. Moreover, even this hypothesis (as we have seen earlier) is incorrect. There is no analysis of the EIA report. EAC has failed to answer to the call to its expertise. b
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126. Clause (vi) of Para 8 of the 2006 Notification stipulates thus:

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

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

127. EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA report. It is duty-bound to analyse the EIA report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required. The reasons which are furnished by EAC constitute a live link between its processes and the outcome of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated. g
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HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 457

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

129. EAC, as an expert body, has to scrutinise all relevant aspects of the project or activity proposed, including its impact on the environment. In taking that decision, the EIA report is an input for its analysis. The scrutiny and appraisal has to be undertaken by EAC as an expert body and its reasons must reflect that this has been done. As the minutes indicate, the non-application of mind by EAC is evident with reference to the presence of 15 ESZs in the study area. EAC notes that the project is outside the ESZ delineated by the Kasturirangan Committee. In the absence of a critical analysis, EAC failed in discharging its duties under the 2006 Notification. The recommendations of EAC furnish a guide for MoEFCC. Indeed, the 2006 Notification stipulates that the recommendations of EAC would normally be accepted. Consequently, a failure of due process before EAC, as in the present case, must lead to the invalidation of EC.

1. The appellate jurisdiction of NGT: the requirement of a merits review

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

“16. Tribunal to have appellate jurisdiction. Any person aggrieved by

* * *

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

458

SUPREME COURT CASES

(2019) 15 SCC

131. Section 20 mandates that the Tribunal shall, while passing any order, decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Several decisions of this Court have given meaning to these principles¹³.

132. The decision of NGT indicates that several significant submissions were urged before it. The entire analysis by NGT is contained in one paragraph of its judgment dated 21-8-2018¹ which is extracted below: (*Federation of Rainbow Warriors case*¹, SCC OnLine NGT para 27)

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

The next paragraph contains a brief reference to the fact that the requirement of a study over a distance of 15 km is in regard to the collection of secondary data. The above paragraph, in our view, does not fulfil the requirement of a merits review by an expert adjudicatory body vested with appellate jurisdiction.

133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment. In order to be eligible for appointment as an expert member, a person must fulfil the following qualifications prescribed in Section 5(2):

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

(a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five year's practical experience in the field of environment and

¹³ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647; *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388; *M.C. Mehta v. Union of India*, (1997) 2 SCC 353; *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718; *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664; *Indian Council for Enviro-Legal Action v. Union of India*, (2011) 8 SCC 161; (2011) 1 SCC (Civ) 87

¹ *Federation of Rainbow Warriors v. Union of India*, 2018 SCC OnLine NGT 831

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 459

a forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or

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

134. NGT is an expert adjudicatory body on the environment.

b 135. In two of its previous decisions, NGT has shown the path along with which it must traverse in arriving at its decisions:

135.1. In *Save Mon Region Federation v. Union of India*¹⁴, the grant of an EC to a 780 MW Hydroelectric Project in Tawang District of Arunachal Pradesh was challenged. NGT framed the question before it in broad terms:

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

d Having reviewed the information furnished in Form I by the project proponent as well as the multiple reports on record on the bird species involved in the site for the proposed project, NGT held that facts material to the case were not present before EAC and the consequent “vacuum in the EIA report” led to aberrations in the appraisal process conducted by it. Suspending EC granted to the project, NGT accepted the contention which was urged before it that NGT has the “authority to take an appropriate decision on the facts placed before it” and “set aside or suspend EC”.

e 135.2. Similarly, in *Sreeranganathan K.P. v. Union of India*¹⁵, the grant of an EC to the KGS Arammula International Airport Project was challenged. NGT found fault with the process leading to up to the grant of EC since sector-specific issues had not been dealt with. NGT extensively reviewed the information submitted by the project proponent in Form I, the deficiencies in the EIA report, the process of appraisal conducted by EAC and the sector-specific guidelines laid down with regard to the constructions of airports and held thus: (SCC OnLine NGT paras 182 & 187)

g “182. ... a duty is cast upon EAC or SEAC, as the case may be, to apply the cardinal principle of sustainable development and principle of precaution while screening, scoping, and appraisal of the projects or activities. While so, it is evident in the instant case that EAC has miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal expectations from the same. For a huge project as the one in the instant case, the consideration for approval has been done in such a cursory and arbitrary manner without taking note of the implication and importance of environmental issues. ... Thus, EAC has not conducted itself as mandated by the EIA Notification,

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14 (2013) 1 All India NGT Reporter 1
15 2014 SCC OnLine NGT 15

460 SUPREME COURT CASES (2019) 15 SCC

2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC.

* * *

187. ... the Tribunal is of the considered opinion that there is no option but to scrap the impugned EC granted by MoEF to the 3rd respondent/ project proponent for setting up the Arammula airport.”

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

137. The learned ASG has placed reliance on the decision of this Court in *Lufarge Umiam Mining (P) Ltd. v. Union of India*¹⁶ (*Lufarge*) to contend that the failure to disclose the presence of trees should not lead to the invalidation of EC. In that case, an application was made under the 1994 Notification for the grant of an EC to a proposed limestone mining project at Nongtraï Village, East Khasi Hills District, Meghalaya. EC was granted for the project in 2001. Pursuant to a letter by the Principal Chief Conservator of Forests to MoEF drawing attention to the non-disclosure of forests, the project proponent applied for a revised EC and forest clearance under the Forest (Conservation) Act, 1980. An ex post facto EC along with forest clearance was granted in 2010. Challenging the grant of EC, it was urged that there was a failing on part of the project proponent to disclose the presence of forests on the proposed project site.

138. A three-Judge Bench of this Court rejected the challenge and upheld the grant of EC to the proposed project. This Court relied, among other factors, on the following:

138.1. The mining of limestone in Khasi Hills dates back to 1763 and is an integral part of the culture of Nongtraï Village.

138.2. The site was cleared after thorough consultation with the custodian of the land, who decided to lease the land for the mining project following the loss of revenue caused due to mining by the unorganised sector.

138.3. The Headman of Nongtraï and Village Durbar, who participated at the public hearing and filed written submissions before this Court, supported the project and certified that no damage would be caused to adjacent lands.

138.4. At the stage of site clearance, MoEF had before it certificates by the Executive Committee, Khasi Hills Autonomous District Council and the DFO, Khasi Hill Division, Shillong, certifying that there were no forests in the proposed project site.

138.5. The DFO certified that the proposed mining site was not a forest as defined in *Godavarman*⁶.

138.6. The 2006 Notification was not applicable.

¹⁶ (2011) 7 SCC 338

⁶ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 461

138.7. MoEF had, at multiple stages, sought clarifications from the project proponent and had undertaken requisite care and caution to protect the environment.

139. Upholding the grant of EC and the forest clearance, this Court held thus: (*Lafarge case*¹⁶, SCC p. 380, para 120)

"120. ... The word "development" is a relative term. One cannot assume that the tribals are not aware of principles of conservation of forest. In the present case, we are satisfied that limestone mining has been going on for centuries in the area and that it is an activity which is intertwined with the culture and the unique landholding and tenure system of Nongtrai Village. On the facts of this case, we are satisfied with the due diligence exercise undertaken by MoEF in the matter of forest diversion. Thus, our order herein is confined to the facts of this case." (emphasis supplied)

140. The decision of this Court in *Lafarge*¹⁶, was based on the facts summarised above. Significantly, the standard of judicial review which must be applied in cases relating to the environment has been formulated by the three-Judge Bench in *Lafarge*¹⁶. S.H. Kapadia, C.J. noted that the doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. The principles of judicial review in environmental matters have been enunciated thus: (SCC p. 380, para 119)

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

141. In a recent three-Judge Bench decision of this Court in *Mantri Techzone (P) Ltd. v. Forward Foundation*¹⁷, this Court had the occasion to construe the provisions of Section 22 of the NGT Act, 2010. Speaking for the Bench, Abdul Nazeer, J. held that the test to determine whether a substantial question of law arises (within the meaning of Section 100 CPC) was formulated in the decision of a Constitution Bench in *Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.*¹⁸, where it was held thus: (AIR p. 1318, para 6)

"6. ... The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general

¹⁶ *Lafarge Umiam Mining (P) Ltd. v. Union of India*, (2011) 7 SCC 338

¹⁷ (2019) 18 SCC 494 : 2019 SCC Online SC 322

¹⁸ 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

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

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Reappreciation of the “factual matrix” has been held to be distinct from a substantial question of law. In the present case, we have indicated the basis for the invocation of the jurisdiction of this Court under Section 22. There was a failure to follow binding norms under the 2006 Notification. There were serious flaws in the decision-making process. Relevant material has been excluded from consideration and extraneous circumstances were borne in mind. EAC as an expert body abdicated its obligations to make an expert determination based on reasons. NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it under Section 16(h) read with Section 20 of the NGT Act, 2010 by merely deferring to the decision to recommend and grant an E.C. The parameters in regard to the existence of substantial questions of law have hence been established in the classical or conventional sense of that expression.

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J. Environmental Rule of Law

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

143. Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement — both in developed and developing countries alike¹⁹. The environmental rule of law seeks to address this gap.

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144. The environmental rule of law provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace¹⁹. It imbues environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance¹⁹. The environmental rule of law becomes a priority particularly when we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, supports sustainable economic and social development, protects public health,

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¹⁹ United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y>

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HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 463

a contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights¹⁹. Similarly, the rule of law in environmental matters is indispensable “for equity in terms of the advancement of the Sustainable Development Goals (SDGs), the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socioeconomic rights²⁰.”

b **145.** Amartya Sen argues for a broadening of the notion of sustainable development which is the most dominant theme of environmental literature, from a need-based standard²¹ to a standard based on freedoms²². Thus recharacterised, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar — or more — freedoms. The intertwined concepts of environmental rule of law thus further intragenerational as well as intergenerational equity.

c **146.** Decision 27/9 which was adopted by the United Nations Environment Programme’s (UNEP’s) Governing Body at its first universal session in 2013 on “Advancing Justice, Governance and Law for Environmental Sustainability” was the first internationally negotiated document to establish the term “environmental rule of law.” It declared that “the violation of environmental law has the potential to undermine sustainable development and the implementation of agreed environmental goals and objectives at all levels and that the rule of law and good governance play an essential role in reducing such violations”. It thus urged governments and organisations to reinforce cooperation to combat non-compliance with environmental laws towards achieving sustainable development. It also called upon the Executive Director to assist with the “development and implementation of environmental rule of law with attention at all levels to mutually supporting governance features, including information disclosure, public participation, implementable and enforceable laws, and implementation and accountability mechanisms including coordination of roles as well as environmental auditing and criminal, civil and administrative enforcement with timely, impartial and independent dispute resolution”. Similarly, the first United Nations Environment Assembly in 2014 adopted Resolution 1/13, which calls upon countries “to work for the strengthening of environmental rule of law at the international, regional and national levels”.

g ¹⁹ United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y>

²⁰ “UN Environment. Environmental Rule of Law”. Available at <<https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0>>

h ²¹ Brundtland definition of Sustainable Development

²² Amartya Sen, “Sustainable Development and Our Responsibilities”. Available at <<http://www.comitatoscientifico.org/temi%20SD/documents/SEN%20Responsibility&SD%2010.pdf>>

147. In 2016, the First World Environmental Law Congress, co-sponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law²³ which outlines 13 principles for developing and implementing solutions for ecologically sustainable development:

- (i) Obligation to Protect Nature
- (ii) Right to Nature and Rights of Nature
- (iii) Right to Environment.
- (iv) Ecological Sustainability and Resilience
- (v) In Dubio Pro Natura
- (vi) Ecological Functions of Property
- (vii) Intragenerational Equity
- (viii) Intergenerational Equity
- (ix) Gender Equality
- (x) Participation of Minority and Vulnerable Groups
- (xi) Indigenous and Tribal Peoples
- (xii) Non-regression
- (xiii) Progression

148. Dhvani Mehta's doctoral thesis²⁴ explores this idea of environmental rule of law in the Indian context by analysing the functioning of the three institutions of the Government with regard to environmental law. It develops a framework to assess whether the environmental rule of law in India is being strengthened or weakened, through an analysis of the legal instruments of each of the institutions of Government—statutes, executive orders and judicial decisions. The indicators on the basis of which this is done are:

- (a) the capacity of statutes to guide behaviour (one of the organising principles of the rule of law) by clearly articulating goals or balancing competing interests;
- (b) the ability of the executive to take flexible but reasoned decisions grounded in primary legislation; and
- (c) the ability of the judiciary to apply statutory interpretation and consistent standards of judicial review to give effect to environmental rights and principles.

149. In 2015, the International Community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs. These 17 goals are:

- (i) Eradication of poverty;
- (ii) Eradication of hunger;
- (iii) Good health and well-being;

²³ IUCN. "Environmental Rule of Law". Available at <<http://www.iucn.org/commissions/world-commission-environmental-law/wcel-resources/environmental-rule-law>>

²⁴ Dhvani Mehta. *The Environmental Rule of Law in India*, University of Oxford, 2017. Available at <<https://ora.ox.ac.uk/objects/uuid:730202ee-f2e4-4d2f-9575-938a728fe82a>>

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 465

- (iv) Quality education;
- (v) Gender equality;
- a (vi) Clean water and sanitation;
- (vii) Affordable and clean energy;
- (viii) Decent work and economic growth;
- (ix) Industry, innovation and infrastructure;
- (x) Reduced inequalities;
- b (xi) Sustainable cities and communities;
- (xii) Sustainable consumption and production;
- (xiii) Climate action;
- (xiv) Protecting life below water;
- (xv) Life on land;
- c (xvi) Peace, justice and strong institutions; and
- (xvii) Partnerships to achieve the goals.

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

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

152. The statistics on climate change indicate that:

f 152.1. Between 1880 and 2012, average global temperatures have increased by 0.85°C.

152.2. Between 1901 and 2010, as ocean expanded, the global average sea level has risen by 19 cm.

152.3. Since 1990, global emissions of CO₂ increased by almost 50%.

g 152.4. Between 2000 and 2010, emissions grew at a more rapid rate than each of the three decades preceding it.

h 153. In this backdrop, SDG 16 emphasises the need to protect, restore and promote sustainable use and management of terrestrial ecosystems and forests, combat desertification of river lands, prevent land degradation and halt the loss of biodiversity. Terrestrial ecosystems provide a range of ecosystem services including the capture of carbon, maintenance of soil quality, provision of habitat for biodiversity, maintenance of water quality and regulation of water flow together with control over erosion. Maintenance of ecosystems is hence

466

SUPREME COURT CASES

(2019) 15 SCC

crucial to efforts to combat climate change, mitigate and reduce the risks of natural disasters including floods and landslides. In this backdrop, promoting environmental justice and ensuring strong institutions is quintessential to promoting peaceful and inclusive societies for sustainable development. SDG 16, therefore, construes the promotion of the rule of law as intrinsic towards implementing multilateral environmental agreements and progressing towards internationally agreed environmental goals.

154. On 2-10-2016, India ratified the Paris Agreement²⁵ on climate change which reaffirmed the goal of “limiting global temperature increase to well below 2°C, while pursuing efforts to limit the increase to 1.5 degrees above pre-industrial levels”. Article 5 of the Agreement encourages parties to conserve and enhance sinks and reservoirs of greenhouse gases, which include forests. Under its Nationally Determined Contributions under the Paris Agreement, India made the following three commitments²⁶:

(i) Greenhouse gas emission intensity of its gross domestic product will be reduced by 33-35% below 2005 levels by 2030;

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

(iii) An additional “carbon sink” of 2.5 to 3 billion tonnes of CO₂ equivalent through additional forest and tree cover will be created by 2030.

155. In March 2019, UNEP released the Global Environment Outlook themed “Healthy Planet, Healthy People”²⁷. Noting clear “links between human health and the state of the environment”, the report concludes that clean-up and efficiency improvements are not adequate to pursue the 2030 Agenda and SDGs and achieve the internationally agreed environmental goals on pollution control. Instead, “transformative change” which reconfigures basic social and production systems and structures is needed. This includes well-designed policies on institutional frameworks, social practices, cultural norms and values along with their implementation, compliance and enforcement. In this view, a systemic and integrated policy action²⁷ would ensure that a “healthy environment is a prerequisite and foundation for economic prosperity, human health and well-being”²⁷.

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

25 Entered into force on 4-11-2016.

26 India’s Intended Nationally Determined Contribution: Working Towards Climate Justice at P. 29, submitted to the UNFCCC secretariat.

27 Global Environment Outlook 6, UNEP, 4-3-2019

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 467

- 157.** The 2006 Notification must hence be construed as a significant link in India's quest to pursue SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.
- 158.** Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the need for a new airport is paramount with an increasing volume of passengers and consequently the flaws in the EIA process should be disregarded. The need for setting up a new airport is a matter of policy. The role of the decision-makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed. This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened.
- 159.** In the present case, as our analysis has indicated, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form I. Disclosures in Form I are the underpinning for the preparation of ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part of this judgment including the failure to acknowledge that within the study area contemplated by the Guidance Manual, there is a presence of ESZs.
- 160.** EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. The 2006 Notification postulates that normally, MoEFCC would accept the recommendation of EAC. This makes the role of EAC even more significant. NGT is an adjudicatory body which is vested with appellate jurisdiction over the grant of an EC. NGT dealt with the submissions which were urged before it in essentially one paragraph. It failed to comprehend the true nature of its role and power under Section 16(h) and Section 20 of the NGT Act, 2010. In failing to carry out a merits review, NGT has not discharged an adjudicatory function which properly belongs to it.
- 161.** In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Equally, as an area requiring balance between development of infrastructure and the environment, we are of the view that appropriate directions should be issued by this Court, which would ensure that while the need for a public project as significant as an international

468

SUPREME COURT CASES

(2019) 15 SCC

airport is duly factored into the decision making calculus, such development proceeds on a considered view of the importance of the prevailing state of the environment. Bearing in mind the need to bring about a wholesome balance between the development of infrastructure of an airport and the preservation of the environment, we have come to the conclusion that time-bound directions should be issued.

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

K. Directions

163. We accordingly issue the following directions:

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

163.2. EAC shall carry out the exercise under 163.1 above within a period of one month of the receipt of a certified copy of this order.

163.3. Until EAC carries out the fresh exercise as directed above, EC granted by MoEFCC on 28-10-2015 shall remain suspended.

163.4. Upon reconsidering the matter in terms of the present directions, EAC, if it allows the construction to proceed will impose such additional conditions which in its expert view will adequately protect the concerns about the terrestrial ecosystems noticed in this judgment. EAC would be at liberty to lay down appropriate conditions concerning air, water, noise, land, biological and socioeconomic environment.

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 469

163.6. We grant liberty to the State of Goa as the project proponent and MoEFCC, as the case may be, to file the report of EAC before this Court in the form of a miscellaneous application so as to facilitate the passing of appropriate orders in the proceedings.

163.7. No other court or tribunal shall entertain any challenge to the report that is to be submitted before this Court by EAC in compliance with the present order.

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

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

166. The appeal is allowed in the above terms. There shall be no order as to costs.

Civil Appeal No. 1053 of 2019

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

66

SUPREME COURT CASES

(2020) 2 SCC

(2020) 2 Supreme Court Cases 66

2019

Dec. 3

(BEFORE DR D.Y. CHANDRACHUD AND AJAY RASTOGI, JJ.)

KEYSTONE REALTORS PRIVATE LIMITED

.. Appellant;

Versus

2-Judge

ANIL V. THARTHARE AND OTHERS

.. Respondents.

Bench

Civil Appeal No. 2435 of 2019[†], decided on December 3, 2019

Environment Law — Development Projects — Environment Impact Assessment Notification 2006, bearing S.O. 1533 — Paras 2 and 7 — Interpretation of — Objectives of EIA Notification, clarified

— Amendment of environmental clearance (EC) which had already been granted, for expansion of projects — Impermissibility of — Fresh clearance can be obtained from authorities for expansion, held, only by following procedure laid down under Para 7(ii) — Mandatory nature thereof, emphasised

— On facts held, amendment of EC for expansion of the project was impermissible — NGT direction of imposition of Rs One crore towards compensatory costs, affirmed — Expert committee to evaluate environmental impact and to suggest total compensatory costs to be imposed

Held, EIA Notification seeks to ensure protection and preservation of environment during execution of new projects and expansion or modernisation of existing projects — It imposes restrictions on execution of new projects and on expansion of existing projects, until their potential environmental impact has been assessed and approved by grant of EC

In a case where text of provisions require interpretation, court must adopt an interpretation which is in consonance with object and purpose of legislation or delegated legislation as a whole — EIA Notification was adopted with intention of restricting new projects and expansion of new projects until their environmental impact could be evaluated and understood

It cannot be disputed that as size of project increases, so does magnitude of project's environmental impact — Interpretation lending meaning that EIA Notification which would permit, incrementally or otherwise, project proponents to increase construction area of project without oversight from Expert Appraisal Committee or State Level Expert Appraisal Committee (SEAC), as applicable — It is not for courts to lay down bright-line test as to what constitutes marginal increase and what constitutes material increase — As EIA Notification currently stands, expansion within limits prescribed by Schedule is subject to procedure set out in Para 7(ii)

Plain reading of second half of Para 2(ii) would indicate that it applies to cases where project was initially below threshold limits stipulated in Schedule but after the proposed expansion, would breach threshold limits — Therefore, it does not cover a case where project had already crossed lower threshold limit set out in Schedule and expansion does not cross upper limit stipulated by Schedule

[†] Arising from the Judgment and Order in *Anil Tharthare v. State of Maharashtra*, 2019 SCC OnLine NGT 876 [National Green Tribunal, Principal Bench at New Delhi, Appeal No. 122 of 2018 (Earlier Appeal No. 9 of 2014), dt. 11-2-2019]

KEYSTONE REALTORS (P) LTD. v. ANIL
V. THARTHARE

67

- a* Para 2(ii) must be r/w Para 7(ii) — Para 7(ii) lays down exact procedure to be followed by project proponent in case of expansion — Two crucial aspects of Para 7(ii) are: (A) it uses phrase “expansion with increase in production capacity beyond the capacity for which prior environment clearance has been granted”; and (B) qualifying language referring to breaching threshold limits “after expansion” is absent — “Expansion” can occur even after grant of EC when project first crossed the lower limit stipulated in threshold — It is not necessary for project to breach upper limit after expansion — Therefore close reading of Para 7(ii) would mean that even after obtaining EC if project is expanded beyond limits for which the prior EC was obtained, fresh application would need to be made even if expansion is within upper limit prescribed in Schedule

- c* If Para 2(ii) does not cover a case where expansion is within limits stipulated by Schedule, project proponent may incrementally keep increasing size of project area over time — This would result in significant increase in project size without assessment EIA resulting from expansion — Such outcome would defeat entire scheme of EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by relevant regulatory authorities

- d* — There is considerable merit in observations of Committee constituted by MoEF that requirement of an EC at time of expansion forms a critical step in environmental clearance regime — It assists officials not just in evaluating and mitigating any adverse impact caused by expansion but also in assessing whether project proponent is in compliance with their existing obligations —
e Crucially, any form of expansion necessarily puts a strain on local environment and infrastructure and needs to be carefully evaluated in holistic manner

- Lower limit of Entry 8(a) of Schedule is built-up area of 20,000 sq m and upper limit is 1,50,000 sq m — Environmental impact of construction of 1,50,000 sq m is drastically more than 20,000 sq m — At the time of second increase in present case, total construction area of appellant’s project enlarged from 32,395.17 sq m to 40,480.88 sq m — As result of such expansion, appellant constructed 16 addition flats which were sold at prevailing market rate — Appellant did not comply with procedure set under Para 7(ii) — It rather sought amendment to EC — Amendment to EC dated 13-3-2014 did not discuss potential environmental impact of increase in construction area — But merely records that construction area now stands at 40,480.88 sq m

- g* Procedure set out under Para 7(ii) exists to ensure that where project is expanded in size, environmental impact on surrounding area is evaluated holistically considering all relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area — This was not done in case of appellant’s project — Held,
h it was not open to authorities to grant amendment of EC without following procedure set out in Para 7(ii)

68

SUPREME COURT CASES

(2020) 2 SCC

— As appellant had completed construction, authorities were denied ability to evaluate environmental impact and suggest methods to mitigate any environmental damage — Therefore, only remedial measures may be taken

Hence, direction of NGT to appellant to deposit Rs One crore affirmed

Expert committee constituted by NGT directed to continue its evaluation of project so as to bring environmental impact as close as possible to that contemplated in EC dt. 2-5-2013 and also suggest compensatory exaction to be imposed on appellant Housing and Real Estate Building/Planning Norms

Development Permission/Occupancy Certificate/NOC/Environmental NOC

Interpretation of Statutes Basic Rules Purposive construction/interpretation/Mischief rule/Heydon's rule — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Restitution — Disgorgement of Gains of Wrongdoer (Paras 6 and 13 to 21)

Anil Tharthare v. State of Maharashtra, 2019 SCC OnLine NGT 876, affirmed

Keystone Realtors (P) Ltd. v. Environment Department, 2016 SCC OnLine Bom 9340, cited

The appellant, a project proponent of residential redevelopment, received commencement certificate. When project commenced, area was 8720.32 sq m. As area of construction was increased to 32,395.17 sq m, the appellant applied for Environmental Clearance (EC) under Environment Impact Assessment (EIA). The State Level Expert Appraisal Committee for Maharashtra (SEAC) recommended the grant of an EC for the project. On 2-5-2013 the third respondent, the State Level Environment Impact Assessment Authority for Maharashtra (SEIAA), based on the recommendations of SEAC granted an EC for total construction of 32,395.17 sq m. The appellant increased total construction area by 40,480.88 sq m. Therefore, in environmental clearance given on 2-5-2013, the appellant sought amendment. Accordingly, amendment was granted to EC dated 2-5-2013.

Respondent 1 challenged grant of amended environmental clearance before the National Green Tribunal (NGT). The appellant raised several grounds questioning maintainability of petition before NGT. The contentions raised by the appellant were rejected. The appellant approached the High Court, which held that appeal on behalf of Respondent 1 not maintainable and challenge to the environmental clearance barred by limitation. However, this dispute was transferred to Principal Bench of NGT and decided against the appellant, which is challenged in this appeal. While dismissing the appeal, the Supreme Court held as above.

G-D/63343/C

Advocates who appeared in this case :

Mukul Rohatgi, Senior Advocate (Kunal Tandan, Pranaya Goyal, Aman Raj Gandhi, Nikhil Rohatgi, Abhishek Sharma, Ms Sanjana Arora, Ms Richa Saudilya and Ms Narayani Bhattacharyya, Advocates) for the Appellant;
Aditya Pratap, Munawwar Naseem, Chirag M. Shroff, Ms Mahima C. Shroff, Ms Yashika Verma and Riya Thomas, Advocates) for the Respondents.

Chronological list of cases cited

1. 2019 SCC OnLine NGT 876. *Anil Tharthare v. State of Maharashtra* 69a
2. 2016 SCC OnLine Bom 9340, *Keystone Realtors (P) Ltd. v. Environment Department* 70d

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KEYSTONE REALTORS (P) LTD. v. ANIL
V. THARTTHARE (*Dr Chandrachud, J.*)

69

The Judgment of the Court was delivered by

- a DR D.Y. CHANDRACHUD, J.** The present civil appeal arises from an order dated 11-2-2019¹ of the Principal Bench of the National Green Tribunal (NGT). In its order, NGT held that the increase in the total construction area of the appellant's project was an "expansion" under a Notification (bearing number S.O. 1533) dated 14-9-2006 (EIA Notification) of the Ministry of Environment and Forests. NGT found that the appellant had undertaken an
- b** "expansion" as set out in Para 2 of the EIA Notification without complying with the regulatory procedure prescribed. The appellant was directed to deposit an amount of rupees one crore with the Central Pollution Control Board (CPCB). Noting that the construction at the project site had been completed, NGT appointed a five-member expert committee to study the impact of the appellant's expanded project and to suggest remedial measures.

c *The facts*

- d** 2. The appellant is the project proponent of a residential redevelopment, called "Oriana Residential Project" situated at CTS No. 646, 646 (P) Gandhinagar, Bandra (East), Mumbai 400 050. On 8-6-2010 the appellant received a commencement certificate to carry out the development and erect a building situated at the project property. The appellant began construction. When the construction commenced, the total construction area was 8720.32 sq m. The ambit of the project was expanded, and the constructed area was increased to 32,395.17 sq m. Under the EIA Notification, an Environmental Clearance (EC) was necessary if the total construction area exceeded 20,000 sq m. Hence, the appellant applied for an EC under the EIA Notification.

- e** 3. The fourth respondent, the State Level Expert Appraisal Committee for Maharashtra (SEAC) recommended the grant of an EC for the project. On 2-5-2013 the third respondent, the State Level Environment Impact Assessment Authority for Maharashtra (SEIAA), based on the recommendations of SEAC granted an EC. It is not in dispute that at the time when EC dated 2-5-2013 was granted, the total construction area of the project was 32,395.17 sq m.
- f** The grant of EC was conditional on the appellant obtaining a "consent for establishment" from the Maharashtra Pollution Control Board under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.

- g** 4. By a letter dated 24-9-2013, the appellant informed the Environment Department of the Government of Maharashtra, the second respondent, that the construction area was being further increased by 8085.71 sq m, as a result of which the total construction area of the project would stand enhanced to 40,480.88 sq m. In its letter, the appellant sought an "amendment" to EC dated 2-5-2013 by the third respondent to reflect the increase in the total construction area. On 13-3-2014, the third respondent granted an "amendment" to EC dated 2-5-2013 on the ground that there was only a "marginal increase

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¹ Anil Tharthare v. State of Maharashtra, 2019 SCC OnLine NGT 876

70

SUPREME COURT CASES

(2020) 2 SCC

in built-up and construction area". The third respondent noted the changes in the specification of the project as follows:

Description	As per EC dated 2-5-2013		Amendment	
FSI area	16,346.32 sq m		21,365.54 sq m	
Non-FSI area	16,048.85 sq m		19,115.34 sq m	
Total construction area	32,395.17 sq m		40,480.88 sq m	
Nos. of tenements	Members 64	Sale 61	Members 64	Sale 77
Building configuration	Member	2 Basement	Member	2 Basement

5. The first respondent, claiming to be a resident of MIG Colony, Gandhinagar, Bandra East, Mumbai, challenged the grant of the amended EC dated 13-3-2014 before the Pune Bench of NGT. In response, the appellant filed two applications, challenging the standing of the first respondent and contending that the challenge was barred by limitation. By an order dated 4-5-2016, the Pune Bench of NGT rejected the applications questioning the maintainability of the proceedings and setting up the bar of limitation. The appellant filed a writ petition before the High Court of Judicature at Bombay to challenge the decision of the Pune Bench of NGT. The Bombay High Court, allowing the writ petition held by an order dated 23-8-2016², that the appeal was not maintainable at the behest of the first respondent, and the challenge against the grant of the amended EC dated 13-3-2014 was barred by limitation. By an administrative order dated 31-7-2018, the dispute was transferred from the Pune Bench of NGT to the Principal Bench which heard the parties and delivered the impugned order.

Relevant clauses of the EIA Notification

6. The present dispute raises important questions regarding the interpretation of the EIA Notification. The EIA Notification seeks to ensure the protection and preservation of the environment during the execution of new projects and the expansion or modernisation of existing projects. It imposes restrictions on the execution of new projects and on the expansion of existing projects, until their potential environmental impact has been assessed and approved by the grant of an EC. Para 2 of the EIA Notification reads thus:

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

² *Keystone Realtors (P) Ltd. v. Environment Department*, 2016 SCC OnLine Bom 9310

KEYSTONE REALTORS (P) LTD. v. ANIL
V. TIARTIARE (Dr Chandrachud, J.)

71

- (i) All new projects or activities listed in the Schedule to this notification;
- a (ii) *Expansion and modernisation of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the sector concerned, that is, projects or activities which cross the threshold limits given in the Schedule after expansion or modernisation;*
- b (iii) Any change in product mix in an existing manufacturing unit included in Schedule beyond the specified range.” (emphasis supplied)
7. The Schedule to the EIA Notification classifies potential projects into Category ‘A’ and Category ‘B’ based on their size and potential environmental impact. Category ‘A’ projects require project proponents to secure an EC from the Ministry of Environment, Forests and Climate Change. Category ‘B’
- c projects require project proponents to secure an EC from the SEIAA, based on the recommendations of SEAC. Where a project falls within the parameters stipulated in the Schedule, Para 2 of the EIA Notification provides that no construction work shall begin unless an EC is granted in regard to three types of activity: (i) new projects or activities provided in the Schedule, (ii) expansion or modernisation of existing projects or activities provided in the Schedule, and
- d (iii) changes in the product mix in existing manufacturing units provided in the Schedule beyond the specified range. The present dispute raises questions as to how the second type of activity, the “expansion” of existing projects, should be construed under the EIA Notification.
8. In order to secure an EC, the project proponent must submit an application in the manner set out in Form 1 and Supplementary Form 1-A (if
- e applicable) of the EIA Notification. Under Para 7(i) of the EIA Notification, the project proponent must also submit a pre-feasibility report. However, in the case of projects under Item 8 of the Schedule, only a conceptual plan is required to be submitted. Para 7(ii) of the EIA Notification states that:
- “7(ii) *Prior Environmental Clearance (EC) process for expansion or modernisation of change of product mix in existing projects:*
- f *All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernisation of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the*
- g *Schedule to this notification through change in process and or technology or involving a change in the product mix shall be made in Form 1 and they shall be considered by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultation and the application shall be appraised accordingly for grant*
- h *of environmental clearance.”* (emphasis supplied)

72

SUPREME COURT CASES

(2020) 2 SCC

Clause (ii) of Para 2 of the EIA Notification requires the project proponent to secure an EC from the relevant regulatory authority prior to undertaking any “expansion” of an existing project. Para 7(ii) further stipulates that all applications for an EC in cases of “expansion” resulting in the increase of production capacity or lease area beyond the capacity/area stipulated in the previous EC shall be made in the manner set out in Form 1 or 1-A (as applicable).

9. The appellant’s application in Form 1 acknowledges that the project fell under Entry 8(a) of Schedule 1 of the EIA Notification. Entry 8 deals with “Building and Construction projects having a built-up area of or greater than 20,000 sq m but less than 1,50,000 sq m”. Entry 8 of the Schedule to the EIA Notification is as follows:

8 — Building/Construction projects/Area Development projects and Townships			
8(a)	Building and construction projects	>20,000 sq m and <1,50,000 sq m of built-up area	Built-up area for covered construction: in the case of facilities open to the sky, it will be the activity area
8(b)	Townships and area development projects	Covering an area $\geq$ 50 ha and or built-up area >1,50,000 sq m	All projects under Item 8(b) shall be appraised as Category B1

Issue

10. In applying for the original EC, the appellant submitted an application in Form 1 as required under the provisions of the EIA Notification. The total construction area identified in the appellant’s Form 1 was 32,395.17 sq m. However, in September 2013 the appellant informed the second respondent of an increase by 8085.71 sq m as a result of which the total construction area of the project would be 40,480.88 sq m. In seeking an “amendment” to EC dated 2-5-2013 the appellant did not submit an updated Form 1. Further, the “amendment” to EC was granted by the SEIAA without the recommendations of SEAC. The issue before this Court is whether the “amended” EC dated 13-3-2014 granted by the SEIAA without following the procedure stipulated in Para 7(ii) of the EIA Notification is valid.

Submissions

11. Mr Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellant submitted that:

11.1. When construction began, the total construction area of the appellant’s project was 8720.32 sq m. As the EIA Notification requires projects with a total built-up area of or more than 20,000 sq m to procure an EC prior to the start of construction, no EC was required before construction of the appellant’s project commenced;

11.2. Pursuant to the first increase, when the appellant’s project crossed the 20,000 sq m threshold provided for in the EIA Notification, the appellant submitted Form 1 and was granted a valid EC dated 2-5-2013 by the third respondent;

KEYSTONE REALTORS (P) LTD. v. ANIL
V. TIARTIARE (*Dr Chandrachud, J.*)

73

- 11.3.** Pursuant to the second increase, the built-up area of the appellant's project only marginally increased by 8085.71 sq m to a total construction area of 40,480.88 sq m, which is within the upper limit of 1,50,000 sq m prescribed by Entry 8(a) of the Schedule to the EIA Notification. Therefore, the second increase was not an "expansion" within the meaning of clause (ii) of Para 2 of the EIA Notification and no fresh Form 1 or EC was required at the time of the second increase;
- 11.4.** Clause (ii) of Para 2 only applies to situations where the project crosses the lower or upper threshold limits stipulated in the Schedule. Any increase in production capacity or construction area *within the limits* set out in the Schedule would not constitute an "expansion" within the meaning of Clause (ii) of Para 2 and does not require compliance with the procedure under Para 7(ii) of the EIA Notification;
- 11.5.** The increase in the appellant's project is only marginal and does not have an adverse impact on the environment;
- 11.6.** The SEIAA applied its mind to the appellant's request for an "amendment"; noted that the increase in construction area was only marginal and issued an amendment to the original EC dated 2-5-2013; and
- 11.7.** NGT had no basis to impose the fine of rupees one crore on the appellant.
- 12.** Joining issue with the above submissions, Mr Aditya Pratap, learned counsel appearing on behalf of the first respondent submitted that:
- 12.1.** Under clause (ii) of Para 2 read with Para 7(ii) of the EIA Notification, any expansion beyond the "threshold limit" requires a fresh EC. The appellant's project had crossed the threshold limit of 20,000 sq m and the second increase of 8085.71 sq m constituted an "*expansion beyond the threshold limit*" and hence required a fresh EC;
- 12.2.** Once a project breaches the lower threshold limit set out in the Schedule to the EIA Notification, any expansion or modernisation, even within the upper threshold set out in the Schedule, will require the submission of a fresh Form 1 and the matter to be placed before the Expert Appraisal Committee or SEAC, as applicable in accordance with Para 7(ii) of the EIA Notification;
- 12.3.** Adopting the appellant's interpretation of Clause (ii) of Para 2 would defeat the object and purpose of the EIA Notification as a whole. It would allow project proponents to incrementally increase the construction area and over time significantly impinge on the environmental impact of the project without seeking a fresh EC;
- 12.4.** If the law prescribes an act to be done in a particular manner, it must be done only in that manner and no other. Under Para 7(ii) of the EIA Notification, it was incumbent on the SEIAA to place the matter before SEAC for appraisal and recommendations; and
- 12.5.** The EIA Notification is an operationalisation of the precautionary principle, which forms a part of the environmental law of India. The EIA Notification must be read in a manner which gives effect to the precautionary principle.

Interpreting Paras 2 and 7

13. The central controversy between the parties to the present dispute is the manner in which Paras 2 and 7 of the EIA Notification should be interpreted. Clause (ii) of Para 2 of the EIA Notification stipulates that a project proponent shall require an EC prior to the start of construction in the case of an “expansion”. Clause (ii) uses the phrase “expansion...beyond the limits specified for the sector concerned”. The first respondent sought to lay emphasis on this construction to argue that any expansion beyond the lower limit stipulated in the Schedule would attract the requirement of a prior EC under Para 2. However, the above language in Clause (ii) is further qualified by the phrase “that is, projects or activities which cross the threshold limits given in the Schedule *after* expansion or modernisation”. A plain reading of the second half of Clause (ii) would indicate that it applies to cases where a project was initially below the threshold limits stipulated in the Schedule but after the proposed expansion, would breach the threshold limits. Clause (ii) of Para 2 of the EIA Notification therefore would not appear to cover a case where a project had already crossed the lower threshold limit set out in the Schedule and the expansion does not cross the upper limit stipulated by the Schedule.

14. However, Clause (ii) of Para 2 must be read with Para 7(ii) of the EIA Notification. Para 7(ii) lays down the exact procedure to be followed by a project proponent in the case of an expansion. Two crucial points must be noted with respect to Para 7(ii). First, it uses the phrase, “expansion with increase in production capacity *beyond the capacity for which prior environment clearance has been granted*”. Second, the qualifying language referring to breaching the threshold limits “after expansion” is absent. An “expansion” can occur even after the grant of an EC when the project first crossed the lower limit stipulated in the threshold and it is not necessary for the project to breach the upper limit after the expansion. Therefore, a close reading of Para 7(ii) would support the interpretation put forth by the first respondent — that even after obtaining an EC if the project is expanded beyond the limits for which the prior EC was obtained, a fresh application would need to be made even if the expansion is within the upper limit prescribed in the Schedule.

15. The dangers effectively articulated by the learned counsel for the first respondent are real. If Clause (ii) of Para 2 does not cover a case where the expansion is within the limits stipulated by the Schedule, a project proponent may incrementally keep increasing the size of the project area over time resulting in a significant increase in the project size without an assessment of the environmental impact resulting from the expansion. Such an outcome would defeat the entire scheme of the EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by the relevant regulatory authorities. In the present case, the lower limit of Entry 8(a) of the Schedule is a built-up area of 20,000 sq m and the upper limit is 1,50,000 sq m. It cannot be doubted that the environmental impact of a construction of 1,50,000 sq m is drastically more than construction of 20,000 sq m. If the appellant’s argument is accepted in totality, a project proponent could potentially secure an EC for constructing 20,000 sq m and by

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KEYSTONE REALTORS (P) LTD. v. ANIL
V. TIHARTIARE (Dr Chandrachud, J.)

75

a “amendment” steadily increase the area of construction up to 1,50,000 sq m without submitting an updated Form 1 or any substantive review by SEAC.

16. We note that subsequent to the EIA Notification being published in 2006, a draft notification was issued on 19-1-2009³. The draft notification proposed the following amendment:

“In Para 2 [of the EIA Notification], after sub-para (iii), the following shall be inserted; namely:

b However modernisation or expansion proposals without any increase in pollution load, and, or without any additional water and or land requirement are exempted from the provisions of this Notification:

c Provided that, a self-certification, stating that the proposals shall not involve any additional pollution load, waste generation or water requirement, be submitted to the regulatory authority by the project proponent.”

17. Prior to adopting the draft notification, hearings were conducted and written comments were solicited from various stakeholders including: (i) Central Ministries and Departments, (ii) State Governments and their Agencies, (iii) Industries and their Associations, and (iv) Civil Society including NGOs.
d A committee was constituted by the Ministry of Environment and Forests, Government of India which published a report in October 2009. The committee specifically recommended against the adoption of the above amendment, noting:

e “The amendments propose to exempt modernisation and expansion of projects based on a self-certification by project authorities that there is no increase in pollution load. *It is totally unacceptable that the modernisation and expansion of projects be removed from the environmental clearance regime, with or without the requirement of self-certification.* There are several industries operating in critically polluted areas or are in violation of their environmental clearance conditions, which need to be considered before the expansion of a project is considered. What is to be considered is not just whether there is an increase in pollution load but also the current impact of the project and its compliance with environmental clearance conditions. We can provide clear examples wherein the non-compliance of the clearance conditions has not been considered while granting clearance for expansion which includes adding new components to the existing industrial operations, etc. This has allowed several projects to continue their activities and expand despite blatant non-compliance. Finally, it is only with industrial, thermal power and other such related operations that one can decide on parameters of pollution. *Development projects like highways, airports and other infrastructure projects which seek to expand might have a detrimental impact due to factors such as change in land use (i.e. construction over a wetland, grassland or agricultural land, etc.).* Despite this, the project proponent can certify that there is no change in pollution

3 Notification S.O. 195 (E) dated 19-1-2009.

load and hence expansion is to be allowed. *The current process seeks a detailed EIA report to determine whether impacts can be mitigated. If the amendment is brought into force, it will simply do away with this critical and necessary step in the environmental clearance process.* Therefore, this amendment should not be allowed.

* * *

The draft notification takes a myopic view of environmental and social impact of modernisation and expansion. *Any modernisation/expansion projects will necessarily entail increase in production, increase in transportation, increase in pressure on the local infrastructure and local natural resources and increase in the pollution load during the construction phase.* So, even if a modernisation/expansion does not lead to an increase in the pollution load or water or land requirement within the factory premises during the operation phase, it will lead to an increase in environmental and social impact outside the premise.” (emphasis supplied)

18. The draft amendment was not adopted in subsequent amendments to the EIA Notification. We find considerable merit in the observations of the committee that the requirement of an EC at the time of expansion forms a critical step in the environmental clearance regime. According to the committee, it assists officials not just in evaluating and mitigating any adverse impact caused by the expansion but also in assessing whether the project proponent is in compliance with their existing obligations. Crucially, any form of expansion necessarily puts a strain on the local environment and infrastructure and needs to be carefully evaluated in a holistic manner.

19. In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project’s environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or SEAC, as applicable. It is true that there may exist certain situations where the expansion sought by a project proponent is truly marginal or the environmental impact of such expansion is non-existent. However, it is not for this Court to lay down a bright-line test as to what constitutes a “marginal” increase and what constitutes a material increase warranting a fresh Form I and scrutiny by the Expert Appraisal Committee. If the Government in its wisdom were to prescribe that a one-time “marginal” increase (e.g. 5% or 10%) in project size, within the threshold limit stipulated in the Schedule, could be subject to a lower standard of scrutiny without diluting the urgent need for environmental protection, conceivably this Court may give effect to such a provision. This would be subject to any challenge on the ground of there being a violation of

KEYSTONE REALTORS (P) LTD. v. ANIL
V. TIHARTIARE (*Dr Chandrachud, J.*)

77

- a the precautionary principle. However, as the EIA Notification currently stands, an expansion within the limits prescribed by the Schedules would be subject to the procedure set out in Para 7(ii).

- b 20. At the time of the second increase, the total construction area of the appellant's project was enlarged from 32,395.17 sq m to 40,480.88 sq m. As a result of the expansion, the appellant constructed sixteen additional flats which were sold at the prevailing market rate. The appellant did not comply with the procedure set out under Para 7(ii) of the EIA Notification but rather sought an "amendment" to EC. The third respondent did not require the appellant to submit an updated Form 1 nor was the proposal processed and evaluated by the fourth respondent. The "amendment" to EC dated 13-3-2014 does not discuss the potential environmental impact of the increase in construction area, but merely records that the construction area now stands at 40,480.88 sq m.
- c The procedure set out under Para 7(ii) of the EIA Notification exists to ensure that where a project is expanded in size, the environmental impact on the surrounding area is evaluated holistically considering all the relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area. This was not done in the case of the appellant's project. It was not open to the third respondent to grant an "amendment" to EC without following the procedure set out in Para 7(ii) of the EIA Notification.
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- e 21. We further note that as on the date of the impugned order construction at the project site had already been completed. A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of a project. By completing the construction of the project, the appellant denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage. At this stage, only remedial measures may be taken. NGT has already directed the appellant to deposit rupees one crore and has set up an expert committee to evaluate the impact of the appellant's project and suggest remedial measures. In view of these circumstances, we uphold the directions of NGT and direct that the committee continue its evaluation of the appellant's project so as to bring its environmental impact as close as possible to that contemplated in EC dated 2-5-2013 and also suggest the compensatory exaction to be imposed on the appellant.
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- g 22. The appeal is dismissed. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of.

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2021 SCC OnLine SC 897

In the Supreme Court of India
(BEFORE A.M. KHANWILKAR, HRISHIKESH ROY AND C.T. RAVIKUMAR, JJ.)

Civil Appeal Nos. 12122-12123 of 2018
Municipal Corporation of Greater Mumbai ... Appellant(s);
Versus
Ankita Sinha and Others ... Respondent(s).

With

Civil Appeal No. 86/2019
Civil Appeal No. 5902/2019
Civil Appeal No. 6273 of 2021
(Arising out of SLP(C) No. 6732/2021)
Civil Appeal No. 6274 of 2021
(Arising out of SLP(C) No. 5930/2021)
Civil Appeal No. 6275 of 2021
(Arising out of SLP(C) No. 6733/2021)
Civil Appeal No. 6276 of 2021
(Arising out of SLP(C) No. 16448 of 2021)
Diary No. 11655/2021
Civil Appeal No. 6277-6278 of 2021
(Arising out of SLP(C) No. 16449-16450 of 2021)
Diary No. 13789/2021
Civil Appeal No. 6279 of 2021
(Arising out of SLP(C) No. 16451 of 2021)
Diary No. 13811/2021
Civil Appeal No. 6280-6281 of 2021
(Arising out of SLP(C) No. 16452-16453 of 2021)
Diary No. 13890/2021
Civil Appeal No. 2897/2021
Civil Appeal No. 6282 of 2021
(Arising out of SLP(C) No. 11426 of 2021)
Civil Appeal No. 6283 of 2021
(Arising out of SLP(C) No. 11427 of 2021)
Civil Appeal No. 6262 of 2021
Diary No. 16948 of 2021
Civil Appeal No. 6284 of 2021
(Arising out of SLP(C) No. 11798 of 2021)
Civil Appeal No. 6285 of 2021
(Arising out of SLP(C) No. 12669 of 2021)
Civil Appeal No. 6286 of 2021
(Arising out of SLP(C) No. 16454 of 2021)
Diary No. 19534/2021

Civil Appeal Nos. 12122-12123 of 2018, Civil Appeal No. 86/2019, Civil Appeal No. 5902/2019, Civil Appeal No. 6273 of 2021 (Arising out of SLP(C) No.

6732/2021), Civil Appeal No. 6274 of 2021 (Arising out of SLP(C) No. 5930/2021), Civil Appeal No. 6275 of 2021 (Arising out of SLP(C) No. 6733/2021), Civil Appeal No. 6276 of 2021 (Arising out of SLP(C) No. 16448 of 2021), Diary No. 11655/2021, Civil Appeal No. 6277-6278 of 2021 (Arising out of SLP(C) No. 16449-16450 of 2021), Diary No. 13789/2021, Civil Appeal No. 6279 of 2021 (Arising out of SLP(C) No. 16451 of 2021), Diary No. 13811/2021, Civil Appeal No. 6280-6281 of 2021 (Arising out of SLP(C) No. 16452-16453 of 2021), Diary No. 13890/2021, Civil Appeal No. 2897/2021, Civil Appeal No. 6282 of 2021 (Arising out of SLP(C) No. 11426 of 2021), Civil Appeal No. 6283 of 2021 (Arising out of SLP(C) No. 11427 of 2021), Civil Appeal No. 6262 of 2021, Diary No. 16948 of 2021, Civil Appeal No. 6284 of 2021 (Arising out of SLP(C) No. 11798 of 2021), Civil Appeal No. 6285 of 2021 (Arising out of SLP(C) No. 12669 of 2021), Civil Appeal No. 6286 of 2021 (Arising out of SLP(C) No. 16454 of 2021) and Diary No. 19534/2021

Decided on October 7, 2021

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.:—

“Estragon : Let's go.

Vladimir : We can't.

Estragon : Why not?

Vladimir : We're waiting for Godot.”¹

2. Leave granted in the Special Leave Petitions.

3. The consideration to be made in these matters is whether the National Green Tribunal (for short “the NGT”) has the power to exercise *Suo Motu* jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short, “the NGT Act 2010”).

4. In the lead case in this group, i.e. the Civil Appeal No. 86 of 2019, the NGT noticed an article titled “*Garbage Gangs of Deonar : The Kingpins and Their Multi-Crore Trade*” in the online news portal, *The Quint*. The article spoke of how mismanagement of solid waste had an adverse impact on the environment, public health and lives of individuals living in the vicinity of the dumping ground in Mumbai city.

5. The NGT took *suo motu* cognizance of the above article vide order dated 07.08.2018 and directed that the article writer Ankita Sinha be the applicant in the case OA No. 510 of 2018, registered at the NGT's instance. Thereafter, steps were taken for inspection of the Deonar Dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of Greater Mumbai (for short “the MCGM”). Pursuant to the Report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, the NGT vide order dated 30.10.2018 noted that ‘*damage to the environment and public health is self-evident*’ and ordered MCGM to pay compensation to the tune of Rs. 5 crores.

6. This Court while entertaining the Civil Appeal No. 86/2019 of MCGM, ordered stay on the operation of the order passed by the NGT and thereafter arranged for analogous consideration of the related cases where the common threshold jurisdictional issue arises on whether the NGT has the power to exercise *suo motu* jurisdiction.

7. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita

Sharma, Mr. S. Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act *suo motu*, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting *suo motu* cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available with superior courts) is highlighted to keep away *suo motu* power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

8. Projecting the contrary view, Mr. Nidhesh Gupta, the learned Senior Counsel appearing for the aggrieved party in SLP(C) No. 6732/2021, Mr. Sanjay Parikh, learned Senior Counsel for the Intervener in C.A. No. 86/2019 and Mr. Gopal Sankaranarayanan, learned Senior Counsel appearing for the Impleader I.A. No. 71482/2021 in the SLP(C) No. 6732/2021, by referring to the special role envisaged for the NGT and the history of its incorporation, make equally powerful submission in support of exercise of *suo motu* jurisdiction, by the NGT.

9. Mr. Anand Grover, the learned Senior Counsel was appointed as the *Amicus Curiae* to assist the Court and he was heard at length. The counsel acknowledges the NGT's role and position under the Act and its wide jurisdiction over environmental matters but Mr. Grover is of the view that the NGT is incapable of triggering action on its own. In other words, the NGT cannot act *suo motu* without someone moving the Forum as otherwise the forum then would be perceived to be judging its own cause. Since *suo motu* power is not conferred under the NGT Act, the specialized tribunal has to be moved by an outside party. But the format of the application is not important and even a letter addressed by an interested party, will clothe the NGT with power to take action is the concessional submission of Mr. Grover.

10. Representing the Central Government, Ms. Aishwarya Bhati, the learned Additional Solicitor General of India submitted that *Suo Motu* power is not exercisable by the NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed *National Environment Tribunal Act, 1995* (hereinafter referred to as the "NET Act"). The counsel refers to the provisions of the NGT Act and submits that the concept of *locus standi* was expanded for NGT's intervention under Section 18(2)(e) but the tribunal is not vested with *suo motu* power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, the NGT can commence action on environmental matters. Thus, on exercise of epistolary jurisdiction by the NGT, the ASG is on the same page as the *amicus curiae* but as earlier noted both counsel argue for keeping away the *suo motu* power from the NGT.

11. Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered v. Dharminder Bhohi*² wherein, provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus. Section 19(25)

conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

12. Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore v. Union of India*³, opined on behalf of a Division Bench that,

“67. ...The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts.”

13. The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak v. Achyut Kashinath*⁴, observed as under:—

“34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised.”

14. The second limb of contention is that the Act is applicable to ‘disputes’ as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara v. Rajendra Singh Bhandari*⁵ wherein the term ‘substantial question relating to environment’ was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

“19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.

20. ...In *Prabhakar v. Deptt. of Sericulture* [*Prabhakar v. Deptt. of Sericulture*, [(2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of “dispute” was noted in paras 34 and 35 of the Report : (SCC p. 21)

“34. To understand the meaning of the word “dispute”, it would be appropriate to start with the grammatical or dictionary meaning of the term:

“*Dispute*”—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;”

35. *Black’s Law Dictionary*, 5th Edn., p. 424 defines “dispute” as under:

‘*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.’”

15. The *amicus curiae* has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial system but not for any other ameliorative, restorative or preventative functions.

16. Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226

and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.*⁶ Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

"41. ...Suffice it to say that the NGT is not a tribunal set up either under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act.....

43. ...In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges and Immunities of State Legislatures, In re [Powers, Privileges and Immunities of State Legislatures, In re, [(1965) 1 SCR 413 : AIR 1965 SC 745]*, made in the following words : (SCR p. 499 : AIR p. 789, para 138)

"138. We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.

'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England*, Vol. 9, p. 349]'."

For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL [BSNL v. TRAI, [(2014) 3 SCC 222]*, we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in *Wilfred J. v. Ministry of Environment & Forests [Wilfred J. v. Ministry of Environment & Forests, [2014 SCC OnLine NGT 6860]* must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

17. The argument has been that the superior Courts exercising discretionary powers under Article 32 and Article 226, to safeguard fundamental rights, can venture into judicial review. But such a power not being expressly conferred on the NGT would suggest the limited nature of the Forum's powers, which would exclude any *suo motu* exercise.

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

18. In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which

shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

19. The precursor to the NGT Act was the 186th Report of the Law Commission of India dated 23.9.2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialized Court to deal with environmental issues:—

“It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.

These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Art. 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Art. 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.

It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts.”

20. The above would suggest that the Law Commission was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialized forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court.

21. The NGT, therefore, was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that the creation of the NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum. The 186th Law Commission Report provided the following reasoning,

“Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Art. 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as under Art. 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in *L. Chandra Kumar v. Union*

of India, [(1997) 3 SCC 261.

No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter.”²

22. Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT.

23. This is how the proposed forum was made free from the rules of evidence and the NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc. The observance of the principles of natural justice was however mandated.

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

24. The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 2, 3, 4, 5 and 6 of the Statement of Objects and Reasons being relevant are extracted hereinbelow:—

“2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a

specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.”

25. A reading of the Statement of Objects and Reasons shows that paragraph 4 thereof refers to the *National Environmental Tribunal Act, 1995 (NET)* which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher Courts which involve multi-disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialized environmental Courts.

26. Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life under Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186th Law Commission Report highlighting that the body so created, would aim to “*achieve the objectives of Article 21, 47, 48A, 51A (g) of the Constitution of India by means of a fair, fast and satisfactory judicial procedure*”. An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction.

27. The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.

28. The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

29. The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of the NGT.

III. THE NEED FOR PURPOSIVE INTERPRETATION

30. While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgement, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt

for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes*, authored by Justice G.P. Singh who explained thus,

“When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.

It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an ‘elementary rule’ by Viscount Simonds : a compelling rule by Lord Sommervell of Harrow; and a “settled rule” by B.K. Mukherjee J. “I agree” said Lord Halsbury, “that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it.”

31. The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional Courts flagging their environmental concerns.

32. The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which “*shall suppress the mischief and advance the remedy*” as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co. v. State of Bihar*⁸,

“...the office of all judges is to make such construction as shal suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*.”

33. Francis Bennion in his book *Statutory Interpretation* described ‘purposive interpretation’ as under:

‘A purposive construction of an enactment is one which gives effect to the legislative purpose by—

- (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or
- (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.’

34. Justice Frankfurter of US Supreme Court in ‘*Some Reflections on the Reading of Statutes*’, has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner,

‘The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.

...

Judge Learned Hand speaks of the art of interpretation as ‘the proliferation of purpose’.”⁹

35. Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo's phraseology in *Panama Refining Co. v. Ryan*, and the same is taken as a lodestar in our quest,

“the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view”¹⁰.

36. The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew

procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.¹¹ The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT

37. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) "*as the Tribunal may think fit*". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) "*any person aggrieved including any representative body/organization*" and the *locus standi* is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the CPC and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

38. While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice & Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

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

39. The said Rules make it clear that the NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

40. By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to

the environmental principles and even hauling up authorities for inaction, when need be.

41. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

42. Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

43. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

V. NON-ADJUDICATORY ROLES OF NGT

44. As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See *Vellore Citizens' Welfare Forum v. UOI*¹²; *M.C. Mehta v. UOI*¹³ etc.]

45. The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

46. For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of *lis*, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

47. The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report,

“The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. The Environment Court must be able to provide an “environmental solution” to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive

jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time.”

48. We have earlier discussed that the NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active “*dispute*”, but the formulation of *decisions*.

49. With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India*¹⁴, highlighted the NGT's role in the context, in the following words:—

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

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

50. In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of the NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo motu* by the Courts.

VI EXERCISE OF SUO MOTU POWER BY NGT

51. Let us now explore whether the NGT in discharge of its functions, should also have *suo motu* power. The specialized tribunal's exercise of *suo motu* powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

52. Explaining the purpose for constituting the special court to deal with environmental issues, in *Mantri Techzone (P) Ltd. v. Forward Foundation*¹⁵, Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:—

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

53. As can be seen from the quoted passage, this Court recognized that the NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

54. Elaborating further, in paragraphs 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that,

“46. ... As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.”

55. Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri v. DDA*¹⁶ was not to constrict the *suo motu* powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of ‘Merits Review’ and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

“503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute.”

56. Thus, the ratio in *Rajeev Suri* to the quoted extent will not clash with the view propounded here as the exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystalized by the statute, the role of the NGT is clearly discernible.

57. The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *Andhra Pradesh Pollution Control Board v. Prof. M. V. Nayudu (Retd.)*¹⁷ where Justice M. Jagannadha Rao speaking for a Division Bench referred to a comparable court in Australia and noted the following,

“The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters.”

58. The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

VII. UNIQUENESS OF NGT VIS-A-VIS OTHER TRIBUNALS

59. While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

60. The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok Bhushan in *State of Meghalaya v. All Dimas Students Union*¹⁸, fittingly observed thus:—

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

“14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are *prima facie* enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private— of a citizen.”

61. Reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising “*wide range of jurisdiction*” and the “*wide range of powers*”, given to it by the statute.

62. During the course of its functioning, the NGT has been recognized as one of the most progressive Tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how the NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia,

“The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance.”¹⁹

VIII. THE SUI GENERIS ROLE OF NGT

63. The NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution. The structure of *Sui generis* institutions was explained in *Paramjit Kaur v. State of Punjab*²⁰, wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

“14. The concept of *sui generis* is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbitrate is entrusted acts *sui generis*, that is, on its own and not under any law.”

64. In *DG NHA v. Aam Aadmi Lokmanch*²¹, Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:—

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

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

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

65. In that case, this Court repelled the argument for a restricted jurisdiction for the NGT, and fittingly observed in paragraph 76 that the powers conferred on the NGT are both reflexive and preventive and the role of the NGT was recognized in paragraph 77 as “an expert regulatory body”, which can issue general directions also *albeit* within the statutory framework.

66. The above discussion would advise us to say that the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate *suo motu* proceedings should also be available with the NGT.

67. The NGT is a Tribunal with *sui generis* characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multidimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

68. Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take *suo motu* cognizance of matters, for effective discharge of its mandate.

69. The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder,

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

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

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose : Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

70. The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

71. In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

72. The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

73. It may also be relevant to bear in mind that while dealing with contested cases,

the NGT is required to pass “award” and “order” and the statute repeatedly uses the word “decision”. Therefore, it is appropriate to correlate the word “decision” to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

74. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab v. Shamlal Murari*²² has so correctly prioritized the substantive rights and observed succinctly,

“8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

75. While discussing the NGT's power and responsibility, it is essential to keep in mind the *Principle 10 of the Rio Declaration* which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. THE PRECAUTIONARY PRINCIPLE

76. Tracing the origin of the *Precautionary Principle*, Scott Lafranchi in his treatise²³ has expounded on the proactive role of the authorities in the following passage:—

“Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on “long term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm.”¹⁶ The precautionary foundation of *Vorsorgeprinzip* has been described as an “action principle” that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and “can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.”

77. The origin of the *Precautionary Principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

78. As earlier seen, S.20 of the NGT Act which includes the term “decision”, in addition to “order” and “award”, also require the Tribunal to apply the ‘*Precautionary Principle*’ and the statutory mandate being relevant is extracted:—

“20. Tribunal to apply certain principles. - The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.”

79. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other ‘decisions’ or ‘orders’ to governmental authorities or polluters, when they fail to “to anticipate,

prevent and attack the causes of environmental degradation”²⁴. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

80. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, ‘*The Nature of the Judicial Process*’, stated thus,

“It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided.”

81. The above could be a pointer towards the preemptive functions of the NGT as a *sui generis* body.

XI. ENVIRONMENTAL JUSTICE AND ENVIRONMENTAL EQUITY

82. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.²⁵ Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

83. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role of the Courts in Environmental Law*, wrote the following evocative passage on the concept of environmental justice,

“Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving “environmental justice” or “environmental equity”, which is understood to mean the fair distribution of environmental risks and protection from environmental harms.”²⁶

84. There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

“Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people “live, work, play, and go to school”,

whereas the people who reside there do little or nothing to harm their community.”²⁷

85. When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An “*equal footing*” conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

86. The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of ‘Public Interest Litigation’ or widening the scope of *locus standi*.

“The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities.”²⁸

87. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the ‘*Blindfold of Lady Justice*’, which symbolizes “*the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class.*”²⁹ The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

88. Proceeding with the above understating, we can comfortably place the NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosenzanz and Shyam Divan in their writing- *Environmental Law And Policy In India*, have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights³⁰, liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.³¹

89. By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a pollution free environment for a holistic existence.³² Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar v. State of Bihar*, this Court explicitly held the following,

“Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.”³³

90. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the ‘*Absolute Liability Principle*’³⁴ by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and

mechanisms in this sphere have been created, on account of this Court's initiative.

"The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. ...The right was recognized as part of the right to life in 1991. ... The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."³⁵

91. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.³⁶ There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the 'at risk' nature of some populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.³⁷

92. Justice T.S. Doabia in *Environmental & Pollution Laws in India*, has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters,

"The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.

...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned."³⁸

93. Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to the NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior Court was surely expected to be seen in the Tribunal's approach.

94. Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority v. Central Empowered Committee*³⁹ so succinctly said that,

"40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are *sui generis*. The environmental rule of law seeks to create essential tools - conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges - of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the

preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts.”

95. It is this environmental rule of law that has been encapsulated with the NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that,

“With reference to the judicial enforcement of environmental law - which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order - the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade.”⁴⁰

96. The NGT therefore, is the institutionalization of the developments made by this Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

X. CONCLUSION:

97. Before we set out our conclusion, we acknowledge the able contribution of Mr. Anand Grover as *amicus curiae*, assisted by Ms. Astha Sharma, AOR who were requested to assist the Court on the central issue of *suo motu* jurisdiction of NGT.

98. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a *sui generis* institution and not *unus multorum*, and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

99. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists⁴¹ with many countries declaring climate emergencies and many others being urged to follow suit⁴².

100. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long term and very often irreparable environmental damage which are expected to be arrested by the NGT, urge this Court to advert to what is termed as the ‘*Seventh Generation*’ sustainability principle, or the ‘*Great Law of the Iroquois*’ (as it originates from the Iroquois Tribe) which requires all decision making to withstand for the benefit of seven generations down the line.

101. It is vital for the wellbeing of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

102. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum

created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the “*global impacts of climate change will fall disproportionately on minority and low-income communities*”.⁴³ Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

103. The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

104. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

105. When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate *suo motu* action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of *suo motu* jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

106. One could admit to the argument of danger of *suo motu* jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedural safeguards clarified above in play, the nature of the trigger itself viz. a letter or a ‘*suo motu*’ initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

107. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

108. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with *suo motu* power in discharge of its functions under the NGT Act.

109. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being

heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

¹ *Beckett, S.* (1954). *Waiting for Godot : Tragicomedy in 2 Acts.*

² (2013) 15 SCC 341

³ (2008) 1 SCC 125

⁴ (2011) 9 SCC 541

⁵ (2018) 11 SCC 734

⁶ (2019) 19 SCC 479

⁷ Chapter II, 186th Law Commission Report.

⁸ (1955) 2 SCR 603; AIR 1955 SC 661

⁹ 47 Columbia Law Review 527

¹⁰ 293 US 388 (1935) (dissenting)

¹¹ *Sarah Mathew v. Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62, *New India Assurance Co. Ltd. v. Nusli Neville Wadia*, (2008) 3 SCC 279.

¹² (1996) 5 SCC 647

¹³ (1997) 2 SCC 353

¹⁴ (2012) 8 SCC 326

¹⁵ (2019) 18 SCC 494

¹⁶ 2021 SCC OnLine SC 7.

¹⁷ (1999) 2 SCC 718

¹⁸ (2019) 8 SCC 177

¹⁹ GILL, G. (2020). Mapping the Power Struggles of the National Green Tribunal of India : The Rise and Fall? *Asian Journal of Law and Society*, 7(1), 85-126.

²⁰ (1999) 2 SCC 131

²¹ 2020 SCC OnLine SC 572

²² (1976) 1 SCC 719

²³ Scott La Franchi, *Surveying the Precautionary Principle's Ongoing Global Development : The Evolution of an Emergent Environmental Management Tool*, [32 B.C. Env'tl. Aff. L. Rev. 679 (2005)

²⁴ *Vellore Citizens (supra)*, *S. Jagannathan v. Union of India*, (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board v. C Kenchappa*, (2006) 6 SCC 371.

²⁵ Schlosberg D, *Defining Environmental Justice : Theories, Movements, and Nature* (Oxford University Press 2009)

²⁶ Schiffer, L. J., & Dowling, T. J. (1997). Reflections On The Role Of The Courts In Environmental Law. *Environmental Law*, 27(2), 327-342.

²⁷ Jeff Todd, A "Sense of Equity" in *Environmental Justice Litigation*, [44 HARV. ENVTL. L. REV. 169, 193 (2020).

²⁸ Supra Note 26.

²⁹ Ibid

³⁰ *Rural Litigation And Entitlement Kendra v. State Of U. P.*, AIR 1985 SC 652, *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613, *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577

³¹ See M.A.A. Baig, *Environmental Law And Justice*(1996). Domenico Amirante, *Environmental Courts In Comparative Perspective : Preliminary Reflections On The National Green Tribunal Of India* (2012). M.K. Ramesh, *Environmental Justice : Courts And Beyond*, Indian Jo. Of Env'tl. L. 20(2002).

³² Maheshwara Swamy, N. *Law Relating to Environmental Pollution and Protection*. India, Thompson Reuters, Vol.I, Ed.5.

³³ (1991) 1 SCC 74.

³⁴ *M.C. Mehta v. Union of India*, [(1987) 1 SCC 395.

³⁵ Rajamani, Lavanya. 2007. *Public Interest Environmental Litigation in India : Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*. *Journal of Environmental Law*

³⁶ *Supra*, Note 19.

³⁷ *M.C. Mehta v. Union of India*, (1986) 2 SCC 176, *Indian Council for Environmental-Legal Action v. Union of India*, (1996) 3 SCC 212, *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718, *A.P. Pollution Control Board II v. M.V. Nayudu*, (2001) 2 SCC 62.

³⁸ Justice T.S. Doabia, *Environmental & Pollution Laws in India*, 3rd Ed., Vol 2 (2017).

³⁹ (2021) 4 SCC 309

⁴⁰ Domenico Amirante, *Environmental Courts in Comparative Perspective : Preliminary Reflections on the National Green Tribunal of India*, 29 *Pace Env'tl. L. Rev.* 441 (2012)

⁴¹ Indian Network for Climate Change Assessment, *Climate Change and India : A 4X4 Assessment - A sectoral and regional analysis for 2030s*, Ministry of Environment and Forests, Government of India, 16 November 2010

⁴² Secretary-General's Remarks at the Climate Ambition Summit. United Nations. United Nations, December 12, 2020.

⁴³ *Supra* Note 23.

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66

SUPREME COURT CASES

(2020) 2 SCC

(2020) 2 Supreme Court Cases 66

2019

Dec. 3

(BEFORE DR D.Y. CHANDRACHUD AND AJAY RASTOGI, JJ.)

KEYSTONE REALTORS PRIVATE LIMITED

.. Appellant;

Versus

2-Judge

ANIL V. THARTHARE AND OTHERS

.. Respondents.

Bench

Civil Appeal No. 2435 of 2019[†], decided on December 3, 2019

Environment Law — Development Projects — Environment Impact Assessment Notification 2006, bearing S.O. 1533 — Paras 2 and 7 — Interpretation of — Objectives of EIA Notification, clarified

— Amendment of environmental clearance (EC) which had already been granted, for expansion of projects — Impermissibility of — Fresh clearance can be obtained from authorities for expansion, held, only by following procedure laid down under Para 7(ii) — Mandatory nature thereof, emphasised

— On facts held, amendment of EC for expansion of the project was impermissible — NGT direction of imposition of Rs One crore towards compensatory costs, affirmed — Expert committee to evaluate environmental impact and to suggest total compensatory costs to be imposed

Held, EIA Notification seeks to ensure protection and preservation of environment during execution of new projects and expansion or modernisation of existing projects — It imposes restrictions on execution of new projects and on expansion of existing projects, until their potential environmental impact has been assessed and approved by grant of EC

In a case where text of provisions require interpretation, court must adopt an interpretation which is in consonance with object and purpose of legislation or delegated legislation as a whole — EIA Notification was adopted with intention of restricting new projects and expansion of new projects until their environmental impact could be evaluated and understood

It cannot be disputed that as size of project increases, so does magnitude of project's environmental impact — Interpretation lending meaning that EIA Notification which would permit, incrementally or otherwise, project proponents to increase construction area of project without oversight from Expert Appraisal Committee or State Level Expert Appraisal Committee (SEAC), as applicable — It is not for courts to lay down bright-line test as to what constitutes marginal increase and what constitutes material increase — As EIA Notification currently stands, expansion within limits prescribed by Schedule is subject to procedure set out in Para 7(ii)

Plain reading of second half of Para 2(ii) would indicate that it applies to cases where project was initially below threshold limits stipulated in Schedule but after the proposed expansion, would breach threshold limits — Therefore, it does not cover a case where project had already crossed lower threshold limit set out in Schedule and expansion does not cross upper limit stipulated by Schedule

[†] Arising from the Judgment and Order in *Anil Tharthare v. State of Maharashtra*, 2019 SCC OnLine NGT 876 [National Green Tribunal, Principal Bench at New Delhi, Appeal No. 122 of 2018 (Earlier Appeal No. 9 of 2014), dt. 11-2-2019]

KEYSTONE REALTORS (P) LTD. v. ANIL
V. THARTHARE

67

- a* Para 2(ii) must be r/w Para 7(ii) — Para 7(ii) lays down exact procedure to be followed by project proponent in case of expansion — Two crucial aspects of Para 7(ii) are: (A) it uses phrase “expansion with increase in production capacity beyond the capacity for which prior environment clearance has been granted”; and (B) qualifying language referring to breaching threshold limits “after expansion” is absent — “Expansion” can occur even after grant of EC when project first crossed the lower limit stipulated in threshold — It is not necessary for project to breach upper limit after expansion — Therefore close reading of Para 7(ii) would mean that even after obtaining EC if project is expanded beyond limits for which the prior EC was obtained, fresh application would need to be made even if expansion is within upper limit prescribed in Schedule

- c* If Para 2(ii) does not cover a case where expansion is within limits stipulated by Schedule, project proponent may incrementally keep increasing size of project area over time — This would result in significant increase in project size without assessment EIA resulting from expansion — Such outcome would defeat entire scheme of EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by relevant regulatory authorities

- d* — There is considerable merit in observations of Committee constituted by MoEF that requirement of an EC at time of expansion forms a critical step in environmental clearance regime — It assists officials not just in evaluating and mitigating any adverse impact caused by expansion but also in assessing whether project proponent is in compliance with their existing obligations —
e Crucially, any form of expansion necessarily puts a strain on local environment and infrastructure and needs to be carefully evaluated in holistic manner

- Lower limit of Entry 8(a) of Schedule is built-up area of 20,000 sq m and upper limit is 1,50,000 sq m — Environmental impact of construction of 1,50,000 sq m is drastically more than 20,000 sq m — At the time of second increase in present case, total construction area of appellant’s project enlarged from 32,395.17 sq m to 40,480.88 sq m — As result of such expansion, appellant constructed 16 addition flats which were sold at prevailing market rate — Appellant did not comply with procedure set under Para 7(ii) — It rather sought amendment to EC — Amendment to EC dated 13-3-2014 did not discuss potential environmental impact of increase in construction area — But merely records that construction area now stands at 40,480.88 sq m

- g* Procedure set out under Para 7(ii) exists to ensure that where project is expanded in size, environmental impact on surrounding area is evaluated holistically considering all relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area — This was not done in case of appellant’s project — Held,
h it was not open to authorities to grant amendment of EC without following procedure set out in Para 7(ii)

— As appellant had completed construction, authorities were denied ability to evaluate environmental impact and suggest methods to mitigate any environmental damage — Therefore, only remedial measures may be taken

Hence, direction of NGT to appellant to deposit Rs One crore affirmed

Expert committee constituted by NGT directed to continue its evaluation of project so as to bring environmental impact as close as possible to that contemplated in EC dt. 2-5-2013 and also suggest compensatory exaction to be imposed on appellant Housing and Real Estate Building/Planning Norms

Development Permission/Occupancy Certificate/NOC/Environmental NOC

Interpretation of Statutes Basic Rules Purposive construction/interpretation/Mischief rule/Heydon's rule — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Restitution — Disgorgement of Gains of Wrongdoer (Paras 6 and 13 to 21)

Anil Tharthare v. State of Maharashtra, 2019 SCC OnLine NGT 876, affirmed

Keystone Realtors (P) Ltd. v. Environment Department, 2016 SCC OnLine Bom 9340, cited

The appellant, a project proponent of residential redevelopment, received commencement certificate. When project commenced, area was 8720.32 sq m. As area of construction was increased to 32,395.17 sq m, the appellant applied for Environmental Clearance (EC) under Environment Impact Assessment (EIA). The State Level Expert Appraisal Committee for Maharashtra (SEAC) recommended the grant of an EC for the project. On 2-5-2013 the third respondent, the State Level Environment Impact Assessment Authority for Maharashtra (SEIAA), based on the recommendations of SEAC granted an EC for total construction of 32,395.17 sq m. The appellant increased total construction area by 40,480.88 sq m. Therefore, in environmental clearance given on 2-5-2013, the appellant sought amendment. Accordingly, amendment was granted to EC dated 2-5-2013.

Respondent 1 challenged grant of amended environmental clearance before the National Green Tribunal (NGT). The appellant raised several grounds questioning maintainability of petition before NGT. The contentions raised by the appellant were rejected. The appellant approached the High Court, which held that appeal on behalf of Respondent 1 not maintainable and challenge to the environmental clearance barred by limitation. However, this dispute was transferred to Principal Bench of NGT and decided against the appellant, which is challenged in this appeal. While dismissing the appeal, the Supreme Court held as above.

G-D/63343/C

Advocates who appeared in this case :

Mukul Rohatgi, Senior Advocate (Kunal Tandan, Pranaya Goyal, Aman Raj Gandhi, Nikhil Rohatgi, Abhishek Sharma, Ms Sanjana Arora, Ms Richa Saudilya and Ms Narayani Bhattacharyya, Advocates) for the Appellant;
Aditya Pratap, Munawwar Naseem, Chirag M. Shroff, Ms Mahima C. Shroff, Ms Yashika Verma and Riya Thomas, Advocates) for the Respondents.

Chronological list of cases cited

1. 2019 SCC OnLine NGT 876. *Anil Tharthare v. State of Maharashtra* 69a
2. 2016 SCC OnLine Bom 9340, *Keystone Realtors (P) Ltd. v. Environment Department* 70d

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KEYSTONE REALTORS (P) LTD. v. ANIL
V. THARTTHARE (*Dr Chandrachud, J.*)

69

The Judgment of the Court was delivered by

- a DR D.Y. CHANDRACHUD, J.** The present civil appeal arises from an order dated 11-2-2019¹ of the Principal Bench of the National Green Tribunal (NGT). In its order, NGT held that the increase in the total construction area of the appellant's project was an "expansion" under a Notification (bearing number S.O. 1533) dated 14-9-2006 (EIA Notification) of the Ministry of Environment and Forests. NGT found that the appellant had undertaken an
- b** "expansion" as set out in Para 2 of the EIA Notification without complying with the regulatory procedure prescribed. The appellant was directed to deposit an amount of rupees one crore with the Central Pollution Control Board (CPCB). Noting that the construction at the project site had been completed, NGT appointed a five-member expert committee to study the impact of the appellant's expanded project and to suggest remedial measures.

c *The facts*

- d** 2. The appellant is the project proponent of a residential redevelopment, called "Oriana Residential Project" situated at CTS No. 646, 646 (P) Gandhinagar, Bandra (East), Mumbai 400 050. On 8-6-2010 the appellant received a commencement certificate to carry out the development and erect a building situated at the project property. The appellant began construction. When the construction commenced, the total construction area was 8720.32 sq m. The ambit of the project was expanded, and the constructed area was increased to 32,395.17 sq m. Under the EIA Notification, an Environmental Clearance (EC) was necessary if the total construction area exceeded 20,000 sq m. Hence, the appellant applied for an EC under the EIA Notification.

- e** 3. The fourth respondent, the State Level Expert Appraisal Committee for Maharashtra (SEAC) recommended the grant of an EC for the project. On 2-5-2013 the third respondent, the State Level Environment Impact Assessment Authority for Maharashtra (SEIAA), based on the recommendations of SEAC granted an EC. It is not in dispute that at the time when EC dated 2-5-2013 was granted, the total construction area of the project was 32,395.17 sq m.
- f** The grant of EC was conditional on the appellant obtaining a "consent for establishment" from the Maharashtra Pollution Control Board under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.

- g** 4. By a letter dated 24-9-2013, the appellant informed the Environment Department of the Government of Maharashtra, the second respondent, that the construction area was being further increased by 8085.71 sq m, as a result of which the total construction area of the project would stand enhanced to 40,480.88 sq m. In its letter, the appellant sought an "amendment" to EC dated 2-5-2013 by the third respondent to reflect the increase in the total construction area. On 13-3-2014, the third respondent granted an "amendment" to EC dated 2-5-2013 on the ground that there was only a "marginal increase

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¹ Anil Tharthare v. State of Maharashtra, 2019 SCC OnLine NGT 876

70

SUPREME COURT CASES

(2020) 2 SCC

in built-up and construction area". The third respondent noted the changes in the specification of the project as follows:

Description	As per EC dated 2-5-2013		Amendment	
FSI area	16,346.32 sq m		21,365.54 sq m	
Non-FSI area	16,048.85 sq m		19,115.34 sq m	
Total construction area	32,395.17 sq m		40,480.88 sq m	
Nos. of tenements	Members 64	Sale 61	Members 64	Sale 77
Building configuration	Member	2 Basement	Member	2 Basement

5. The first respondent, claiming to be a resident of MIG Colony, Gandhinagar, Bandra East, Mumbai, challenged the grant of the amended EC dated 13-3-2014 before the Pune Bench of NGT. In response, the appellant filed two applications, challenging the standing of the first respondent and contending that the challenge was barred by limitation. By an order dated 4-5-2016, the Pune Bench of NGT rejected the applications questioning the maintainability of the proceedings and setting up the bar of limitation. The appellant filed a writ petition before the High Court of Judicature at Bombay to challenge the decision of the Pune Bench of NGT. The Bombay High Court, allowing the writ petition held by an order dated 23-8-2016², that the appeal was not maintainable at the behest of the first respondent, and the challenge against the grant of the amended EC dated 13-3-2014 was barred by limitation. By an administrative order dated 31-7-2018, the dispute was transferred from the Pune Bench of NGT to the Principal Bench which heard the parties and delivered the impugned order.

Relevant clauses of the EIA Notification

6. The present dispute raises important questions regarding the interpretation of the EIA Notification. The EIA Notification seeks to ensure the protection and preservation of the environment during the execution of new projects and the expansion or modernisation of existing projects. It imposes restrictions on the execution of new projects and on the expansion of existing projects, until their potential environmental impact has been assessed and approved by the grant of an EC. Para 2 of the EIA Notification reads thus:

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

² *Keystone Realtors (P) Ltd. v. Environment Department*, 2016 SCC OnLine Bom 9310

KEYSTONE REALTORS (P) LTD. v. ANIL
V. TIARTIARE (Dr Chandrachud, J.)

71

- (i) All new projects or activities listed in the Schedule to this notification;
- a (ii) *Expansion and modernisation of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the sector concerned, that is, projects or activities which cross the threshold limits given in the Schedule after expansion or modernisation;*
- b (iii) Any change in product mix in an existing manufacturing unit included in Schedule beyond the specified range.” (emphasis supplied)
7. The Schedule to the EIA Notification classifies potential projects into Category ‘A’ and Category ‘B’ based on their size and potential environmental impact. Category ‘A’ projects require project proponents to secure an EC from the Ministry of Environment, Forests and Climate Change. Category ‘B’
- c projects require project proponents to secure an EC from the SEIAA, based on the recommendations of SEAC. Where a project falls within the parameters stipulated in the Schedule, Para 2 of the EIA Notification provides that no construction work shall begin unless an EC is granted in regard to three types of activity: (i) new projects or activities provided in the Schedule, (ii) expansion or modernisation of existing projects or activities provided in the Schedule, and
- d (iii) changes in the product mix in existing manufacturing units provided in the Schedule beyond the specified range. The present dispute raises questions as to how the second type of activity, the “expansion” of existing projects, should be construed under the EIA Notification.
8. In order to secure an EC, the project proponent must submit an application in the manner set out in Form 1 and Supplementary Form 1-A (if
- e applicable) of the EIA Notification. Under Para 7(i) of the EIA Notification, the project proponent must also submit a pre-feasibility report. However, in the case of projects under Item 8 of the Schedule, only a conceptual plan is required to be submitted. Para 7(ii) of the EIA Notification states that:
- “7(ii) *Prior Environmental Clearance (EC) process for expansion or modernisation of change of product mix in existing projects:*
- f *All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernisation of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the*
- g *Schedule to this notification through change in process and or technology or involving a change in the product mix shall be made in Form 1 and they shall be considered by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultation and the application shall be appraised accordingly for grant*
- h *of environmental clearance.”* (emphasis supplied)

Clause (ii) of Para 2 of the EIA Notification requires the project proponent to secure an EC from the relevant regulatory authority prior to undertaking any “expansion” of an existing project. Para 7(ii) further stipulates that all applications for an EC in cases of “expansion” resulting in the increase of production capacity or lease area beyond the capacity/area stipulated in the previous EC shall be made in the manner set out in Form 1 or 1-A (as applicable).

9. The appellant’s application in Form 1 acknowledges that the project fell under Entry 8(a) of Schedule 1 of the EIA Notification. Entry 8 deals with “Building and Construction projects having a built-up area of or greater than 20,000 sq m but less than 1,50,000 sq m”. Entry 8 of the Schedule to the EIA Notification is as follows:

8 — Building/Construction projects/Area Development projects and Townships			
8(a)	Building and construction projects	>20,000 sq m and <1,50,000 sq m of built-up area	Built-up area for covered construction: in the case of facilities open to the sky, it will be the activity area
8(b)	Townships and area development projects	Covering an area $\geq$ 50 ha and or built-up area >1,50,000 sq m	All projects under Item 8(b) shall be appraised as Category B1

Issue

10. In applying for the original EC, the appellant submitted an application in Form 1 as required under the provisions of the EIA Notification. The total construction area identified in the appellant’s Form 1 was 32,395.17 sq m. However, in September 2013 the appellant informed the second respondent of an increase by 8085.71 sq m as a result of which the total construction area of the project would be 40,480.88 sq m. In seeking an “amendment” to EC dated 2-5-2013 the appellant did not submit an updated Form 1. Further, the “amendment” to EC was granted by the SEIAA without the recommendations of SEAC. The issue before this Court is whether the “amended” EC dated 13-3-2014 granted by the SEIAA without following the procedure stipulated in Para 7(ii) of the EIA Notification is valid.

Submissions

11. Mr Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellant submitted that:

11.1. When construction began, the total construction area of the appellant’s project was 8720.32 sq m. As the EIA Notification requires projects with a total built-up area of or more than 20,000 sq m to procure an EC prior to the start of construction, no EC was required before construction of the appellant’s project commenced;

11.2. Pursuant to the first increase, when the appellant’s project crossed the 20,000 sq m threshold provided for in the EIA Notification, the appellant submitted Form 1 and was granted a valid EC dated 2-5-2013 by the third respondent;

KEYSTONE REALTORS (P) LTD. v. ANIL
V. TIARTIARE (*Dr Chandrachud, J.*)

73

- 11.3.** Pursuant to the second increase, the built-up area of the appellant's project only marginally increased by 8085.71 sq m to a total construction area of 40,480.88 sq m, which is within the upper limit of 1,50,000 sq m prescribed by Entry 8(a) of the Schedule to the EIA Notification. Therefore, the second increase was not an "expansion" within the meaning of clause (ii) of Para 2 of the EIA Notification and no fresh Form 1 or EC was required at the time of the second increase;
- 11.4.** Clause (ii) of Para 2 only applies to situations where the project crosses the lower or upper threshold limits stipulated in the Schedule. Any increase in production capacity or construction area *within the limits* set out in the Schedule would not constitute an "expansion" within the meaning of Clause (ii) of Para 2 and does not require compliance with the procedure under Para 7(ii) of the EIA Notification;
- 11.5.** The increase in the appellant's project is only marginal and does not have an adverse impact on the environment;
- 11.6.** The SEIAA applied its mind to the appellant's request for an "amendment"; noted that the increase in construction area was only marginal and issued an amendment to the original EC dated 2-5-2013; and
- 11.7.** NGT had no basis to impose the fine of rupees one crore on the appellant.
- 12.** Joining issue with the above submissions, Mr Aditya Pratap, learned counsel appearing on behalf of the first respondent submitted that:
- 12.1.** Under clause (ii) of Para 2 read with Para 7(ii) of the EIA Notification, any expansion beyond the "threshold limit" requires a fresh EC. The appellant's project had crossed the threshold limit of 20,000 sq m and the second increase of 8085.71 sq m constituted an "*expansion beyond the threshold limit*" and hence required a fresh EC;
- 12.2.** Once a project breaches the lower threshold limit set out in the Schedule to the EIA Notification, any expansion or modernisation, even within the upper threshold set out in the Schedule, will require the submission of a fresh Form 1 and the matter to be placed before the Expert Appraisal Committee or SEAC, as applicable in accordance with Para 7(ii) of the EIA Notification;
- 12.3.** Adopting the appellant's interpretation of Clause (ii) of Para 2 would defeat the object and purpose of the EIA Notification as a whole. It would allow project proponents to incrementally increase the construction area and over time significantly impinge on the environmental impact of the project without seeking a fresh EC;
- 12.4.** If the law prescribes an act to be done in a particular manner, it must be done only in that manner and no other. Under Para 7(ii) of the EIA Notification, it was incumbent on the SEIAA to place the matter before SEAC for appraisal and recommendations; and
- 12.5.** The EIA Notification is an operationalisation of the precautionary principle, which forms a part of the environmental law of India. The EIA Notification must be read in a manner which gives effect to the precautionary principle.

Interpreting Paras 2 and 7

13. The central controversy between the parties to the present dispute is the manner in which Paras 2 and 7 of the EIA Notification should be interpreted. Clause (ii) of Para 2 of the EIA Notification stipulates that a project proponent shall require an EC prior to the start of construction in the case of an “expansion”. Clause (ii) uses the phrase “expansion...beyond the limits specified for the sector concerned”. The first respondent sought to lay emphasis on this construction to argue that any expansion beyond the lower limit stipulated in the Schedule would attract the requirement of a prior EC under Para 2. However, the above language in Clause (ii) is further qualified by the phrase “that is, projects or activities which cross the threshold limits given in the Schedule *after* expansion or modernisation”. A plain reading of the second half of Clause (ii) would indicate that it applies to cases where a project was initially below the threshold limits stipulated in the Schedule but after the proposed expansion, would breach the threshold limits. Clause (ii) of Para 2 of the EIA Notification therefore would not appear to cover a case where a project had already crossed the lower threshold limit set out in the Schedule and the expansion does not cross the upper limit stipulated by the Schedule.

14. However, Clause (ii) of Para 2 must be read with Para 7(ii) of the EIA Notification. Para 7(ii) lays down the exact procedure to be followed by a project proponent in the case of an expansion. Two crucial points must be noted with respect to Para 7(ii). First, it uses the phrase, “expansion with increase in production capacity *beyond the capacity for which prior environment clearance has been granted*”. Second, the qualifying language referring to breaching the threshold limits “after expansion” is absent. An “expansion” can occur even after the grant of an EC when the project first crossed the lower limit stipulated in the threshold and it is not necessary for the project to breach the upper limit after the expansion. Therefore, a close reading of Para 7(ii) would support the interpretation put forth by the first respondent — that even after obtaining an EC if the project is expanded beyond the limits for which the prior EC was obtained, a fresh application would need to be made even if the expansion is within the upper limit prescribed in the Schedule.

15. The dangers effectively articulated by the learned counsel for the first respondent are real. If Clause (ii) of Para 2 does not cover a case where the expansion is within the limits stipulated by the Schedule, a project proponent may incrementally keep increasing the size of the project area over time resulting in a significant increase in the project size without an assessment of the environmental impact resulting from the expansion. Such an outcome would defeat the entire scheme of the EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by the relevant regulatory authorities. In the present case, the lower limit of Entry 8(a) of the Schedule is a built-up area of 20,000 sq m and the upper limit is 1,50,000 sq m. It cannot be doubted that the environmental impact of a construction of 1,50,000 sq m is drastically more than construction of 20,000 sq m. If the appellant’s argument is accepted in totality, a project proponent could potentially secure an EC for constructing 20,000 sq m and by

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KEYSTONE REALTORS (P) LTD. v. ANIL
V. TIARTIARE (Dr Chandrachud, J.)

75

a “amendment” steadily increase the area of construction up to 1,50,000 sq m without submitting an updated Form 1 or any substantive review by SEAC.

16. We note that subsequent to the EIA Notification being published in 2006, a draft notification was issued on 19-1-2009³. The draft notification proposed the following amendment:

“In Para 2 [of the EIA Notification], after sub-para (iii), the following shall be inserted; namely:

b However modernisation or expansion proposals without any increase in pollution load, and, or without any additional water and or land requirement are exempted from the provisions of this Notification:

c Provided that, a self-certification, stating that the proposals shall not involve any additional pollution load, waste generation or water requirement, be submitted to the regulatory authority by the project proponent.”

d 17. Prior to adopting the draft notification, hearings were conducted and written comments were solicited from various stakeholders including: (i) Central Ministries and Departments, (ii) State Governments and their Agencies, (iii) Industries and their Associations, and (iv) Civil Society including NGOs. A committee was constituted by the Ministry of Environment and Forests, Government of India which published a report in October 2009. The committee specifically recommended against the adoption of the above amendment, noting:

e “The amendments propose to exempt modernisation and expansion of projects based on a self-certification by project authorities that there is no increase in pollution load. *It is totally unacceptable that the modernisation and expansion of projects be removed from the environmental clearance regime, with or without the requirement of self-certification.* There are several industries operating in critically polluted areas or are in violation of their environmental clearance conditions, which need to be considered before the expansion of a project is considered. What is to be considered is not just whether there is an increase in pollution load but also the current impact of the project and its compliance with environmental clearance conditions. We can provide clear examples wherein the non-compliance of the clearance conditions has not been considered while granting clearance for expansion which includes adding new components to the existing industrial operations, etc. This has allowed several projects to continue their activities and expand despite blatant non-compliance. Finally, it is only with industrial, thermal power and other such related operations that one can decide on parameters of pollution. *Development projects like highways, airports and other infrastructure projects which seek to expand might have a detrimental impact due to factors such as change in land use (i.e. construction over a wetland, grassland or agricultural land, etc.).* Despite this, the project proponent can certify that there is no change in pollution

3 Notification S.O. 195 (E) dated 19-1-2009.

load and hence expansion is to be allowed. *The current process seeks a detailed EIA report to determine whether impacts can be mitigated. If the amendment is brought into force, it will simply do away with this critical and necessary step in the environmental clearance process.* Therefore, this amendment should not be allowed.

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The draft notification takes a myopic view of environmental and social impact of modernisation and expansion. Any modernisation/expansion projects will necessarily entail increase in production, increase in transportation, increase in pressure on the local infrastructure and local natural resources and increase in the pollution load during the construction phase. So, even if a modernisation/expansion does not lead to an increase in the pollution load or water or land requirement within the factory premises during the operation phase, it will lead to an increase in environmental and social impact outside the premise. (emphasis supplied)

18. The draft amendment was not adopted in subsequent amendments to the EIA Notification. We find considerable merit in the observations of the committee that the requirement of an EC at the time of expansion forms a critical step in the environmental clearance regime. According to the committee, it assists officials not just in evaluating and mitigating any adverse impact caused by the expansion but also in assessing whether the project proponent is in compliance with their existing obligations. Crucially, any form of expansion necessarily puts a strain on the local environment and infrastructure and needs to be carefully evaluated in a holistic manner.

19. In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project's environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or SEAC, as applicable. It is true that there may exist certain situations where the expansion sought by a project proponent is truly marginal or the environmental impact of such expansion is non-existent. However, it is not for this Court to lay down a bright-line test as to what constitutes a "marginal" increase and what constitutes a material increase warranting a fresh Form I and scrutiny by the Expert Appraisal Committee. If the Government in its wisdom were to prescribe that a one-time "marginal" increase (e.g. 5% or 10%) in project size, within the threshold limit stipulated in the Schedule, could be subject to a lower standard of scrutiny without diluting the urgent need for environmental protection, conceivably this Court may give effect to such a provision. This would be subject to any challenge on the ground of there being a violation of

KEYSTONE REALTORS (P) LTD. v. ANIL
V. TIHARTIARE (*Dr Chandrachud, J.*)

77

- a the precautionary principle. However, as the EIA Notification currently stands, an expansion within the limits prescribed by the Schedules would be subject to the procedure set out in Para 7(ii).

- b 20. At the time of the second increase, the total construction area of the appellant's project was enlarged from 32,395.17 sq m to 40,480.88 sq m. As a result of the expansion, the appellant constructed sixteen additional flats which were sold at the prevailing market rate. The appellant did not comply with the procedure set out under Para 7(ii) of the EIA Notification but rather sought an "amendment" to EC. The third respondent did not require the appellant to submit an updated Form 1 nor was the proposal processed and evaluated by the fourth respondent. The "amendment" to EC dated 13-3-2014 does not discuss the potential environmental impact of the increase in construction area, but merely records that the construction area now stands at 40,480.88 sq m.
- c The procedure set out under Para 7(ii) of the EIA Notification exists to ensure that where a project is expanded in size, the environmental impact on the surrounding area is evaluated holistically considering all the relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area. This was not done in the case of the appellant's project. It was not open to the third respondent to grant an "amendment" to EC without following the procedure set out in Para 7(ii) of the EIA Notification.
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- e 21. We further note that as on the date of the impugned order construction at the project site had already been completed. A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of a project. By completing the construction of the project, the appellant denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage. At this stage, only remedial measures may be taken. NGT has already directed the appellant to deposit rupees one crore and has set up an expert committee to evaluate the impact of the appellant's project and suggest remedial measures. In view of these circumstances, we uphold the directions of NGT and direct that the committee continue its evaluation of the appellant's project so as to bring its environmental impact as close as possible to that contemplated in EC dated 2-5-2013 and also suggest the compensatory exaction to be imposed on the appellant.
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- g 22. The appeal is dismissed. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of.

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REPORTABLE

2023INSC804

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

CIVIL APPEAL No. 5707 OF 2023
(@ SPECIAL LEAVE PETITION (CIVIL) NO.18727 OF 2023)

UNION TERRITORY OF LADAKH & ORS.

... APPELLANTS

VERSUS

JAMMU AND KASHMIR NATIONAL CONFERENCE & ANR. ... RESPONDENTS

A1: Union Territory of Ladakh through its Chief Secretary

A2: Chief Election Officer, UT of Ladakh

A3: District Election Officer (Kargil)

**A4: Administrative Secretary, Election Department, UT
of Ladakh**

**R1: Jammu and Kashmir National Conference, through its
General Secretary**

R2: Election Commission of India

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Signature Not Verified
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SONIA BHADRI
Date: 2023.09.06
14:36:40 IST
Reason: [S]

Heard learned counsel for the parties.

2. Leave granted.

3. The present appeal is directed against the Judgment and Order dated 14.08.2023 (hereinafter referred to as the "Impugned Judgment") rendered by a learned Division Bench of the High Court of Jammu & Kashmir and Ladakh at Srinagar (hereinafter referred to as the "High Court") dismissing Letters Patent Appeal No.151 of 2023 filed by the Appellants and upholding the interim order of a learned Single Judge dated 09.08.2023 in Writ Petition (Civil) No.1933 of 2023.

BRIEF FACTS:

4. The controversy involved in this *lis* is the non-allocation of the Plough symbol to the writ petitioner, the Jammu and Kashmir National Conference/Respondent No.1 herein (hereinafter referred to as "R1") for its candidates to contest the then-upcoming General Elections of the Ladakh Autonomous Hill Development Council, Kargil (hereinafter referred to as the "LAHDC"). In view of the urgency in the matter, the learned Single Judge passed an interim order on

09.08.2023, the operative portion whereof at Paragraph 11 reads as under:

"11. Keeping in view that the upcoming General Election of Ladakh Autonomous Hill Development Council (LAHDC) stands announced, the petitioner-party is directed to approach the office of the respondents 1 to 3 & 5, for notifying the reserved symbol (plough) already allotted to it and respondents 1 to 3 & 5 shall notify the symbol allotted to petitioner-party in terms of Paragraphs 10 and 10(A) of Election Symbols (Reservation and Allotment) Order, 1968, and allow the candidates set up by the petitioner-party to contest on the reserved election symbol (plough) already allotted to the party."

5. Aggrieved, the Appellants moved the learned Division Bench of the High Court by preferring an appeal, which after hearing was dismissed *vide* Impugned Judgment on 14.08.2023.

SUBMISSION BY THE APPELLANTS:

6. Mr. K. M. Nataraj, learned Additional Solicitor General (hereinafter referred to as the "ASG") for the Appellants submitted that the learned Single Judge and the learned Division Bench of the High Court have issued directions contrary to law. It was submitted

that both orders have been passed on an erroneous assumption that the provisions of Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the "1968 Order"), would be applicable in elections to the LAHDC. Learned ASG canvassed that this is not the correct legal position as the LAHDC election is being conducted by the Election Authority of the Union Territory of Ladakh constituted under Rule 5 of The Ladakh Autonomous Hill Development Councils (Election) Rules, 1995 (hereinafter referred to as the "1995 Rules"). It was contended that the Election Commission of India (hereinafter referred to as the "ECI") is empowered to hold elections to the Parliamentary and State Assembly constituencies and for the present LAHDC elections, the ECI does not exercise any authority. Thus, the learned ASG submitted that any reference to the provisions of the 1968 Order is misplaced.

7. Learned ASG, further, contended that Paragraphs No. 9, 10 and 10(A) of the 1968 Order speak of restrictions on the allotment of symbols reserved for

State Parties in States where such parties are not recognized; concession to candidates set up by a State Party at elections in other States or Union Territories, and; concession to candidates set up by an un-recognized party which was earlier recognized as a National or State Party, respectively. Thus, it was his categoric stand that such concession can be only for the purposes of Parliamentary and State Assembly elections, and not for the election in question.

8. Learned ASG submitted that the reference by the ECI in its communication dated 18.07.2023 to R1, that it can avail the concession under Paragraph 10 of the 1968 Order can neither confer any right on R1, nor compel the Election Authority of the Union Territory of Ladakh to allow the prayer of R1, as made in the Writ Petition before the High Court. With regard to the opinion of the Law Department of the Appellant No.1, as quoted in the communication of the District Election Officer (District Magistrate), Kargil in his communication dated 12.07.2023 to the Chief Electoral Officer, Union Territory of Ladakh, the same at best

was only advisory but not binding as it is for the Election Authority of the Union Territory of Ladakh to independently consider such request.

9. He submitted that none of the candidates, who have filled up and submitted their nomination forms, have either sought the Plough symbol or indicated in the relevant column that they were candidates of R1 and on this score alone, at this stage, R1 was not entitled to any indulgence by this Court.

10. He summed up his arguments by stating that, as of now¹, the process of elections had already been set in motion. Learned ASG pointed out that filing of the nomination forms had begun from 16.08.2023 and reached the penultimate stage since the last date of withdrawal of nominations (26.08.2023) had already elapsed. It was stated that now only polling remained to be held on 10.09.2023 and in this view of the matter, this Court may set aside the Impugned Order.

¹ This Court's order dated 01.09.2023 is quoted for ready reference:
*'Application for impleadment is rejected.
Heard learned counsel for the parties.
Judgment reserved.
List the matter for pronouncement on 06.09.2023.'*

SUBMISSIONS BY RESPONDENT NO.1:

11. Learned counsel for R1 submitted that the orders of the learned Single Judge dated 09.08.2023 and the learned Division Bench dated 14.08.2023 are self-speaking and have dealt in detail with the contentions of the Appellants and the same have been negated on cogent legal and factual grounds. It was submitted that there should not have been, in the first place, any issue with the Appellants in granting the Plough symbol for the reason that R1 is the incumbent ruling party in the LAHDC, and was entitled to the Plough symbol, since the same was neither part of the list of free symbols nor allotted to any other National or State Party, so recognized, either by the ECI or by the Election Authority for the Union Territory of Ladakh. It was submitted that a completely partisan and arbitrary approach had been adopted by the Appellants in denying their preferred symbol (Plough) for oblique reasons to deny a level-playing field between candidates. It was further submitted that the Plough symbol was well-known

to the electorate since decades as being exclusively associated with R1, the denial of the same is clearly intended to cause unjustified prejudice. It was stated that undue advantage would accrue to the remaining candidates/parties contesting the LAHDC elections.

12. He urged the Court to take note of the fact that despite the learned Single Judge having passed directions well before the commencement of even the filing of nominations, upheld by the learned Division Bench, which again, was before the starting of the nomination process, and despite there being a contempt case pending before the learned Single Judge, which was adjourned on prayer made by the Appellants, citing the pendency of the present appeal, the Appellants had not complied with the orders of the High Court. In this backdrop, submitted learned counsel, to take a stand before this Court that now due to efflux of time, no relief can be granted to R1, was clear dishonest conduct. It was submitted that this Court would not let a just cause be defeated only because of delay occasioned by the other side and the Appellants cannot

take the advantage of such delay caused by them to the detriment of R1's *bonafide*, legitimate and genuine claim.

13. Learned counsel submitted that allotment of symbols by the Appellants to the National Parties and free symbols shown in the Notification for the present elections clearly shows that the same are in conformity with the 1968 Order. Thus, he submitted, the Appellants are precluded from blowing hot and cold that they cannot and should not be permitted to selectively, as per their whims and fancies, decide as to which provisions under the 1968 Order would be applicable and which provisions would not. It was submitted that a harmonious reading of Paragraphs 9, 10, 10(A) as also 12 of the 1968 Order would indicate beyond doubt that in the absence of anything to the contrary, the Appellants were required to be guided by the 1968 Order *in toto*, which was also the indication in the letter written by the ECI to R1 and the same view was taken by the Law Department in its Legal Opinion to the Appellants.

ANALYSIS, REASONING AND CONCLUSION:

14. The relevant Paragraphs of the 1968 Order, attention to which was drawn by the learned ASG and the learned counsel for R1, are set out below:

"9. Restriction on the allotment of Symbols reserved for State parties in States where such parties are not recognised.— A symbol reserved for a State party in any State—

(a) shall not be included in the list of free symbols for any other State or Union territory, and

(b) shall not be reserved for any other party which subsequently becomes eligible, on fulfilment of the conditions specified in paragraph 6, for recognition as a State party in any other State:

Provided that nothing contained in clause (b) shall apply in relation to a political party, for which the Commission has, immediately before the commencement of the Election Symbols (Reservation and Allotment) (Amendment) Order, 1997, already reserved the same symbol which it has also reserved for some other State party or parties in any other State or States.

10. Concessions to candidates set up by a State party at elections in other States or Union territories.— If a political party, which is recognised as a State party in some State or States, sets up a candidate at an election in a constituency in any other State in which it is not a recognised State party, then such candidate may, to the exclusion of all other candidates in the constituency, be

allotted the symbol reserved for that party in the State or States in which it is a recognised State Party, notwithstanding that such symbol is not specified in the list of free symbols for such other State or Union territory, on the fulfilment of each of the following conditions, namely:—

(a) that an application is made to the Commission by the said party for exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the publication in the Official Gazette of the notification calling the election;

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), (c), (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

(c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment: Provided that nothing contained in this paragraph shall apply to a candidate set up by a State party at an election in any constituency in a State in which that party is not a State Party and where the same symbol is already reserved for some other State Party in that State.

10A. Concession to candidates set up by an unrecognized party which was earlier recognized as a National or State party.— If a political party, which is unrecognized at present but was a recognized National or State party in any State or Union territory not earlier than six years from the date of notification of the election, sets up a candidate at an election in a constituency in any State or Union territory, whether such

party was earlier recognized in that State or Union territory or not, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved earlier for that party when it was a recognized National or State party, notwithstanding that such symbol is not specified in the list of free symbols for such State or Union territory, on the fulfillment of each of the following conditions, namely:--

(a) that an application is made to the Commission by the said party for the exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the publication in the Official Gazette of the notification calling the election;

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), (c), (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

(c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment:

Provided that nothing contained in this paragraph shall apply to a candidate set up by the said party at an election in any constituency in a State or Union territory where the same symbol is already reserved for some other National or State party in that State or Union Territory.

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12. Choice of symbols by other candidates and allotment thereof.—(1) Any candidate at

an election in a constituency in any State or Union territory, other than—

(a) a candidate set up by a National Party; or

(b) a candidate set up by a political party which is a State Party in that State; or

(c) a candidate referred to in paragraph 10 or paragraph 10A;

shall choose, and shall be allotted, in accordance with the provisions hereafter set out in this paragraph, one of the symbols specified as free symbols for that State or Union territory by notification under paragraph 17.

(2) Where any free symbol has been chosen by only one candidate at such election, the returning officer shall allot that symbol to that candidate and to no one else.

(3) Where the same free symbol has been chosen by several candidates at such election, then—

(a) if of those several candidates, only one is a candidate set up by an unrecognised political party and all the rest are independent candidates, the returning officer shall allot that free symbol to the candidate set up by the unrecognised political party, and to no one else; and, if, those several candidates, two or more are set up by different unrecognised political parties and the rest are independent candidates, the returning officer shall decide by lot to which of the two or more candidates set up by the different unrecognised political parties that free symbol shall be allotted, and allot that free symbol to the candidate on whom the lot falls, and to no one else:

Provided that where of the two or more such candidates set up by such different

unrecognized political parties, only one is, or was, immediately before such election, a sitting member of the House of the People, or, as the case may be, of the Legislative Assembly (irrespective of the fact as to whether he was allotted that free symbol or any other symbol at the previous election when he was chosen as such member), the returning officer shall allot that free symbol to that candidate, and to no one else;

(b) if, of those several candidates, no one is set up by any unrecognised political party and all the independent candidates, but one of the independent candidates is, or was, immediately before such election a sitting member of the House of the People, or, as the case may be, of the legislative Assembly, and was allotted that free symbol at the previous election when he was chosen as such member, the Returning Officer shall allot that free symbol to that candidate, and to no one else; and

(c) if, of those several candidates, being all independent candidates, no one is, or was, a sitting member as aforesaid, the returning officer shall decide by lot to which of those independent candidates that free symbol shall be allotted, and allot that free symbol to the candidates on whom the lot falls, and to no one else."

15. Sections 12 and 13 of the Ladakh Autonomous Hill Development Councils Act, 1997² (hereinafter referred to as the "1997 Act") read as under:

"12. Disputes regarding elections. - (1) No election shall be called in question except by an election petition presented in such

² This repealed The Ladakh Autonomous Hill Development Councils Act, 1995 (President's Act No.1 of 1995).

manner as may be prescribed and before such authority as may be appointed by Government, from time to time, by notification in the Government Gazette:

Provided that no person below the rank of a District Judge shall be appointed for the purpose of this section.

(2) No election shall be called in question except on any one or more of the following grounds, namely: -

(a) that on the date of his election the returned candidate was not qualified or was disqualified, to be chosen to fill the seat in the Council;

(b) that a corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent.

Explanation: - For the purposes of this section "corrupt practice" shall mean any of the corrupt practices specified in section 132 of the Jammu and Kashmir Representation of the People Act, 1957;

(c) that any nomination has been improperly rejected;

(d) that the result of the election in so far as it concerns the returned candidate has been materially affected-

(i) by any improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent; or

(iii) by the improper reception, refusal or rejection of any vote; or

(iv) by the reception of any vote which is void; or

(v) by any non-compliance with provisions of this Act or of any rules or orders made thereunder.

(3) At the conclusion of the trial of an election petition the authority appointed under sub-section (1) shall make an order-

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidates to have been duly elected.

(4) If a petitioner in addition to calling in question the election of a returned candidate makes a declaration that he himself or any other candidate has been duly elected and the authority under sub-section (1) is of opinion that-

(a) in fact the petitioner or such other candidate has received the majority of valid votes; or

(b) but for the votes obtained by the returned candidate by corrupt practice the petitioner or such other candidate would have obtained the majority of the valid votes,

the authority as aforesaid shall, after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

13. Procedure for election disputes. - The procedure provided in the Code of Civil Procedure, Samvat 1977 in regard to suits shall be followed by the authority appointed under section 12 as far as it can be made

applicable in the trial and disposal of an election petition under this Act."

16. It requires no reiteration that the powers of this Court and the High Courts vested under the Constitution cannot be abridged, excluded or taken away, being part of the Basic Structure of our Constitution. Reference need only be made to decisions in ***His Holiness Kesavananda Bharati Sripadagalvaru v State of Kerala***, (1973) 4 SCC 225; ***Indira Nehru Gandhi v Raj Narain***, 1975 Supp SCC 1; ***Minerva Mills Ltd. v Union of India***, (1980) 3 SCC 625; ***L Chandra Kumar v Union of India***, (1997) 3 SCC 261 and more recently, to ***Kalpana Mehta v Union of India***, (2018) 7 SCC 1 and ***Roger Mathew v South Indian Bank Limited***, (2020) 6 SCC 1, all of which were rendered by a Bench of 5 or more learned Judges. Section 12 of the 1997 Act need not detain us. Insofar as Section 13 of the 1997 Act is concerned, it is by now too well-settled that the availability of alternative efficacious remedy is no bar to the exercise of high prerogative writ jurisdiction, in the light of various decisions, including but not limited to, ***State of Uttar Pradesh v Mohammad Nooh***, 1958 SCR

595; Madhya Pradesh State Agro Industries Development Corporation Ltd. v Jahan Khan, (2007) 10 SCC 88; Maharashtra Chess Association v Union of India, (2020) 13 SCC 285. Even on the anvil of **Radha Krishan Industries v State of Himachal Pradesh, (2021) 6 SCC 771**, Section 13 of the 1997 Act does not, and cannot, impede a Constitutional Court from proceeding further. We do not wish to multiply established authorities on the point but would add the very recent **Godrej Sara Lee Ltd. v Excise and Taxation Officer-cum-Assessing Authority, 2023 SCC OnLine SC 95** to the list enumerated above.

17. At the threshold, it is noted that the ECI deals with the conduct of elections to the Parliament, the State Legislative Assemblies and the State Legislative Councils. The Union Territory of Ladakh does not currently have a Legislative Assembly. The last election to the Parliamentary constituency was held in the year 2019. That said, first things first. The Legal Opinion by the Law Department remains internal advice, and advice alone, and as such, the learned ASG was

correct in contending that the same would not create/confer any right in favour of R1. In ***Mahadeo v Sovan Devi***, 2022 SCC OnLine SC 1118 (where one of us, Vikram Nath, J. was part of the *coram*), the Court, after considering various case-laws, held that *"It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. ..."*

18. In ***Kalpana Mehta*** (*supra*), Hon. Dipak Misra, C.J.I., with whom 4 learned Judges concurred, stated:

"40. While focussing on the exercise of the power of judicial review, it has to be borne in mind that the source of authority is the Constitution of India. The Court has the adjudicating authority to scrutinise the limits of the power and transgression of such limits. The nature and scope of judicial review has been succinctly stated in Union of India v. Raghubir Singh [Union of India v. Raghubir Singh, (1989) 2 SCC 754] by R.S. Pathak, C.J. thus : (SCC p. 766, para 7)

"7. ... The range of judicial review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law. ... With this impressive expanse of judicial power, it is only right that the superior courts in India should be conscious of the enormous responsibility which rest on them. This is

especially true of the Supreme Court, for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on all courts within the territory of India."

And again: (SCC p. 767, para 11)

"11. Legal compulsions cannot be limited by existing legal propositions, because there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters."

The aforesaid two passages lay immense responsibility on the Court pertaining to the exercise of the power keeping in view the accepted values of the present. An organic instrument requires the Court to draw strength from the spirit of the Constitution. The propelling element of the Constitution commands the realisation of the values. The aspiring dynamism of the interpretative process also expects the same.

41. This Court has the constitutional power and the authority to interpret the constitutional provisions as well as the statutory provisions. The conferment of the power of judicial review has a great sanctity as the constitutional court has the power to

declare any law as unconstitutional if there is lack of competence of the legislature keeping in view the field of legislation as provided in the Constitution or if a provision contravenes or runs counter to any of the fundamental rights or any constitutional provision or if a provision is manifestly arbitrary.

42. When we speak about judicial review, it is also necessary to be alive to the concept of judicial restraint. The duty of judicial review which the Constitution has bestowed upon the judiciary is not unfettered; it comes within the conception of judicial restraint. The principle of judicial restraint requires that Judges ought to decide cases while being within their defined limits of power. Judges are expected to interpret any law or any provision of the Constitution as per the limits laid down by the Constitution.

43. In S.C. Chandra v. State of Jharkhand [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897], it has been ruled that the judiciary should exercise restraint and ordinarily should not encroach into the legislative domain. In this regard, a reference to a three-Judge Bench decision in Suresh Seth v. Indore Municipal Corpn. [Suresh Seth v. Indore Municipal Corpn., (2005) 13 SCC 287] is quite instructive. In the said case, a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956. Repelling the submission, the Court held that it is purely a matter of policy which is for the elected representatives of the people to decide and no directions can be issued by the Court in this regard. The Court further observed that this Court cannot issue directions to the

legislature to make any particular kind of enactment. In this context, the Court held that under our constitutional scheme, Parliament and Legislative Assemblies exercise sovereign power to enact law and no outside power or authority can issue a direction to enact a particular kind of legislation. While so holding, the Court referred to the decision in *Supreme Court Employees' Welfare Assn. v. Union of India* [*Supreme Court Employees' Welfare Assn. v. Union of India*, (1989) 4 SCC 187 : 1989 SCC (L&S) 569] wherein it was held that no court can direct a legislature to enact a particular law and similarly when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated authority.

44. Recently, in *Census Commr. v. R. Krishnamurthy* [*Census Commr. v. R. Krishnamurthy*, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589], the Court, after referring to *Premium Granites v. State of T.N.* [*Premium Granites v. State of T.N.*, (1994) 2 SCC 691], *M.P. Oil Extraction v. State of M.P.* [*M.P. Oil Extraction v. State of M.P.*, (1997) 7 SCC 592], *State of M.P. v. Narmada Bachao Andolan* [*State of M.P. v. Narmada Bachao Andolan*, (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875] and *State of Punjab v. Ram Lubhaya Bagga* [*State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117 : 1998 SCC (L&S) 1021], held : (*R. Krishnamurthy case* [*Census Commr. v. R. Krishnamurthy*, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589], SCC p. 809, para 33)

"33. From the aforesaid pronouncement of law, it is clear as noonday that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion."

45. At this juncture, we think it apt to clearly state that the judicial restraint cannot and should not be such that it amounts to judicial abdication and judicial passivism. The Judiciary cannot abdicate the solemn duty which the Constitution has placed on its shoulders i.e. to protect the fundamental rights of the citizens guaranteed under Part III of the Constitution. The constitutional courts cannot sit in oblivion when fundamental rights of individuals are at stake. Our Constitution has conceived the constitutional courts to act as defenders against illegal intrusion of the fundamental rights of individuals. The Constitution, under its aegis, has armed the constitutional courts with wide powers which the courts should exercise, without an iota of hesitation or apprehension, when the fundamental rights of individuals are in jeopardy. Elucidating on the said aspect, this Court in Virendra Singh v. State of U.P. [Virendra Singh v. State of U.P., AIR 1954 SC 447] has observed : (AIR p. 454, para 34)

"34. ... We have upon us the whole armour of the Constitution and walk from henceforth in its enlightened ways, wearing the breastplate

of its protecting provisions and flashing the flaming sword of its inspiration."

46. While interpreting fundamental rights, the constitutional courts should remember that whenever an occasion arises, the courts have to adopt a liberal approach with the object to infuse lively spirit and vigour so that the fundamental rights do not suffer. When we say so, it may not be understood that while interpreting fundamental rights, the constitutional courts should altogether depart from the doctrine of precedents but it is the obligation of the constitutional courts to act as sentinel on the qui vive to ardently guard the fundamental rights of individuals bestowed upon by the Constitution. The duty of this Court, in this context, has been aptly described in K.S. Srinivasan v. Union of India [K.S. Srinivasan v. Union of India, AIR 1958 SC 419] wherein it was stated : (AIR p. 433, para 50)

"50. ... All I can see is a man who has been wronged and I can see a plain way out. I would take it."

47. Such an approach applies with more zeal in case of Article 32 of the Constitution which has been described by Dr B.R. Ambedkar as "the very soul of the Constitution – the very heart of it – the most important Article". Article 32 enjoys special status and, therefore, it is incumbent upon this Court, in matters under Article 32, to adopt a progressive attitude. This would be in consonance with the duty of this Court under the Constitution, that is, to secure the inalienable fundamental rights of individuals."

(emphasis supplied)

19. The observations afore-referred are in perfect sync with what is expected of Constitutional Courts. They are not restricted only to Articles 32 or 226 of the Constitution but lay down a talisman of sorts.

20. The learned ASG also submitted that the Appellants were entitled to take an independent decision. This goes against their stand before the learned Division Bench. If we were to agree with this, the obvious import, then, would be that the Appellants were required to take a decision independently. As noted in Paragraphs 5 and 11 of the Impugned Judgment, the Appellants contended that the ECI was the competent authority to allot symbols and not the Election Authority. What then was the reason for the Appellants to shift stands? When read in conjunction with the finding at Paragraph 13 of the Impugned Judgment the Appellants' acts leave no shred of doubt in our minds, that circumstances forcing this Court to intercede have arisen. Let us for a moment, however, consider that the Appellants, as now sought to be projected, were entitled to arrive at an independent decision. Yet,

such decision could not be whimsical, arbitrary or capricious. It would necessarily have to be: (a) in accordance with lawful discretion; (b) reasonable, and; (c) equitable and just. The Court would indicate that a genuine request, in the attendant facts, could not have been turned down only on the ground that there was no provision for the same, when such request could be acceded to (i) without any violation of law, and; (ii) is within the jurisdictional domain and capacity of the authority concerned, and; (iii) does not prejudice any other stakeholder, and; (iv) does not militate against public interest.

21. The High Court, being a Constitutional Court, is not, by any stretch of imagination, precluded from issuing a direction of the nature issued by it in the instant case, under Article 226 of the Constitution of India, more so when such direction does not violate any statutory provision. In ***High Court of Tripura v Tirtha Sarathi Mukherjee*, (2019) 16 SCC 663**, this Court had answered, in the affirmative, as to the power of the High Courts under Article 226 to direct for actions, in

a rare and exceptional situation, which do not find mention in the provisions concerned. Noticing and relying upon **High Court of Tripura** (supra), in **Aish Mohammad v State of Haryana, 2023 SCC OnLine SC 736**, we held:

"24. Moreover, the learned Civil Judge (Junior Division) found no ground to interfere with the adverse remarks yet granted liberty to the appellant to move for expunction thereof. The learned Civil Court erred in assuming that it had the power to do so, in the absence of any such provision in the Punjab Police Rules, 1934. There may be cases where a High Court under Articles 226 or 227 of the Constitution of India or this Court in exercise of its constitutional powers may specifically direct for fresh consideration of a representation, even in the absence of specific provisions. In High Court of Tripura v. Tirtha Sarathi Mukherjee, (2019) 16 SCC 663, the question that arose was whether, in the absence of a statutory provision, a writ petitioner could seek re-evaluation of examination answer scripts? Answering, this Court held:

"20. The question however arises whether even if there is no legal right to demand re-valuation as of right could there arise circumstances which leave the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for re-valuation it turns out that despite giving the correct answer no marks are awarded. No doubt

this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

21. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for re-valuation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for re-valuation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional."

(emphasis supplied)"

(emphasis supplied by us via bolding)

22. Elections to any office/body are required to be free, fair and transparent. Elections lie at the core of democracy. The authority entrusted by law to

hold/conduct such elections is to be completely independent of any extraneous influence/consideration. It is surprising that the Union Territory of Ladakh not only denied R1 the Plough symbol, but even upon timely intervention by the learned Single Judge, has left no stone unturned not only to resist but also frustrate a cause simply by efflux of time.

23. A detailed dive into the sequence of events is apposite. R1 was before the concerned authorities, by way of representation, well in time, and much before even the Notification dated 02/05.08.2023 was published, by impugning the Notification dated 26.07.2023 which denied it the Plough symbol. R1 had moved the ECI, which opined, by way of communication dated 18.07.2023 that the ECI does not allocate any symbol for local body elections as the same falls within the domain of the State Election Commission concerned. The ECI stated that as there is no Legislative Assembly in the Union Territory of Ladakh and the 1968 Order does not provide for recognition to parties in a Union Territory without a Legislative

Assembly, R1 could not be recognised in the Union Territory of Ladakh. However, it was further noted that as R1 is a recognized State Party in the Union Territory of Jammu and Kashmir with its reserved symbol being the Plough, it could avail concession under Paragraph 10³ of the 1968 Order.

24. On 15.05.2023, the ECI updated its Notification dated 23.09.2021 specifying the names of recognised National and State Parties and the list of free symbols where R1 was again recognised as a State Party, though for the Union Territory of Jammu and Kashmir only. On 31.05.2023, R1 made a representation to the Appellant No.2 seeking recognition as a State Party and for the allotment of the Plough symbol to it for all elections in the Union Territory of Ladakh. Appellant No.2 forwarded the said representation to Appellant No.3 for comments. On 07.06.2023, Appellant No.3 advised Appellant No.2 to approach the ECI. On 08.06.2023, R1 sought recognition as a State Party in the Union Territory of Ladakh and allotment of the Plough symbol.

³ Already extracted *supra*.

25. On 07.07.2023, R1 represented to Appellant No.2 seeking recognition as a State Party in the Union Territory of Ladakh with the Plough symbol. Appellant No.2 forwarded the said representation to Appellant No.3 on 11.07.2023 and sought comments thereon. On 12.07.2023, Appellant No.3 wrote to Appellant No.2, incorporating the opinion of the Law Department, which was in favour of R1. Appellant No.3 indicated that R1 can be recognised and provided reserved symbol for LAHDC elections by the Administration of Union Territory of Ladakh under the relevant rules.

26. No action was taken and no order was passed pursuant to Appellant No.3's communication dated 12.07.2023 to Appellant No.2. Then, the Election Department of the Union Territory of Ladakh issued a Notification on 26.07.2023 notifying the list of reserved and free symbols, in terms of the ECI's Notification dated 15.05.2023. R1 approached the High Court on 29.07.2023 challenging the notification dated 26.07.2023 and seeking a mandamus to notify the Plough

symbol as its reserved symbol for elections to LAHDC. The Writ Petition being pending, on 05.08.2023, the Election Department of the Union Territory of Ladakh notified the schedule of elections to constitute the 5th LAHDC, Kargil. In such background, an interim order came to be passed by the learned Single Judge and affirmed by the learned Division Bench.

27. This Court notes, with concern, that the Appellants, while sitting on the representation of R1, went ahead and notified the elections on 02/05.08.2023. We are unable to appreciate such conduct. This recalcitrance to decide in time speaks volumes. Instances like these raise serious questions.

28. Having considered the matter *in extenso*, the Court does not find any merit in the present appeal. The request for allotment of the Plough symbol by R1 was *bonafide*, legitimate and just, for the plain reason that in the erstwhile State of Jammu and Kashmir (which included the present Union Territory of Ladakh), it was a recognized State Party having been allotted the

Plough symbol. Upon bifurcation of the erstwhile State of Jammu and Kashmir and the creation of two new Union Territories, namely the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh, though the ECI had not notified R1 as a State Party for the Union Territory of Ladakh, it cannot be *simpliciter* that R1 was not entitled for the allotment of plough symbol to it, in the factual background. What is also clear is that the Appellants are attempting to approbate and reprobate, which this Court will not countenance.

29. In the present case, there is no conflict with any other stakeholder for the reason that the Plough symbol is neither a symbol exclusively allotted to any National or State Party nor one of the symbols shown in the list of free symbols. Thus, there was and is no impediment in such symbol being granted to R1. This is also fortified in the factual setting of the Plough symbol being the reserved symbol for R1 in the erstwhile State of Jammu and Kashmir and even for the Union Territory of Jammu and Kashmir, as it now exists, where the same symbol stands allotted to it.

30. The contention of the learned ASG for the Appellants that the Plough symbol cannot be allotted, neither has been supported by any reason nor any legal impediment to such grant has been shown. In the absence of anything contrary in any rule framed for conduct of the elections in question, relating to allotment of symbols, the provisions of the 1968 Order can safely be relied upon, at the very least, as a guideline to exercise of executive power of like nature. Thus, a harmonious reading of Paragraphs 9, 10, 10(A) and 12 would clearly indicate that under the terms of the 1968 Order, the request of R1 is not bereft of justification. At the cost of repetition, the Court would indicate that nothing substantive has been shown to this Court to indicate that allotment of the Plough symbol would in any way be an infraction or go against the public interest.

31. Another major issue canvassed by the learned ASG on behalf of the Appellants, to the effect that no relief be granted to R1 due to the election process

having reached the penultimate stage, unfortunately, has also to be noted to be rejected. Having chosen, with eyes open, to not comply with successive orders of the learned Single Judge and the learned Division Bench, both of which were passed well in time, such as not to stall/delay the notified election schedule, the Appellants cannot be permitted to plead that interference by us at this late juncture should not be forthcoming.

32. The Court would categorically emphasize that no litigant should have even an iota of doubt or an impression (rather, a misimpression) that just because of systemic delay or the matter not being taken up by the Courts resulting in efflux of time the cause would be defeated, and the Court would be rendered helpless to ensure justice to the party concerned. It would not be out of place to mention that this Court can even turn the clock back, if the situation warrants such dire measures. The powers of this Court, if need be, to even restore *status quo ante* are not in the realm of any doubt. The relief(s) granted in the lead opinion by

Hon. Khehar, J. (as the learned Chief Justice then was), concurred with by the other 4 learned Judges, in ***Nabam Rebia and Bamang Felix v Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1*** is enough on this aspect. We know full well that a 5-Judge Bench in ***Subhash Desai v Principal Secretary, Governor of Maharashtra, 2023 SCC OnLine SC 607*** has referred ***Nabam Rebia*** (*supra*) to a Larger Bench. However, the questions referred to the Larger Bench do not detract from the power to bring back *status quo ante*. That apart, it is settled that mere reference to a larger Bench does not unsettle declared law. In ***Harbhajan Singh v State of Punjab, (2009) 13 SCC 608***, a 2-Judge Bench said:

"15. Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction under Section 319 of the Code was made out. Only because the correctness of a portion of the judgment in Mohd. Shafi [(2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : (2007) 4 SCR 1023 : (2007) 5 Scale 611] has been doubted by another Bench, the same would not mean

that we should wait for the decision of the larger Bench, particularly when the same instead of assisting the appellants runs counter to their contention."

(emphasis supplied)

33. In **Ashok Sadarangani v Union of India, (2012) 11 SCC 321**, another 2-Judge Bench indicated:

"29. As was indicated in Harbhajan Singh case [Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608: (2010) 1 SCC (Cri) 1135], the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh case [(2010) 15 SCC 118] need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field."

(emphasis supplied)

34. On the other hand, when it was thought proper that other Benches of this Court, the High Courts and the Courts/Tribunals below stay their hands, the same was indicated in as many words, as was the case in **State of Haryana v G D Goenka Tourism Corporation Limited, (2018) 3 SCC 585⁴**:

⁴ The reference was eventually answered in **Indore Development Authority v Manoharlal, (2020) 8 SCC 129**.

"9. Taking all this into consideration, we are of the opinion that it would be appropriate if in the interim and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Secretary General will urgently communicate this order to the Registrar General of every High Court so that our request is complied with.

10. Insofar as the cases pending in this Court are concerned, we request the Benches concerned dealing with similar matters to defer the hearing until a decision is rendered one way or the other on the issue whether the matter should be referred to a larger Bench or not. Apart from anything else, deferring the consideration would avoid inconvenience to the litigating parties, whether it is the State or individuals."

(emphasis supplied)

35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate

Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in ***National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 680***⁵. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.

36. We are conscious that, by way of certain pronouncements, some of which are alluded to in this judgment, the Court extended principles relating to elections to Parliament, State Assemblies and

⁵ See Paragraphs 27 and 28 in the report on this point.

Municipalities to other arenas as well. Indicatively, the interpretation of judgments is always to be made with due regard to the facts and circumstances of the peculiar case concerned⁶. We have looked at Articles 243-0, 243ZG and 329 of the Constitution, and conclude that no bar hit the High Court, even on principle. Apart from the judgments expressly considered and dealt with, hereinbefore and hereinafter, we have perused, out of our own volition, the decisions, *inter alia*, of varying Bench-strength of this Court in ***N P Ponnuswami v Returning Officer, Namakkal Constituency*, 1952 SCR 218⁷; *Durga Shankar Mehta v Thakur Raghuraj Singh*, (1955) 1 SCR 267; *Hari Vishnu Kamath v Syed Ahmad Ishaque*, (1955) 1 SCR 1104; *Narayan Bhaskar Khare (Dr) v Election Commission of India*, 1957 SCR 1081; *Mohinder Singh Gill v Chief Election Commissioner*, (1978) 1 SCC 405; *Lakshmi Charan Sen v A K M Hassan Uzzaman*, (1985) 4 SCC 689; *Indrajit Barua v Election Commission of India*, (1985) 4 SCC 722; *Election Commission of India v Shivaji*, (1988) 1 SCC 277; *Digvijay Mote v Union of***

⁶ *Sanjay Dubey v State of Madhya Pradesh*, 2023 INSC 519 @ Paragraph 18.

⁷ Where the Court held that “The discussion in this passage makes it clear that the word “election” can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.”, with respect to Article 329(b) of the Constitution.

India, (1993) 4 SCC 175⁸; *Boddula Krishnaiah v State Election Commissioner, Andhra Pradesh*, (1996) 3 SCC 416; *Anugrah Narain Singh v State of Uttar Pradesh*, (1996) 6 SCC 303; *Election Commission of India v Ashok Kumar*, (2000) 8 SCC 216; *Kishansing Tomar v Municipal Corporation, Ahmedabad*, (2006) 8 SCC 352; *West Bengal State Election Commission v Communist Party of India (Marxist)*, (2018) 18 SCC 141; *Dravida Munnetra Kazhagam v State of Tamil Nadu*, (2020) 6 SCC 548; *Laxmibai v Collector*, (2020) 12 SCC 186, and last but not the least, *State of Goa v Fouziya Imtiaz Shaikh*, (2021) 8 SCC 401⁹. On scrutiny, in combination with the timelines and facts of the matter herein, we are sure that the High Court did not falter.

37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions *supra*, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to

⁸ Where, apropos Article 324 powers of the ECI, this Court held “However, it has to be stated this power is not unbridled. Judicial review will still be permissible, over the statutory body exercising its functions affecting public law rights.”

⁹ Where the learned 3-Judge Bench has considered a catena of the precedents relevant to the issue(s) before it.

interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time¹⁰, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power *per se* of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order.

¹⁰ *B S Hari Commandant v Union of India*, 2023 SCC OnLine SC 413 @ Paragraph 50.

38. The reasoning of the learned Single Judge, further expounded by the learned Division Bench, leaves no doubt that the relief sought by R1 was required to be granted and, accordingly, the same was granted by the High Court. The stark factor which stares us in the face is that well before and well in time, by way of the writ petition, R1 had approached the Court of first instance (the learned Single Judge), for the reliefs, which have been found due to them ultimately, and upheld by the Appellate Court (the learned Division Bench). It is the Appellants, who by virtue of sheer non-compliance of the High Court's orders, be it noted, without any stay, can alone be labelled responsible for the present imbroglio. These stark facts cannot be broadly equated with other hypothetical scenarios, wherein the facts may warrant a completely hands-off approach.

39. This case constrains the Court to take note of the broader aspect of the lurking danger of authorities concerned using their powers relating to elections

arbitrarily and thereafter, being complacent, rather over-confident, that the Courts would not interfere. The misconceived notion being that in the ultimate eventuate, after elections are over, when such decisions/actions are challenged, by sheer passage of time, irreversible consequences would have occurred, and no substantive relief could be fashioned is just that - misconceived. However, conduct by authorities as exhibited herein may seriously compel the Court to have a comprehensive re-think, as to whether the self-imposed restrictions may need a more liberal interpretation, to ensure that justice is not only done but also seen to be done, and done in time to nip in the bud any attempted misadventure. We refrain from further comment on the Appellants, noting the pendency of the contempt proceeding.

40. As made clear by us in the foregoing paragraphs, the situation emanating herein is, in a manner of speaking, unprecedented. With a sense of anguish, it would not be wrong to say that the instant judgment has been invited upon themselves by the Appellants. The

orders of the High Court, in our considered opinion, were in aid of the electoral process, and no fault can be found therewith.

41. The learned ASG's submission that nobody representing R1 had filed his/her nomination form, by the last date notified, is inapposite, inasmuch as in the position existing, no candidate/representative affiliated with R1 could have filled up the form as the Plough symbol was neither a reserved symbol nor a free symbol, and thus, could not have been opted for by any candidate when filing the nomination form. The serious consequence was that R1's identity as a political party was eclipsed, right before the election to the LAHDC, where it was the incumbent party in power.

42. This Court has previously bestowed consideration on the importance of the symbol in an electoral system, especially one allotted to a political party. Taking note of the 3-Judge Bench decision in ***Shri Sadiq Ali v Election Commission of India, New Delhi, (1972) 4 SCC 664***, another Bench of 3 learned Judges in ***All Party***

Hill Leaders' Conference, Shillong v Captain W A Sangma, (1977) 4 SCC 161 put it thus:

"29. For the purpose of holding elections, allotment of symbol will find a prime place in a country where illiteracy is still very high. It has been found from experience that symbol as a device for casting votes in favour of a candidate of one's choice has proved an invaluable aid. Apart from this, just as people develop a sense of honour, glory and patriotic pride for a flag of one's country, similarly great fervour and emotions are generated for a symbol representing a political party. This is particularly so in a parliamentary democracy which is conducted on party lines. People after a time identify themselves with the symbol and the flag. These are great unifying insignia which cannot all of a sudden, be effaced."¹¹

(emphasis supplied)

43. Placing reliance on **Shri Sadiq Ali** (supra), a 2-Judge Bench summed up as under, in **Edapaddi K Palaniswami v TTV Dhinakaran, (2019) 18 SCC 219**:

"39. We say so because the efficacy of having a common symbol for a political group has been underscored in Sadiq Ali v. Election Commission of India [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] . In para 21 of the said judgment, this Court observed thus : (SCC pp. 674-75)

"21. ... It is well known that overwhelming majority of the electorate are illiterate. It was realised that in view of the handicap of

¹¹ Maintained as appearing in the SCC version available on SCC OnLine; should be read as 'effaced'.

illiteracy, it might not be possible for the illiterate voters to cast their votes in favour of the candidate of their choice unless there was some pictorial representation on the ballot paper itself whereby such voters might identify the candidate of their choice. Symbols were accordingly brought into use. Symbols or emblems are not a peculiar feature of the election law of India. ... The object is to ensure that the process of election is as genuine and fair as possible and that no elector should suffer from any handicap in casting his vote in favour of a candidate of his choice. Although the purpose which accounts for the origin of symbols was of a limited character, the symbol of each political party with the passage of time acquired a great value because the bulk of the electorate associated the political party at the time of elections with its symbol. ..."

(emphasis supplied)

And again in paras 40 and 41 it is observed thus : (Sadiq Ali case [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] , p. 682)

"40. ... It would, therefore, follow that Commission has been clothed with plenary powers by the abovementioned Rules in the matter of allotment of symbols. ... If the Commission is not to be disabled from exercising effectively the plenary powers vested in it in the matter of allotment of symbols and for issuing directions in connection therewith, it is plainly essential that the Commission should have the power to settle a dispute in case claim for the allotment of the symbol of a political party is made by two rival claimants. ... Para 15 is intended to effectuate and subserve the main purposes and objects of the Symbols Order.

The paragraph is designed to ensure that because of a dispute having arisen in a political party between two or more groups, the entire scheme of the Symbols Order relating to the allotment of a symbol reserved for the political party is not set at naught. ... The Commission is an authority created by the Constitution and according to Article 324, the superintendence, direction and control of the electoral rolls for and the conduct of elections to Parliament and to the Legislature of every State and of elections to the office of President and Vice-President shall be vested in the Commission. The fact that the power of resolving a dispute between two rival groups for allotment of symbol of a political party has been vested in such a high authority would raise a presumption, though rebuttable, and provide a guarantee, though not absolute but to a considerable extent, that the power would not be misused but would be exercised in a fair and reasonable manner.

41. ... Article 324 as mentioned above provides that superintendence, direction and control of elections shall be vested in Election Commission. ..."

(emphasis supplied)

40. This decision in Sadiq Ali [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] has been followed in Kanhiya Lal Omar v. R.K. Trivedi [Kanhiya Lal Omar v. R.K. Trivedi, (1985) 4 SCC 628] and in para 10 thereof, the Court observed thus : (SCC pp. 635-36)

"10. It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratic form of Government which our country has adopted. The use of a symbol, be

it a donkey or an elephant, does give rise to a unifying effect amongst the people with a common political and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House. The political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis – in other words, “on systematised differences and unresolved conflicts”. That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (Fifty-second Amendment) Act, 1985 there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to recognition, registration, etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country.”

(emphasis supplied)"
(emphasis supplied by us via bolding)

44. For reasons aforesaid, the entire election process, initiated pursuant to Notification dated 02.08.2023 issued by the Administration of Union Territory of Ladakh, Election Department, UT Secretariat, Ladakh, under S.O.53 published vide No.Secy/Election/2023/290-301 dated 05.08.2023 stands set aside. A fresh Notification shall be issued within seven days from today for elections to constitute the 5th Ladakh Autonomous Hill Development Council, Kargil. R1 is declared entitled to the exclusive allotment of the Plough symbol for candidates proposed to be put up by it.

45. Accordingly, this appeal stands dismissed with costs of Rs.1,00,000/- (Rupees One Lakh) to be deposited in the Supreme Court Advocates on Record Welfare Fund. The same be done within two weeks, and receipt evincing proof thereof be filed with the Registry of this Court within a week thereafter. IAs

170883/2023, 170885/2023 and 174512/2023 be treated as formally allowed.

46. Two further consequences flow:

(a) Writ Petition (Civil) No.1933 of 2023 pending at the High Court at Srinagar is also disposed of in the above terms.

(b) CCP(S) No.340 of 2023, statedly listed next on 08.09.2023 before the learned Single Judge, survives. The same be proceeded with expeditiously, in accordance with law, considering the present judgment.

.....J.
[VIKRAM NATH]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI

06th SEPTEMBER, 2023

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

ORIGINAL APPLICATION NO. 28 OF 2019 (WZ)

Mr. Tanaji Balasaheb Gambhire,
Age : Adult, Occupation : Self-employed,
R/o Flat No.16, CTS-296, Laxmi Apartment,
Near Shivaji Maratha High School,
White House Lane, Shukrawar Peth,
PUNE – 411 002

.....Applicant

Versus

1. Union of India,
Through Secretary,
Ministry of Environment, Forests and
Climate Change,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi – 110 001
2. Chief Secretary,
Government of Maharashtra,
Annex Building,
Mantralaya, Mumbai – 400 032
3. The Principal Secretary,
Environment Department,
Government of Maharashtra,
Room No.217, 2nd Floor, Annex Building,
Mantralaya, Mumbai – 400 032
4. Mr. Satish M. Gavai,
Former Principal Secretary of DoE and
Member Secretary, SEIAA,
Presently Ministry of Industry – Government
Of Maharashtra, Annex Building,
Mantralaya, Mumbai – 400 032
5. State Level Environment Impact Assessment
Authority – Maharashtra (SEIAA), through
Member Secretary,
15th Floor, New Administrative Building,
Mantralaya, Mumbai – 400 032
6. State Expert Appraisal Committee-III
Maharashtra (SEAC-III)
Through Member Secretary,
15th Floor, New Administrative Building,
Mantralaya, Mumbai – 400 032
7. Maharashtra Pollution Control Board,
Through Member Secretary,
Kalpataru Point, 3rd Floor, Near Sion Circle,
Opp. Cine Planet Cinema, Sion (E),
Mumbai – 400 022

8. Maharashtra Pollution Control Board,
Through Regional Officer,
Jog Centre, 3rd Floor, Mumbai-Pune Old Highway,
Wakadewadi, Pune – 411 003
 9. The Secretary,
Urban Development Department,
Government of Maharashtra,
4th Floor, Annex Building,
Mantralaya, Mumbai – 400 032
 10. Pune Municipal Corporation,
Through Commissioner,
Shivaji Nagar, Pune – 411 005
 11. Building Permission Department – PMC
Through City Engineer,
Pune Municipal Corporation,
Shivaji Nagar, Pune – 411 005
 12. Mr. Prashant Waghmare-City Engineer,
Pune Municipal Corporation,
Shivaji Nagar, Pune – 411 005
 13. Collector of Pune,
As Collector and President of District
Environment Protection Committee, Pune,
Collector Office, Bund Garden,
Pune – 411 001
 14. Ministry of Defense,
Through Secretary,
Room No.101-A, South Block, MoD,
New Delhi – 110 011
 15. General Officer Commanding-in-Charge,
Southern Command,
Through the Station Commander,
Station Headquarters, Dakshin Maharashtra
Sub Area, Southern Command,
Camp, Pune – 411 001
 16. M/s Raviraj Bokadia Creative,
A Partnership Firm registered under the
Partnership Act, 1932, having registered office
At Office No.1 to 5, Second Floor,
Millennium Star, Next to Ruby Hall Clinic,
Dhole Patil Road, Pune – 411 001,
Through its Partners
16A. Ravindra Naupatlal Sakla
16B. Raviraj Abhinandan Associates LLP
- Respondent(s)

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Applicant-in-Person

Respondents : Mr. Rahul Garg, Advocate for R1 and R-10 to R-12
Mr. Aniruddha Kulkarni, Advocate for R-3, R-5 & R-6
Ms. Manasi Joshi, Advocate for R-7 and R-8
Mr. Saket Mone, Advocate along with Mr. Abhishek
Salian, Advocate for R-16

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Reserved on : 18.01.2023

Pronounced on : 22.02.2023

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JUDGMENT

1. This Original Application has been filed to get the Environmental Clearance (for short, "EC") dated 15.06.2018 declared ab initio void as the same is revised/modified/amended version of the EC dated 10.11.2017 granted by Pune Municipal Corporation ("PMC", for short), on the basis of quashed Environmental Impact Assessment (EIA) Notification dated 09.12.2016 by order dated 08.12.2017 passed by this Tribunal in Original Application No.677 of 2016; a direction is prayed to be issued to the respondents to demolish the illegal structures at the site in question and restore the area to its original position; a direction is prayed to be issued to respondent No. 16 – M/s Raviraj Bokadia Creative (Project Proponent) to deposit the amount of compensation in Environment Relief Fund; further it is prayed that respondent No.16 – Project Proponent be directed to deposit the exemplary and deterrent special damages on account of violations of Environment Enactments by doing concretization of space resulting in no plantation of trees;; respondent No. 5 – SEIAA and respondent Nos.7 and 8 – MPCB be directed to initiate appropriate action against respondent No. 16 – Project Proponent, including prosecution for violation of EIA Notification, 2006 and other applicable pollution control laws; direct respondent No.2 – Chief Secretary, Govt. of Maharashtra to conduct inquiry against the officers responsible for not following the mandatory provisions of the EIA Notifications and other applicable environment enactments and take appropriate legal action against them; respondent No.2 – Chief Secretary, Govt. of Maharashtra be directed to take appropriate action against respondent No. 4 – Mr. Satish M. Gavai for recommending, granting the EC in violation of EIA Notification, 2006 and recover the amount of damages/fine/cost from his

salary; further it is prayed that respondent No. 9 – Secretary, Urban Development Department, Govt. of Maharashtra be directed to initiate departmental enquiry against respondent No.12 – Mr. Prashant Waghmare, City Engineer for not having taken action despite notice of environmental violations and recover the amount of damages/fine/cost from his salary.

2. The facts of this, in brief, are as follows:-

This Original Application is filed as per liberty granted vide order dated 11.01.2019 passed by this Tribunal in Original Application No.1 of 2019 as the EC/communication dated 15.06.2018 granted by SEIAA to respondent No.16 – Project Proponent within two days without mentioning the same in Agenda of 132nd Meeting and granting continuation/amending/expansion to the EC dated 10.11.2017 granted by PMC as per the S.O. 3999 (E), EIA Notification, 2016 (which has been quashed by this Tribunal in Original Application No.677 of 2016 vide order dated 08.12.2017). The present application is against the EC/communication dated 15.06.2018 granted by SEIAA without authority and thereby committed gross infringement of provisions of the Environment (Protection) Act, 1986 read with EIA Notification, 2006 along with the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 for carrying out illegal building construction in the Project “93 Avenue” without prior EC and Consent to Establish. The said project is situated in Survey Nos.93A/1A/2, 93A/2, 93A/3, 93A/4 of village Wanwadi, Taluka Haveli, District Pune. The total project land is admeasuring 12,700 sq.mtrs from the above parts of survey numbers but the same is not correct area as encroachment has been made in the adjacent area reserved for other purposes. The Project Proponent has undertaken construction of the commercial building phase-wise from Phase-I to Phase-III. The Project Proponent – respondent No.16 has filed measurement plan dated 08.06.1981 issued by the City Survey Office along with remarks of the Assistant Engineer, Development Plan Division of PMC, which

measurement plan is 21 years old surprisingly done by the Secretary of Indian Christian Cemetery, absolutely not related to this project. It was the duty of the Project Proponent to submit the latest plan revealing the exact site condition and changes occurred therein due to various reasons. The project site is included under “No Development Zone/Agricultural Zone” after deletion of Garden Reservation No.M-324 from Development Plan sanctioned on 05.01.1987 by PMC, but the Project Proponent carried out the construction of Mall. The Project Proponent has relied upon the order dated 15.12.2004 passed by the Additional Collector, Pune granting permission to change the use of said larger land from Agricultural to Non-Agricultural (residential) use. The Project Proponent without change in the Development Plan declared that his land had been converted in residential zone. This conversion from No Development Zone to Residential Zone for construction of commercial structure has been done without obtaining permission from the concerned authority. As per the D.C. Regulations, 1987 of PMC, there is prohibition for construction of shops and other commercial activities on Pune-Solapur road (NH-9) starting from Swargate Chowk to PMC limits at Hadapsar. The PMC officers have conveniently neglected to enforce this prohibition and allowed the Project Proponent to proceed with purely commercial activity in violation of D.C. Rules and provisions of the MR&TP Act, 1966. The DC Regulations were modified on 05.06.1997 and out of 58 restricted roads, 29 roads were allowed to make commercial developments of showrooms having no access to the roads, which has been mentioned in the Proviso. This shows that the present project is in complete violation of clause (i) activity.

3. Further, it is submitted in the Original Application that the Project Proponent – respondent No.16 has filed manipulated measurement plan dated 08.06.1997 issued by the City Survey office, which can be seen as the measurement plan dated 08.06.1997 does not show the specification table pertaining to the land use, which was present in the measurement plan dated 08.06.1981 for development. The

Project Proponent has relied upon the order dated 02.06.2001 passed by the Additional Collector, Pune for payment of Rs.93,98,968/- on account of Nazarana/unearned income towards the change of tenure use from Agricultural to Non-Agricultural (Residential) use. This Non-Agricultural permission ought not to have been granted on “no development zone” unless the Development Plan of the city had been changed. The Additional Collector, without going into this aspect that the land is no development zone, has proceeded to change land use. The Non-Agricultural permissions were issued only for residential buildings but actual development is of commercial mall. The revised Development Plan of 2007 never showed that the land is in Commercial Zone.

4. It is further submitted that the PMC has issued 14 sanctions, which are as follows:-

Sr. No.	Commencement Certificate No.	Date of sanction
1.	DPO/2007/VI/55	03.01.2001
2.	CC/4874/2000	30.03.2001
3.	DPO/4740/VI/78	29.03.2001
4.	DPO/5128/VI38	06.09.2003
5.	DPO/3451/VI/36	07.08.2004
6.	DPO/10023/VI/73	08.03.2006
7.	CC/0005/06	01.04.2006
8.	DPO/SEC6/0051/07/118	08.10.2007
9.	CC/3020/07	04.01.208
10.	CC/2634/16	22.11.2016
11.	CC/0527/17	25.05.2017
12.	CC/3314/17	12.03.2018
13.	CC/3309/17	12.03.2018
14.	CC/0589/18	07.06.2018

5. It is submitted that the Project Proponent – respondent No.16 has obtained sanction on 30.03.2001 for residential development and

thereafter revised the sanction for buildings and layout for 14 times, vide orders dated 01.04.2006, 04.01.2008, 22.11.2016, 25.05.2017 and 07.06.2018. The Project Proponent has procured the revised layout sanctions for substantial changes as per the following dates:-

“DPO/2007/VI/55 dated 03.01.2001, revised vide DPO/4740/VI/78 dated 29.03.2001, further revised vide DPO/5128/vi/38 DATED 06.09.2003, further revised vide DPO/3451/VI/36 dated 07.08.2004, further revised vide DPO/10023/VI/73 dated 08.03.2006, further revised vide DPO/SEC6/0051/07/118 dated 08.10.2007, further revised vide DPO/SEC6/0051/07/118 dated 08.10.2007 and CC/3314/17 dated 12.03.2018”

6. According to the applicant, the Project Proponent has changed his residential proposal to commercial vide revised layout sanction dated 07.08.2004. As per the Commencement Certificate issued under the dC Rules, the CC permission is valid only for one year. Thereafter, the PMC issued revisions vide Commencement Certificate dated 22.11.2016, after lapse of eight years from last permission dated 04.01.2008 without taking any legal recourse under the Maharashtra Regional & Town Planning Act, 1966 (MR&TP Act). The PMC has not issued any revision or permission from 04.01.2008 till 22.11.2016. Therefore, as per Sections 44 and 45 of the MR&TP Act, the sanction issued to the present project became invalid, as the building sanction commencement is valid only for one year.

7. It is submitted by the applicant that the Project Proponent has procured Plinth Check Certificate on 21.07.2007. The net plot area shown by the Project Proponent in various sanctions is as follows:-

Commencement Certificate	Net Plot Area (Sq. Mtrs.)	Permissible TDR	TDR claimed (Sq. Mtrs.)
CC/0005/06 01.04.2006	10938.41	0	0

DPO/SEC6/0051/07/118 08.10.2007	10938.41	40% 4375.36	4375.36
CC/3020/07 04.01.2008	10938.41	40% 4375.36	3370.00
CC/2634/16 22.11.2016	10938.41	40% 4375.36	3370.00
CC/0527/17 25.05.2017	10938.41	1.40 17054.18	3370.00
CC/3314/17 12.03.2018	11504.35	1.40 16106.09	Slum-2100 Reserv-5969.96
CC/0589/18 07.06.2018	11504.35	1.40 16106.09	Slum-2100 Reserv-7418.15

8. It would emerge from the above table that the net plot area is increased from 10938.41 sq.mtrs. to 11504.35 sq.mtrs., which is completely illegal. At the time of calculating the net plot area in Revision dated 07.06.2018, the Project Proponent has not reduced the open space and transformer area from net gross area. Therefore, the net plot area shown to the extent of 11504.35 sq.mtrs is illegal but the same was approved by the PMC overriding the auto-DCR generated only to benefit the Project Proponent.

9. The Transferable Development Rights (TDR) loading is increased from 40% to 140% i.e. from claimed 4375.36 sq.mtrs. to 16106.09 sq.mtrs. The TDR loading shown is 9518.15 sq.mtrs. (Slum 2100 + reservation 7418.15 sq.mtrs.) against illegal TDR claim of 16106.09 sq.mtrs. The Project Proponent has utilized TDR for 45 Mtr. D.P. Road widening on an area 518.44 sq.mtrs. to the extent of 1036.88 sq.mtrs. and further the Project Proponent has utilized TDR for an area of 677.21 sq.mtrs. but road widening areas are not handed over to the PMC, which is totally illegal and in violation of DC Rules. The Project Proponent has claimed net plot area to the extent of 11504.35 sq.mtrs. without excluding recreational open space of 1218.15 sq.mtrs. for the computation of FSI and TDR instead of 10938.41 sq.mtrs. The development started in the year 2000 with the applicability of DC Rules Provisions of 1987 and therefore, the Project Proponent cannot take benefit of new DC Rules, 2017 merely because of non-issuance of

occupancy certificates. The Project Proponent has claimed FSI to the tune of 1.25 and TDR 1.40% of net plot area, which is totally illegal as these loadings will give counterblast to the provisions of occupant load and tenement statements. Moreover, purely commercial development on Pune-Solapur road is totally illegal.

10. It is further submitted in the application that as per the DC Rules, 1987, the ramp slope must be in the form of 1:10 but the Project Proponent has provided only 1:5 ramp slope, which is harmful for smooth vehicle movement up and down and can cause damage to the life of passengers/visitors. Considering the ramp slope of 1:5, it is required to close the basement permanently.

11. It is submitted that the Project Proponent has changed residential proposal to commercial vide revised layout sanction dated 07.08.2004, showing floors B+G+5 having height 25.61 Mtrs. with front and rear margin space 7.5 Mtrs and the side marginal space 9.00 Mtrs. The actual height of the building is more than 25 Mtrs., but the Project Proponent has shown only 23.98 Mtrs., therefore, marginal spaces for the present building should be more than 7.5 Mtrs. The Project Proponent himself in EC dated 17.10.2017 has admitted that the turning radius for fire tender movement is 7.5 Mtrs., but the marginal space to this building is less than 6 Mtrs. The front marginal space is 3 Mtrs, side marginal space and rear marginal space is 6 Mtrs and side marginal space at open space-3 is 3 Mtrs as shown in the sanctioned plan dated 07.06.2018. Therefore, it is apparent that only 3 Mtrs side marginal space is provided at open space-3 instead of 7.5 Mtrs marginal space. The side margin is less than 3 Mtrs at various points of marginal spaces around the buildings, therefore, the fire tender movement cannot be achieved. The calculation of net plot area is flawed, which is revealed from the approved plan dated 07.06.2018 and the condition No.22 of the EC dated 10.11.2017 for maintaining turning radius for easy access for fire tender movement from all around the building, excluding the width for plantation is 7.5 Mtrs, which is not maintainable at all.

12. It is submitted that the project in question is sharing common boundary wall with Defense Establishment but No Objection Certificate has been obtained from the Ministry of Defense as per Section 7 of the Works of Defense Act, 1903. On a complaint made by the applicant on 01.10.2018, the Defense Establishment has initiated action against the Project Proponent. The Project Proponent has submitted false submission in form-1 that there is no Defense installation within 15 kms. The Project Proponent has made excavation on the plot for construction of commercial building. Therefore, it was necessary for him to pay royalty to the Mining Department under Collector, Pune, which has not been done and hence, the Project Proponent has duped the exchequer.

13. It is laid down in EIA Notification, 2006 that the building project having BUA of more than 20,000 sq.mtrs would require EC. The present project has potential of BUA of more than 20,000 sq.mtrs. from the beginning i.e. 04.01.2008, therefore it was mandatory for the Project Proponent to obtain prior EC, but without having procured it, the Project Proponent had carried out construction from 2007 to 2010 and then the construction work was stopped for unknown reasons. The Project Proponent obtained plinth check certificate for construction under violation on 21.07.2007. The MoEF&CC has issued Notification dated 04.04.2011 clarifying the EIA Notification, 2006 for the total built up area for the purposes of obtaining EC under EIA Notification, 2006, which includes all commercial area of all floors. The respondent No.10 – PMC had imposed condition on the Project Proponent to obtain EC and consents from the State Pollution Control Board, which is evident from the following details in tabular chart:-

Sr. No.	Commencement No.	Date	Condition No.	BUA
1	CC/2634/16	22.11.2016		35938.2
2	CC/0527/17	25.05.2017	19	32744.95
3	CC/3314/17	12.03.2018	27	47454.97
4	CC/0589/18	07.06.2018	4	49765.13

14. It is submitted by the applicant that the Project Proponent carried out the construction for total BUA of more than 20,000 sq.mtrs. after revalidation of plans 22.11.2016 and before illegal EC dated 10.11.2017 without caring for causing damage to the environment.

15. The MoEF&CC issued Notification dated 09.12.2016 as a counter blast to original EIA Notification dated 14.09.2006, which was issued to help polluters who had not obtained prior EC and started their scheduled activity. The Project Proponent got an opportunity to get the illegal constructions legalized under the Notification dated 09.12.2016 for grant of EC which has been illegally granted by the PMC. The Project Proponent had already crossed limit of 20,000 sq.mtrs. BUA well prior to year 2017 and it is well admitted fact by the Project Proponent that “#” Item No.7 of EC dated 10.11.2017 note on initiated work showed that the Project Proponent has completed 13,700 sq.mtrs. while in fact at the project site, the Project Proponent had completed 20,000 sq.mtrs. of BUA.

16. An Original Application No.677 of 2016 was filed before this Tribunal (Principal Bench) challenging EIA Notification, 2016 wherein on 21.12.2016 on M.A. No.1298/2016, following order was passed:-

“This is an Application praying for interim stay of the Notification dated 09th December, 2016 since we have fixed the matter for hearing on 04th January, 2017 we do not wish to stay the Notification dated 09th December, 2016. However, all the acts done in the meanwhile will be subject to final orders that would be passed in the matter. Accordingly, M.A. No.1283 of 2016 stands disposed of without any order as to costs.”

17. Thereafter, the NGT passed order dated 15.02.2017 in the same Original Application on M.A. No.148 of 2017 to the following effect:-

“All action taken in the meanwhile including any benefit accruing to any of the stakeholder including private parties will be subject to final orders of the Tribunal.”

18. Thus, the EIA Notification dated 09.12.2016 was partly quashed by NGT vide order dated 08.12.2017 in Original Application No.677 of 2016 with clear direction “2..... (iii) Appendix-XVI relating to constitution

and functioning of Environmental Cell, cannot be sustained and are liable to be quashed for the reasons aforestated....”

19. It is submitted by the applicant that by above judgment of NGT, it is clear that the Environmental Cell created at the level of Authority was declared null and void. Therefore, the present case is a specific case of violation as the local authority has committed intentional negligence.

20. Both the EIA Notifications of 2006 and 2016 do not provide for *ex post facto* EC, which is a concept alien to the environment jurisprudence. Issuing of EC is not a mechanical exercise. It requires meticulous and dispassionate study.

21. According to the applicant, the local authority in the case in hand knowingly issued *ex post facto* EC dated 10.11.2017 for a project which is already in violation and having total constructed BUA potential more than 20,000 sq.mtrs. Therefore, PMC in connivance with the Project Proponent has caused damage to the environment and ecology.

22. The Notification dated 14.03.2017 has been issued by the MoEF&CC to deal with the cases which require *ex post facto* Environmental Clearance (EC) in cases where expansion or modernization of any activity, requiring EC exceeds the existing pollution load. The EIA Notification dated 14.03.2017 has been issued for regularization of the projects under violation but the Project Proponent did not apply under the same. The Project Proponent in order to overcome the illegality of EC dated 10.11.2017 approached with ulterior motive to SEIAA on 13.06.2018 and procured the EC dated 15.06.2018 (impugned herein) without there being any appraisal by SEAC. The Project Proponent applied for EC before SEIAA/SEAC on 13.06.2018 for expansion/modernization and was granted EC within two days on 15.06.2018. There was no mention of a meeting of SEAC having been made in which the project was appraised, nor is there mention of the project in the agenda of 132nd SEIAA meeting in which the project seems to have been considered for assessment. The SEIAA ignored the fact that the work had already been initiated by the Project Proponent without EC.

The amended EC is issued by Mr. Satish M. Gavai, who was facing enquiry pursuant to the order dated 27.09.2016 passed by this Tribunal in Original Application No.184 of 2015 in personal capacity by misusing his powers, therefore, amended EC dated 15.06.2018 is illegal. Mr. Satish Gavai had issued various show-cause notices for having committed violations and for the reasons best known to him, had withdrawn the same and later on issued the EC in question without appraisal of assessment of the proposal.

23. It is further submitted that the Hon'ble Supreme Court in C.A. No.10854/2006 in order dated 10.08.2018 has observed as below:-

"We uphold the original order dated 27.09.2016 holding that the construction raised by the project proponent was in violation of environment clearance granted to it on 04/04/2008. We uphold the fine imposed upon the PMC and the direction given to the PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27.09.2016 and will submit his report to the NGT within three months from today."

24. The Project Proponent has not obtained Consent to Establish nor has he obtained permission to extract the ground water for construction and is discharging polluted water to the sewer line of PMC. The dust from the project is spreading all around and the sewage generated from construction work camp is directly flowing to the PMC sewer line. The DG sets which are installed are emitting huge pollution in the air. The Project Proponent has procured ex post facto Consent to Establish from MPCB on 07.01.2019. After a complaint was made by the applicant, notice dated 29.10.2018 was issued to the Project Proponent pointing out violation pertaining to the Consent to Establish. The MPCB had issued warning notice dated 16.01.2019 to the Project Proponent for non-compliance of the consent condition and EC.

25. The project is situated on the main road where there is heavy traffic. The PMC, vide letter dated 26.10.2007, had directed the Project Proponent to obtain the NOC from the Traffic Department but the same was not obtained. The Project Proponent has drilled three bore-wells for

extracting water for construction from the authority concerned nor has the Project Proponent tested the ground water. The Project Proponent has not preserved the soil which he has excavated and was required to be used for development of recreational space and plantation of the trees.

26. The BUA potential as per sanction dated 08.10.2007 was 26,556.03 sq.mtrs. and the total BUA potential as per sanction dated 04.01.2008 was 35,806.5 sq.mtrs., which is evident from the following table:-

Sr. No.	Description	Area in Sq.Mtrs.	
		08.10.2007	04.01.2008
01	F.S.I.	14850.00	13700
02	Enclosed Balcony	1633.03	1620.85
03	Staircase		1262.54
04	Passage		2881.29
05	Lift Lobby		1567.28
06	Enclosed Lobby		164.40
07	Atrium		2270.55
08	AHU Room		420.07
09	Lift		54.62
10	Parking Area provided	10073.00	11864.90
	Total	26,556.03	35,806.5

27. The Project Proponent disclosed the total BUA of 35,938.2 Sq.Mtrs against 22.11.2016 sanction, 32,744.95 Sq.Mtrs. against 25.05.2017 sanction, 47,454.97 Sq.Mtrs. against 12.03.2018 sanction and 49,765.13 Sq.Mtrs. against 07.06.2018 sanction of PMC, as shown in the following table:-

Sr. No	Description	Area in Sq.Mtrs.			
		22.11.2016	25.05.2017	12.03.2018	7.06.2018
1.	F.S.I.	13700	14322.51	24089.51	25476.66
2.	Enclosed Balcony	1620.85	1696.13	1696.11	1696.11

3.	Open Balcony			511.01	434.02
4.	Staircase	1262.54	909.76	1355.52	1355.52
5.	Passage	2881.29	5991.04	5977.31	5977.31
6.	Lift Lobby	1567.28	970.76	970.76	970.76
7.	Enclosed Lobby	164.40	159.76	159.76	159.76
8.	Atrium	2270.55	484.86	484.86	484.86
9.	AHU Room	420.07	155.52	155.52	155.52
10.	Lift	54.62	54.61	54.61	54.61
11.	Lift M Room	131.70			
12.	Parking Area provided	11864.90	8000	12000	13000
	Total	35,938.2	32,744.95	47,454.97	49,765.13

28. The Project Proponent procured Plinth Check Certificate on 21.07.2007 and carried out construction till 2010 as per the sanction plan dated 04.01.2008 and completed construction of more than 20,000 sq.mtrs. in the form of B+B+G+1+2+3+4 and 5th floor under construction. The EC in question dated 15.06.2018 is granted for total BUA 51,834.47 sq.mtrs. and the BUA sanctioned by PMC is 49,765.13 sq.mtrs. against last sanction dated 07.06.2018.

29. The Project Proponent has installed one DG set of 180 KVA for electric supply without any permission, which is releasing NOx, Sox, CO, etc. and making noise more than 60 decibel without any acoustic enclosure to control the noise.

30. The Project Proponent had undertaken to plant 158 trees in Form-1A, but there is no space for plantation. As per DC Rules, 1987, 10% open space of area was to be provided after deducting DP roads, which has not been left in one place,. The said area was not to be less than 400 sq.mtrs, which is not done in the present case. The Project Proponent has provided open space at three places viz. Open Space-1, Open Space-2 and Open Space-3, admeasuring 610.01 sq.mtrs, 215 sq.mtrs and 393.52 sq.mtrs, respectively. Out of them, Open Space-2 and Open Space-3 are less than 400 sq.mtrs. Total open space provided by the

Project Proponent is 1218 sq.mtrs., which is affected by the road widening shown in the DP Plan-2017. Therefore, these spaces are not to be treated as open space but are part of DP road widening.

31. In Form No.1, the Project Proponent has indicated that there is excavation of top soil quantity to 6189.12 cu.mtrs., excavation of quantity of soft rock and hard rock to the tune of 27,851 cu.mtrs. and excavation of quantity of murum to the tune of 12,348 cu.mtrs. and this is done without applying any impact assessment. The Project Proponent is using glass for covering the buildings which is generating huge amount of heat and has suppressed actual quantity of building material required for construction in Form-1. The restoration of this area would require the expenditure of more than Rs.110 Crores.

32. As per EC dated 10.11.2017, the occupant load would be 5473 persons while as per PMC sanction plan dated 07.06.2018, the occupant load would be 3831 persons. Therefore, the Project Proponent has provided false and misleading information. The Project Proponent has provided false information in relation to natural resources for construction or operation of the project such as land, water, materials or energy. Hence, the above prayers.

33. When the matter was first taken up on 27.03.2019 for consideration by this Tribunal (Principal Bench), vide order dated 27.03.2019, it has been recorded that since the impugned order is appealable and no appeal has been preferred and is even time barred, the validity of Environment Clearance (EC) is not proposed to be dealt with. Thereafter, the learned counsel for the applicant pressed the prayer for quashing the EC on account of violation of conditions of EC, which find mention in the order of this Tribunal dated 27.03.2019. It is recorded in the said order that before considering the said violations, it was necessary to have a report of the Joint Committee which was constituted by the Tribunal and accordingly, the said Committee was constituted which has submitted its report dated 25.04.2019 (pages 861 and 862 of the paper-book), wherein it is mentioned that the site was visited by the

Committee on 19.04.2019 and that the Project Proponent was asked to make available various documents. Nothing of consequence is contained in that report.

34. The order-sheet dated 04.07.2019 indicates that the Joint Committee report dated 25.04.2019 was before the Tribunal against which the applicant has raised objections.

35. When the matter was considered by the Tribunal on 05.02.2020, it was recorded that on perusal of the report and exceptions taken to it by the applicant, the Tribunal was satisfied that crucial questions involved in the case have not been addressed by the Committee and found the report to be un-satisfactory. Therefore, the matter was remanded to the Committee for examining the questions afresh based upon the points taken by the applicant. It was further directed that during the examination of the objections and site visit that would be necessary, the applicant was permitted to be present and to participate in order to ensure effective exercise to be undertaken by the Committee. Thereafter, the Joint Committee has, in compliance of the said order, submitted the report on 29.11.2019, which is quoted herein-in-below:-

“REPORT OF THE COMMITTEE IN RESPONSE OF THE REPLY AFFIDAVIT FILED BY THE APPLICANT DATED 07 SEPTEMBER 2019.

A. INTRODUCTION

1. Scope: *The committee wishes to respond to the aforementioned affidavit by the applicant, largely in the confinement of the operative part of the previous Daily Order by the Hon'ble Tribunal dated 27-03-2019, while providing clarification on all the 7 points mentioned therein. Also, the committee wishes to refute the allegations against the Committee and State level Environment Impact Assessment Authority. All these allegations are baseless, derogatory, painful and hence denied in totality.*

2. Limitations: *For judging certain aspects, such as Traffic Analysis the observations over certain time period, viz. whole day, a week, and at different nodes around the site are very useful. Such data is not available.*

3. *The project is going on since 2003-04, as such the correct nature of the soil and the sub-soil water, the manner of soil disposal at that point of time cannot be assessed by the Joint Committee.*

4. *Absence of certificates stating the completion of various stages of building construction, except the plinth stage by the PMC, or the photographic documentation of the building construction progress, makes it difficult to decide if the construction is in lawful-time-limit. The Joint Committee has to rely on the Architect's Certificate to understand the consumption of FSI Area and Total Built up Area [TBA] from time to time. The mere statement of areas on the drawings, those are approved by the PMC and the Commencement Certificate issued thereafter, is not a proof of consumption of the entire specified area.*

5. **Keeping faith with certain Government Organizations:** *The Committee stands by the expertise of SEIAA Maharashtra State, the then Environment Cell of Pune Municipal Corporation [PMC], the PMC, and the office of Chief Fire Officer (CFO) of PMC in granting the Environmental Clearance [EC], permitting the integration of Environmental Conditions in to the project, in permitting and monitoring building construction projects, and in issuing permission to the Fire related Disaster Management respectively.*

B. THE BUILDING

1. *The project proposal "Commercial Building" now called as "93 Avenue" at S. No. 93A/1A/2, 93A/2, 93A/3, 93A/4, Wanwadi, Pune is adjoining Pune — Solapur Road [NH-9]. The project proposal has got approvals several times to function as a Commercial Building by the PMC in the aforesaid vicinity.*

2. *From the drawings shown to the committee, it appears that there is an approval to the basement and parking floor [which is partly below the ground and partly above and is on a sloping ground], vide building permission by the PMC No. 10023/VI/ 73 dated 08-03-2006.*

3. *It is a single building that houses shops, offices, restaurants, theaters and food court, all in single enclosure over a piece of land of 12,700m² area. The project proponent [PP] has developed the project so as to consume all the Floor Space Index [FSI]; within the frame-work of Development Control [DC] rules. As the project progressed the DC rules are modified/amended and the PP got the additional FSI. Thus the building became large (in footprint) & taller. As and when the PP will have to concede the plot area for road widening, the plot will look smaller and relatively the building will look bigger.*

4. *This building has a striking semi-circular recess on its front façade and a large semi-circular canopy at the tall height. This canopy is covered by glass and is at the height of almost 18m, as such it exposes the podium to natural light, rain, etc. The part of the podium below this canopy is largely exposed to the environment.*

C. CHRONOLOGY :

1. **The chronology of giving the Environmental Clearance [EC] to the "Commercial Building" now called as "93 Avenue" at S. No. 93A/1A/2, 93A/2, 93A/3, 93A/4, Wanwadi, Pune.**
2. Construction started as per Sanction No. DPO/ 5128/ VI/ 35dated 06-092003 and went on to the extent of **13700.00 m² [FSI area]** .It has stopped in 2007-2008 started again in 2017-2018.The exact dates of the stopping and restart of construction activity, are unknown. This time period covers the time, even before the MoEF'sEC/EIA Notification 14-09-2006.
3. After the building permission dated 04-01-2008, the next permission is obtained on 22-11-2016; both are for the **FSI area of 13700.10m² [TBA: 35278.17 m². Ref. Architect's Certificate dated 14-04-2019]**. This time period covers the Total Built up Area norms as per the clarification by MoEF Notification dated 04-04-2011.
4. The PP has sought the building permission for the increased **FSI area of 14322.51m²[TBA: 39243.07m². Ref.: Architect's Certificate dated 14-04- 2019]**,and got same from PMC on 25-05-2017. The PP sought the Environmental Clearance [EC] on account of increase in the total built-up area due to amendments and the proposed project was in purview of Environmental Clearance vide MOEF&CC amended notification dated 09-12-2016 and Government of Maharashtra, UDD Directives u/s.154 No. TPS-1816/ Cr- 443/ 16/ RP Directives/ UD-13 dated 13-04-2017.
5. The Environment Cell [of 6 experts] of PMC has appraised and assessed every parameter of the EC and recommended the project proposal for the building approval under the Integration of Environmental Conditions for Project Category-2 on 10-11-2017.The proposal was considered as per directives of Government of Maharashtra Notification No. TPS1816/CR443/ 16/ DP/Pune & Konkan/UD-13 dated 28-06-2017.
6. This was the EC for various environmental considerations. Only the points relevant to this report are as below:

Plot Area:	12700.00m ²
Net Plot Area:	1093 8.40m ²
FSI Area:	22689.18m²
Non-FSI Area:	25795.17m ²
Total BUA:	48484.35m²
Ground Coverage:	5471.71m ²
Building Configuration:	Basement+ Lower Ground+ Ground+4, Total Height:20.98m.

[Lower Ground is the Storey that is embedded in the slope. In this case, there is a slope from contour level 101.40 m to 103.55 m as mentioned in Sr. No. 2. Topography and Natural Drainage of this EC.]	
Users:	5 4 7 3
Sub-soil Quantity:	6189 m ³

Disposal Method of sub-soil:

Site	Quantity in m ³
Landscaping of 93 Avenue Site	2000
Citadel, Enclave, S. No. 51/1/6, 51/7/7, 51/1/8, B. T. Kawde Road, Ghorpadi, Pune.	3000
Solace Park, B. T. Kawde Road, Ghorpadi, Pune.	1189
	6189

Green Belt Development

ROS Area:	1218.16 m ²
Tree Plantation:	158
Power Requirement:D.G. Set for Construction Stage AND as back-up power	1No.x 62.5 kVA
Construction Requirement: Water	45 m ³ / day, Source of Water: Tanker

Traffic Management

Cars	Scooters	Cycles
539	1633	643

^{7'} The PP obtained the building permission on 12-03-18 for the **FSI Area:24089.51m²[TBA:49953.12m².** _Ref.: Architect's Certificate dated 14-04-2019].

8. The PP got Revised Fire NOC for Shopping Mall & Multiplex Building for the full height of 23.98 m. on 22-05-2018.

9. The PP has amended the proposal for the addition of one floor and got the building permission vide No. Revised CC/ 0589/ 18 dated 07-06-2018 for the **FSI Area:25476.66 m²**[Total BUA:51834.47 m²]

10. State level Environment Impact Assessment Authority [SEIAA] has assessed the aforesaid amended project proposal in 132th meeting on 14-06-2018 for the expansion[addition of one storey as indicated in the Form-1]. Impact on the environment, on account of increase in the total built up area, was assessed for each parameter of the EC. The SEIAA noted that there is no increase in the Ground Coverage. Out of the 54 points assessed the following points are relevant to this report:

Plot Area:	12700.00 m ²
Net Plot Area:	11504.35 m ²
FSI Area:	25476.66 m²
Non-FSI Area:	26357.81 m ²
Total BUA:	51834.47 m²
Ground Coverage:	5 4 7 1 . 7 1 m ²
The Project Proposal is assessed in the SEIAA meeting for the following Building Configuration: Basement+ Lower Ground+ Ground+ 5 (5 th floor is an additional floor), Total Height:23.98m. Ref.:Consolidated Statement: SEIAA-Statement-0000001472, Sr. No. 13, Page 1 of 10 read in conjunction with Sr. No. 22, Page 1 of 10, and Form 1, Sr. No. 5, Page 1 of 16.	
[Lower Ground is the Storey(floor) that is embedded in the slope. In this case there is a slope from contour level 101.40m to 103.55m.]	
Users:	6023
Green Belt Development	
ROS Area:	1218.16 m ²
Tree Plantation:	158
Ref.: Consolidated StatementSEIAA-Statement-0000001472, Sr. No. 44.	
Power Requirement: D.G. Set for Construction Stage and as a power back-up:	1No.x 62.5 kVA -

Traffic Management

Cars	Scooters	Cycles
620	1880	790

11. The EC is granted on 15-06-2018.[The EC is normally granted as soon **as the** minutes are finalized.]
12. The Six Monthly Compliance Report is submitted on 28-06-2018 for TBA: 42600 m².
13. The Six Monthly Compliance Report is submitted on 28-06-2018 for TBA: 51834.47 m².
14. The **Joint Committee has visited the site to inspect the 7 points raised by the NGT in response to the appeal and submitted the report on 25-042019.**
15. The NGT has sought clarification on the aforesaid report.

D. THE CLARIFICATION

Sr.	Issues for clarification	The clarification
1	Junction at exit and entry point of project can cause huge traffic obstacle.	Though no such issue is raised by the Environment Cell of PMC, the Joint committee has applied its own mind. It has observed the complete stretch of 1 km on both the sides of the site, travelled to and fro directions, observed the buildings around for their traffic generation capacity, and also noted the varied users and varied vehicles with respect to the work time. It also looked in to the parking space provision, the access length and entry exit points. The Joint Committee is of opinion that there will not be huge traffic obstacle at the junction of exit and entry points of the project site.
2	No permission for	It is submitted by the PP before Environment

	Ground water extraction.	Department that no ground water will be used for construction of the project and accordingly tanker water issued for the project construction. Reference: Form no. 1, clause no. 1.23 on page no. 6 of 16. Form no. 1, clause no. 2.2 on page no. 7 of 16
3	No ground water test and for construction of basements.	The Project Proponent has tested the water and the results are available for the reference.
4	No soil preservation and no soil test by PP.	Soil Testing has been carried out. Reference: Form no. 1, clause no. 1.4 on page no. 6 of 16. Excavated soil and earth had been transported and used on project site for back-fill and landscaping purposes; and on other projects of the same firm namely, Raviraj Group. The list of projects where soil and earth have been reused are as per clause no. C.6 of this report. It appears that this information has been presented to the Environment Cell of PMC.
5	Total BUA proposed and actual construction.	The entire information on FSI and non-FSI area is in the form of the building permissions by the PMC and the Architect's certificate, respectively. The Joint Committee has observed that the work is being carried out on the site as per the building permission dated 07-06-2018 [the basis of the assessment by SEIAA].
6	Illegal installation and operations of the DG sets.	In the information provided for Environment Clearance, details of DG sets were provided [number and capacity]. The Environment Cell of PMC has already appraised and assessed this parameter. Further it was also assessed by the SEIAA. During the inspection the Joint Committee has

		observed total 3 numbers of D.G. sets, two each of capacity 1010 kVA and one of capacity 250 kVA [total 2270 kVA] as against the sanctioned capacity of 3060 kVA. All are properly installed and are meant for standby/back-up power source.
7	PP and PMC committed scam on account of 10% open space and also there is no space for landscaping and tree plantation and there is damage to the environment and ecology on account of illegal construction.	Open space: Recreational Open Space [ROS] to the extent of 10% of the balance plot area is a mandatory provision under the DC Rules of PMC. The project has received several approvals from PMC. Needless to say, that the PMC has checked for compliance of this mandatory requirement and has approved the plans. On this site, the ROS is in pieces, few are less than 10m length. However, they are approved, probably because they are not meant for playing. [There is no residential area in the project]. In the DCPR 2017 norms, there is a provision of developing ROS on podium. Here on this site, such ROSs are observed. The aforesaid norms also encourage provision of some shelters and landscaping features in the ROS. These ROS are affected by newly proposed 60.0m wide D.P. Road and the affected portion is considered as "Differed Area" under the Maharashtra Regional and Town Planning Act, 1966. Details of ROS(s) are available on the approved plans. 163 trees planted in the ground [not in pots] are observed on the site, which are more than the statutory requirement.

E. DENIAL OF THE ALLEGATIONS

1. The EC has been granted on two occasions by appraising and assessing the , project proposal by the government organizations viz. the Environment Cell of PMC and SEIAA-Maharashtra State, as per the prevailing rules and regulations. **The grant of the EC has not bypassed the appraisal as alleged.**

2. The grant of the EC as soon as the finalization of minutes of the meeting is not the act of misconduct or the favor. The EC was uploaded to website after Minutes of Meeting (MoM) are finalized.

3. The Joint Committee report is based on the site visit of Members, perusal of all the documents [available and demanded], checking of dimensions, site observation, and reference of the standards/rules, etc. The Committee has to work

under certain limitations (A.INTRODUCTION, Limitation) and has to rely on the certifications of reputed agencies (A.INTRODUCTION, Keeping faith with certain Government Organization) to draw some conclusions. Therefore, in no way the report favors to any party. The Joint Committee stands by its views and refutes all allegations.

4. *This particular clarification is also given objectively, without getting carried away by the provocative allegations of the appellant.”*

36. This report was placed before the Tribunal on 19.03.2020 to which the applicant raised objections again. The learned counsel for the Maharashtra Pollution Control Board (MPCB) submitted that the project as very old and much of the records were not available and that the report was submitted based on the materials available. It was submitted that the Committee intended to visit the site and will submit a further report for which time was sought. Accordingly, an order was passed to the effect that further report be filed after inspection. In pursuance of the said order, the Joint Committee submitted its report dated 06.10.2021, which is quoted here-in-below:-

“Joint Committee Report in compliance of Orders passed by Hon'ble NGT on 05/02/2020, 19/03/2020 and 17/06/2020

The Orders passed by the Hon'ble National Green Tribunal, dated 05/02/2020, 19/03/2020 and 17/06/2020, directed the Joint Committee to file a fresh report in consideration of objections raised by the Applicant to the earlier report submitted by the Joint Committee with respect to the project - 93 Avenue. Commercial building located at 93A/ 1/2, 93A/2. 93A/3, 93A/4, Wanwadi Pune.

The objections raised by the Applicant are directly related to the authenticity of the approvals given by different departments. and therefore MPCB vide letters dated 02/09/2020 requested to the Chief Fire Officer. Pune Municipal Corporation, the Tree Officer / Dy. Commissioner, Pune Municipal Corporation, the Additional Commissioner of Police, Traffic Department of Police, Pune and The Chief Engineer, Building Approval/Permission Department, Pune Municipal Corporation, to submit the information on the objections raised by the Applicant.

The Joint Committee has verified the reports received from the above Authorities and submitting the consolidated report as under:-

1. Report of Executive Engineer, Zone – 5, Pune Municipal Corporation, Pune

Sr. No.	Points	Reply

1.	<i>Details of the land use pattern of the lot over which the mall is built/ constructed.</i>	<i>The subject property is situated in Residential Zone R-2 (DCR 1987-Rule No. M-2.2.1 & Modified DCR 1993-Rule No. M-2.2.1 and DCPR 2017- Rule No. 16.2.1)</i>
2.	<i>The factual information about the total area of the Recreational Open Space (ROS). The reason for approving such space, in spite of the variation in dimensions (if any), more than the limit stipulated in the DCPR- Pune.</i>	<i>The Open Spaces are provided as per DCR 1987 Rule No. 13.3 & modified DCR 1997 Rule No. 13.3 The details of Creational Ground Open Space as per CC 3020/07 dated 04.01.2008 are as follows:</i> <i>Open Space 1-610.01 sqm</i> <i>Open Space 2- 215.56 sqm</i> <i>Open Space 3- 393.52 sqm</i>
3.	<i>The factual information about the open spaces other than ROS</i>	<i>Open spaces around the building are provided as per the approved plans.</i>
4.	<i>Details of commercial building permitted on land reserved for residential purpose.</i>	<i>The subject property is situated in Residential Zone R-2 category wherein commercial use is permitted (DCR 1987- Rule No. M-2.2.1 & modified DCR 1997- Rule No. M-2.2.1 and DCPR 2017- Rule No. 16.2.1)</i>
5.	<i>Details of area of the plot which will be reduced by road widening, and the location and size of RG open space provided.</i>	<i>Building plans for the subject property were approved in 2004. The said plans were approved after the deduction of area required for the 45m DP road. Recreational Open spaces are provided as per DCR 1987 Rule No. 13.3, after the deduction of area required for the DP Road widening.</i> <i>As per DP 2017, the width of the Pune Solapur Road is proposed as 60.0 M, thus additional area for this road widening is shown as "Differed Road Widening" on the approved plan CC/3309/17 dated 12.03.2018.</i>
6.	<i>The RG Open Space is not of the correct area and dimensions. Some dimensions are less than what are required. It is located in the front open space and will be affect due to the road widening. Please give</i>	<i>As per 2017 Development Plan, the existing 45m wide DP road is widened to 60m width due to which the additional widening area is shown in the approved plans, thus affecting the previously approved Recreational Ground Open Space.</i>

	details.	
7.	Open spaces around the building are not of required dimensions. Please give details.	Open spaces are provided as per the approved plans.

A copy of the Report received from the Executive Engineer, Zone 5, Pune Municipal Corporation is enclosed herewith as an Annexure-1

2. Report of Chief Fire Officer, Pune Municipal Corporation, Pune

The Chief Fire Officer issued the Final Fire NOC for the project in question, vide no. FB/998, dated 03/06/2019 in view of fire prevention, protection and life safety measures of the building.

The building in question is fully occupied with proper fire prevention and life safety measures along with fire-fighting system. The Fire Officer tested the Hydrant System, Hose Reel System with equipment, portable fire extinguishers and all types of firefighting system and issued Final Fire NOC to the said project.

*A copy of the Report and the copy of the Final Fire NOC received from the Chief Fire Officer, Pune Municipal Corporation is enclosed herewith as an **'Annexure - 2'**.*

3. Report of Assistant Municipal Commissioner and Tree Authority

The Assistant Municipal Commissioner and Tree Officer submitted that former Assistant Municipal Commissioner and Tree Officer, Pune had issued NOC to Project Proponent, vide letter no. VPJ/7825, dated 02/03/2019. The said NOC was issued based on Commencement Certificate no. CCO589/18 dated 07/06/2018 issued by PMC.

*The Tree Officer along with the concerned Tree Inspector i.e. Mr. Vijay Nevase visited the site on Saturday, 5th December, 2020. All trees were checked by the concerned officer and he made a detailed report of these. **As per the said report, the total number of trees which exist and newly planted at site is 166 in numbers** which is more than the minimum requirement. All the plants are in good condition and are well maintained by the developer.*

*A copy of the report received from the Assistant Municipal Commissioner and Tree Authority along with the NOC is enclosed herewith as an **'Annexure3'** collectively.*

4. Report of Assistant Commissioner of Police, Traffic Branch, Pune City

The objections raised by the Applicant have been discussed in detail, and a descriptive technical, scientific analytical and logical explanation is given in the report. It is concluded that after the spot visit, detailed study and inspection, the 9 objections raised by the applicant do not prove the point that the traffic flow on the main road (Pune Solapur Road and Kawade Road) is obstructed by the incoming / outgoing vehicular and pedestrian traffic generated at and by the said establishment '93 Avenue'.

5. Report of Maharashtra Pollution Control Board

- 1) **Land** — Pune Municipal Corporation has submitted a reply on 15/10/2020 and mentioned that the land use pattern is Residential Zone R-2 category wherein commercial use is permitted.

- 2) **Water (Quality & Quantity, Conservation, Bore Well)** —
As per existing Consent to Operate, the total water consumption is 270.62 CMD and total domestic effluent generation is 243.9 CMD.

The PP has water supply from Pune Municipal Corporation. Water bills of PMC are verified from August 2019 to August 2020. It is found that water consumption is within consented limit.

The PP has provided three nos. of pits for rainwater harvesting. One of the pits was opened during the site visit for verification purposes and it was observed that the rainwater harvesting system was functional.

During the site visit, borewells were not found within the premises.

3) Waste Water Treatment —

For treatment of domestic effluent 243.9 CMD, the PP has provided STP of 260 CMD capacity, consisting Of MBBR technology and up to tertiary treatment stage.

During the site visit, the STP was found to be operational. Treated effluent is partly recycled and used for gardening; provision is made for discharge of excess treated effluent into the drainage line of PMC.

The PP has provided an online monitoring system for the STP, to measure parameters such as pH, BOD, COD, TSS and Flow Meter.

JVS samples for outlet of STP are collected, analysis results are observed within limit.

Solid Waste Treatment —

PP has provided OVVC for treatment of organic waste of capacity 800 Kg! D. During the site visit, it was found to be operational. Due to low occupancy of tenants, currently the wet waste generated is around 50 Kg! day. Records of the same is verified during the visit.

4) Energy Conservation —

The PP has provided four nos of solar heater on the top terrace. A DG set of five numbers with capacities 1000 KVA x 2 nos., 250 KVA x 2 nos. and 365 KVA provided with stack of height above building roof level.

A copy of the MPCB Report is enclosed herewith as an 'Annexure - 5'."

37. This report came to be considered by this Tribunal on 26.10.2021, which was said to be not in compliance with the order of this Tribunal by the applicant and an adjournment was sought to respond to the said report. The Tribunal also has recorded that cursory perusal of the said report would prima facie disclose that the same was not in compliance with the above order dated 05.02.2020 passed by the Tribunal. However, taking into consideration the plea made by the learned counsel for MPCB, an opportunity was given to file supporting affidavit and supporting documents and the matter was adjourned to 08.12.2021. On that date, the matter was considered in presence of the learned counsel for MPCB and PMC as well as applicant's learned counsel and after hearing the submissions of the learned counsel for PMC and others, it is recorded that in the light of the contents of the affidavit of MPCB dated 07.12.2021, joint inspection would be carried out in the light of averments made in paragraph 3 of the said affidavit before end of December, 2021.

38. In pursuance of the above order, the Joint Committee has submitted its report dated 08.08.2022, which is quoted here-in-below:-

“Joint Committee Report in compliance of order passed by Hon’ble NGT on 08.12.2021

1. Hon’ble National Green Tribunal in O. A. 28/2019 (IA No.81/2021) filed by Tanaji Balasaheb Gambhire vide order dated 08.12.2021 directed Joint Committee comprising of SEIAA and MPCB to carry out the inspection in the presence of Applicant and examine the objections raised by him to the earlier Joint Committee Report dated 06.10.2021 filed in the matter.
2. Accordingly Joint Committee visit was carried out on 29.12.2021 in the presence of the Applicant Shri, Tanaji Balasaheb Gambhire at the Project site 93 Avenue Mall Survey No. 93(P) Village- Wanawadi, Tal.& Dist- Pune at 11am. Following officials were also present-

Sr. No.	Name of the Officials	Designation
1.	Shri. Pankaj Joshi	Member- SEIAA
2.	Shri. Nitin Shinde	I/c RO MPCB Pune
3.	Shri. Pratap Jagtap	SRO, MPCB Pune-1
4.	Smt. Radhika Hawal-Bartakke	Tahsildar Pune City- Representative of Collective Pune

5.	Smt. Harshada Shinde	Executive Engineer Building Permission Department PMC
6.	Shri. Ramesh Kakade	Dy. Engineer Building Permission Department PMC.
7.	Shri. Ratnakar Taru	Tree Authority PMC
8.	Shri. Prashant Ranpise	CFO PMC
9.	Shri. Shyam Taru	AMC, Wanawadi

Site visit was carried out. Issues in the case were discussed at length with the Applicant in presence of his Advocate and concerned Officials as mentioned above. Site inspection was also vide recorded and concluded the visit at 3 pm. Concerned Officials were directed to submit their replies along with necessary documentary evidence about the submissions made/ issues discussed during the site visit.

3. Report of Executive Engineer, Zone-5 Pune Municipal Corporation- Executive Engineer, Pune Municipal Corporation submitted a tabular report on 24.003.2022 (Annexure-I). Findings in the PMC report are summarized below:

Sr. No.	Points raised by the applicant	Clarification
1.	i. Project is constructed on development zone as per DP-1987 and construction of commercial building on residential zone (para 8 (A) of OA) ii. Commercial construction on prohibited road (para 8 (B,C &D) of OA) iii. Intentional violation of non agricultural permission: NA order No. PMN/NA/SR/3/2001 dated 02.06.2001 granted for change of tenure use from Agricultural to Non Agricultural (Residential) use, but the land project land demarcate as “no development zone” Actual construction of Commercial mall(Para-10 of OA)	i. As per DP 1987 plot was Agricultural Zone. As per year comprehensive Development plan sanctioned in 2000, the plot is in Residential Zone and fronting 45.0M DP road. Therefore, the plot is in category of Residential-2 Zone. As per DC Rules all commercial users are permitted in residential-2 zone. Reference: i. Zoning Demarcation No. DPO/4677 dated 23.03.2001 (Annexure-II) ii. Government Resolution NO. TPS-1893/1045/CR54/93/UD-13 dated 05.06.1997 Modified DCR 1997 DCR No. Clause M-2 (Annexure-III) iii. DCPR2017 clause 16.2.1

	iv. Revised development plan (2007-2027) for old PMC limit including Wanwadi Village clearly shows, the Project land is marked as residential area zone (Para 16 of OA) v. Permissible land use of the plot over which the mall is constructed.	(Annexure – IV)
2	Open Space Objections i. PP and PMC committed scam on account of 10% open space and there is no space for landscaping and trees plantation. ii. Mandatory to provide 10% open space after deducting DP) roads and reservations. iii. Important to provide 10% open space in one place and shall not be less than 400 Sq. M.s. iv. Open space-1, Open space-2 Open space-3, admeasuring about 610.01 Sq. M, 215 Sq.M and 393.52 Sq. M.s respectively. Open space 2& 3 are less than 400 Sq. M.s. v. Total Open Space to be provided by PP is 1218 Sq. M.s but these open space are affected by the DP plan 2017 and therefore these open spaces are not the open spaces but these are part of DP road widening. vi. PP has committed the scam on account of the open space by providing the 10% space and by showing the open space in DP road widening area and also by showing open spaces less than 400 Sq. Mts. At one place (para 29 of OA)	i. As per Garden NOC No. 7825 dated 02.03.2019 requisite number of trees have been planted at site. ii. Lay-out plan was sanctioned in 2007 in which 10% open space was shown after 45.0 M DP Road widening area. Thereafter in all revised plans area of 10 % open space has not changed. As per 2017 DP width of Pune Solapur road is proposed as 60 M wide. Therefore, subject plot is affected by 60M DP road widening. This road widening area is considered as “differed area”/ iii. For Plots having area of more than 5000 Sq.M.s open spaces may be provided in more than one place. But at least one of such places shall not be less than 50% at one place. iv. As per GR No. TPS-893/1045/CR-54/93/UD-13 dated 05.06.1997 Modified DCR 1997 DCR No. 13.3.1 any open space shall not measure less than 200 Sq. M. S. Reference : i. Garden NOC No. 7825 dated 02.03.2019 (Annexure- V) ii. DCPR-2017 clause 17.2.1 Note (Annexure-VI) iii. Govt. Resolution TPS /1893/1045/CR54/93/U D-13 dated 05.06.1997

		DCR NO.13.3.1(Annexure-VII)
3.	45 Mtrs and 60 Mtr. Road widening areas are not handed over to PMC and affected by open spaces 2 & 3	Area under 45.0 M D. P. Road has been handed over to PMC and accordingly updated on 7/12 extract Reference : i. Copy of 7/12 Extract (Annexure-VIII) ii. DCPR 2017 No. 1.4, UDCPR 2020 clause No. 1.5 (Annexure- IX) iii. DCPR 2017 clause No. 17.2.2 Note No. 13 (Annexure- VI) As per 2017 DP width of Pune Solapur road is proposed as 60 M wide. Therefore, subject plot is affected by 60M DP road widening. This road widening area is considered 'differed area'.
4.	PMC sanction plan dated 15.01.2019 permits only B+LG+G+1+2+3+4+5 floors. In actual B+B+G+1+2+3+4+5+6 PP has made illegal construction of two basements Jt. Committee is misleading on account of illegal construction of Two basements. JT Committee is misleading on account of illegal construction of 6 floors beyond scope of alleged EC.	As per the approved plan and as per actual site condition found after site visit along with the applicant and his advocate, building is of B+LG+G+1+2+3+4+5 floors only.
5.	The project is sharing common boundary wall with the defense establishment and it is mandatory to obtain the defence NOC through the local authority, but there is no such NOC obtained from Ministry of Defence . As per Section 7 of the Works of Defence Act-1903 and it is quite strange and shocking while seeking the EC dated 15.06.2018 the PP has made false submissions in form 1 stating that there is no Defense installations within 15	In this regard a copy of order dated 04.01.2003 passed by 3rd Jt. Civil Judge, S. D. Pune provided to the Joint Committee is attached (Annexure- X). The defendants (Union of India, through secretary Defence Department, Army school of physical Training etc) are restrained by way of perpetual injunction from entering upon the suit properties or doing any act causing obstruction to the construction and development work upon the suit properties.

	<i>KM when in fact the project is sharing the boundary with the Defense establishment. (Para-15 of OA)</i>	
6.	<i>TDR loading is increased from 40% to 140% i. e. From claimed 4375.36 Sq. Mtrs. to 16106.09 Sq. Mtrs (para-12(i) of OA)</i>	<i>As per Government directions and sanctioned UDCPR 2020, plot fronting on roads more than 30.0 M wide, permissible TDR is 1.40 subject plot is fronting 45.0 M DP road.</i> i. GR No. TPS-1813/3067/CR-122/MCORP/12/UD-13 dated 28.01.2016 (Annexure XI) ii. GR Addendum GR No. TPS-1813/3067/CR-122/MCORP/12/UD-13 dated 02.05.2016 (Annexure-XII)
8.	<i>PP has Provided only 1:5 ramp slope which must be in the form of 1:10 (para -13 of OA)</i>	<i>After measurement at site along with the applicant and his advocate vehicular ramp was found to be 1:9</i>
9	<i>Illegality by issuing Number of building sanctions by Respondent PMC, there are revision for 14 time in the sanction plan and PP changed residential proposal to commercial vide revised layout sanction DPO/345 1/VI/36 dated 07.08.2044 (para 11 of OA)</i>	<i>All the approvals are given in accordance with the then Development Control Regulations, circulars, GRs etc.</i>
10	<i>Illegal increase in Net Plot Area from 10938.41 sq. Mtrs. to 11504.35 Sq. Mtrs. PP has not deducted the Open Space and transformer area from net gross area (para 12 (c) of OA)</i>	<i>Definition of “Net Plot Area” is mentioned in DCR 1987 clauses no. 13.4.4(Annexure – XIII) and as mentioned DCPR 2017 clause No. 15.8 (Annexure- XIV)</i>
11.	<i>Commercial Construction on Prohibited Road (Para8(B,C&D) of OA</i>	<i>As per sanctioned 1997 DC Rules, Pune Solapur Road is not in the list of prohibited road for commercial user, hence permission for commercial user, hence permission for commercial use was granted.</i>

12.	<i>Project had total potential of BUA more than 20,000 Sq. Mtrs. from beginning of the project and it was mandatory to obtain prior EC as per EIA.</i>	<i>Building plans for the commercial building were approved in the year 2007 and 2008. At the time of these approvals FSI Built-up area was below 20,000 Sq. M. The clarification regarding applicability of EC on total FSI and non- FSI area exceeding 20,0000 Sq. M. Was received in 2012. Accordingly every building plan approval after year 2012 is on condition of obtaining EC.</i>

Excavation

<i>PP has made excavation of plot for construction of commercial building, therefore, it was necessary to pay the royalty to the Mining Department under the Collector Pune. But PP has not paid single rupee towards the royalty and has duped the exchequer. (para 17 of OA)</i>	<i>District Mining Officer, Pune vide letter dated 11.07.2022 after verification of the record has informed that temporary mining permission for plot at S. NO. 93A/1, A/2, 93A/2, 93A/3 and 93A/4 was not given (Annexure – XV)</i>

Points regarding EC given to Project

<i>Total BUA proposed and actual Construction carried out prior to Ex- post facto EC is more than 20000 sq. M. (Para 27 of OA) pp has completed total BUA of 40000 M2 prior to grant of ex-post facto EC</i>	<i>A copy of the Architect Certificate dated 28.03.2022 submitted by Hirak Shah Associates is attached (Annexure-XVI). From the certificate it is observed that as per approval plan dated 04.01.2008, approved FSI + Non FSI area was 13700.10 +21578.07= 35278.17 Sq. M. However, total construction (FSI+ Non FSI) done as on June 2010 was 31844.35. Thereafter construction work was on hold from November, 2010 to November, 2017</i>								
<table border="1"> <thead> <tr> <th>Sanction</th><th>Total BUA</th></tr> </thead> <tbody> <tr> <td>08.10.2007</td><td>26,556.03M²</td></tr> <tr> <td>04.01.2008</td><td>35,806.5M²</td></tr> <tr> <td>22.11.2016</td><td>35,938.2 M²</td></tr> </tbody> </table>	Sanction	Total BUA	08.10.2007	26,556.03M ²	04.01.2008	35,806.5M ²	22.11.2016	35,938.2 M ²	<i>Plan approved on 04.01.2008 was</i>
Sanction	Total BUA								
08.10.2007	26,556.03M ²								
04.01.2008	35,806.5M ²								
22.11.2016	35,938.2 M ²								

25.05.2017	32,744.95M ²	revalidated on 22.11.2016. This was further revised on 25.05.2017 and approval for FSI area of 14322.51Sq.M+ Non FSI area of 24920.56 Sq. M .= Total (FSI+Non FSI) of 39243.07 Sq. M. was obtained. PP submitted application to Pune Municipal Corporation (PMC) for Environmental Clearance on 30.08.2017 for FSI of 22689.18 Sq. M +Non FSI of 25795.17 Sq. M. = Total 48484.35 Sq. M. Construction done on the date of submission of application for EC i.e. 30.8.2017 was (FSI +Non FSI) 31844.35 Sq. M. EC was granted by the PMC on 10.11.2017 for an area of 22689.18 Sq. M. (FSI) +25795.17 Sq. M (Non FSI)= 48484.35 Sq. M is attached (Annexure-XVII)
12.03.2018	47,454.97 M ²	
07.06.2018	49,765.13M ²	
15.	EIA Notification 09.12.2016 is quashed by order dated 08.12.2017 in OA 677 of 2017 and therefore Environment conditions dated 10.11.2017 obtained under this notification is illegal, PMC has no right to issue such conditions.	
16.	Ex Post facto EC 15.06.2018 is procured from member secretary SEIAA without any appraisal & assessment and therefore it is total illegal. EC Application: 13.06.2018 SEIAA Meeting : 14.06.2018, EC granted on 15.06.2018, No appraisal by SEAC-III, EC granted within one day, Case was not on SEIAA agenda (para 21 of OA) Alleged EC dated 15.06.2018 suppresses the configuration of Building. SEIAA 132nd MoM has assessed only G+5FLRS.	
17.	Mischievousness illegal activity of Mr. Satish M. Gavai, habitual offender NGT order dated 27.09.2016 in OA No. 184/2015 Hon'ble SC order dated	On 09.12.2016 MoEF&CC amended EIA notification 2006 regarding integration of environmental conditions in building bye law. In pursuance of

	10.08.2018 in CA No. 10854/2016(Para-22 of OA)	the amended notification, Urban Development Department, Govt. Of Maharashtra vide notification dated 28.06.2017 published the integration of environmental conditions in building bye laws. As per the notification, environment cell of the local body shall carry out the environment appraisal of the proposals with built up area between 20,000 Sq.M. and 1,50,000 Sq. M. Said EC dated 10.11.2017 was issued by the PMC. However, the said notification dated 09.12.2016 was stayed by Hon'ble NGT, Principal Bench, New Delhi in OA No. 677/2016 on 08.12.2017. Thereafter environment Department, Govt. of Maharashtra issued circular dated 29.01.2018, stating that, all Municipal Corporations, Municipal Councils and all special planning authorities in the state shall not process any permission to building and construction projects with BUA between 20,000 M² - 150000 m² by integrating Environment Clearance conditions. EC granted by PMC on 10.11.2017 was in pursuance of Urban Development Department, Govt. of Maharashtra notification dated 28.06.2017 regarding integration of environmental conditions in building bye laws which was in operation on that date and was subsequently stayed on 08.12.2017. Thereafter PP further revised the plan on 12.03.2018 and 07.06.2018 thereby increasing the TBUA from 48484.35 Sq. M.s to 5183.47 Sq. M. i. e. By approx. 3350 Sq. M. S which is 7% more than the are mentioned in EC dated 10.11.2017 given by PMC. After the said revised approval of the plan application was made to SEIA and EC was granted on 15.06.2018 a copy of which is

		attached. (Annexure-XVIII) From the Architects Certificate dated 28.03.2022 it is observed that EIA notification 2006 has been violated by PP since June 2010 as the constructed TBUA exceeded 20,000 Sq. Mtrs. PP should have applied for EC under window period under amnesty scheme. EC granted by SEIAA was for expansion (TBUA as per EC given by PMC48484.35 Sq. M.s which increased by approximately 7% i. e. 3350 Sq. M. S TBUA 51834.47 Sq. M.s)

MPCB Recommendations regarding Consent to Establish

PP has not obtained prior consent to establish from MPCB. (Para-23 of OA)	PP has obtained EC from local body on 10.11.2017 for TBUA 48484.35 Sq. Mtrs; again PP has obtained EC from SEIAA on 15.06.2018 for TBUA 51834.47 Sq. Mtr. Accordingly, PP has applied for Consent to Establish on 21.05.2018 for TBUA 48484.35Sq. Mtr and Board has granted Consent to Establish on 07.01.2019 on the basis of the EC granted vide dated 15.06.2018. Again, PP has obtained amendment in Consent to Establish from Board on 11.07.2019 for TBUA 51834.47 Sq. Mtr as per EC granted on 15.06.2018 (Annexure-XIX)

Ground Water Extraction

No permission for ground water extraction, no ground water test and for construction of basements Two Bore wells No permission from CGWA No ground water test (para-25 of OA) PMC warning notice dated 16.01.2019, point No.2 – You have not yet obtained NOC from Central Ground Water Authority (Page 892 to 893j) There is no ground water test attached to the	Site was thoroughly inspected for ground water extraction in presence of application and his advocate, but ground water extraction was not found.

Jt. Committee report and committee is misleading.	
Soil Testing and Soil Preservation	
21.	No soil preservation and no soil test by PP condition No. XII & XV of the EC dated 15.06.2018 (para 2B of OA) False statement by Jt. Committee. Plinth check is issued on 21.07.2007. Excavation is done in 2007. Therefore, SEAC has not found any abnormality in report is totally false and misleading statement and SEAC has not appraised this project. As project commissioned in 2007, joint committee is unable to comment on this point.

4. **Report of the Chief Fire Officer PMC-** PP himself in EC dated 17.10.2017 admitted that, the turning radius for fire tender movement is 7.52 Mtrs, but marginal spaces to this building is less than 6 Mtrs which are less than 7.5 Mtrs (Para-14 of OA).

Chief Fire Officer who was present during site visit submitted the report dated 12.01.2022 which annexed hereto (Annexure- XX). During site visit, movement of fire Engine was done in presence of Applicant. No difficulty was found which case cause obstruction for fire tender movement. Only at one corner fabricated steps were found to be installed behind the complex for loading and unloading material of one unit holder because of which Fire Engine speed got slower at that point. Instructions were given to remove the fabricated steps to maintain the marginal distances for smoother movement of fire engine in case of emergency. No difficulty was found because of turning radius or margins in the movement of Fire Engine.

5. **Report of the Authority Pune Municipal Corporation:** Shri Sham Taru Tree Authority Pune Municipal Corporation was present during site visit. It has submitted its report on 11.02.2022 (Annexure- XXI). As per the report total 166 number of trees were checked. Trees commonly known as Shirish, raintree and Umber are 15-16 years old and these three trees are well maintained. But the commonly named tree Shirish is in between the side compound wall of Creative 93 Avenue building. The tree is fully grown but in future growth of tree will damage compound wall. Therefore, it is recommended that developer can do fencing in fabrication work which will provide some space from growth of tree. 31 tree mentioned in the report are planted behind the building in pot like structure of cement wall. Due to this trees will not die but growth will be stunted. For full growth of trees it is recommended that developer should leave a space of 1.5 meters from compound wall and replant the trees in a proper pit of 1mx1mx1m with 4meter space between the trees. 5 number of trees commonly known as Kordia planted on compound wall should also be replanted as above.

Recommendations : It is recommended that

1. Maharashtra Pollution Control Board shall initiate:

a. Action under Section 15 read with Section 19 of the Environment (Protection) Act, 1986.

b. Action under water (Prevention and Control) Act 1974 and Air (Prevention and Control) Act, 1981.

2. *Project Proponent to apply for violations ToR and strictly follow the due process under MoEF&CC O. M. Dated 07.07.2021.”*

39. This Tribunal next considered this matter on 14.09.2011 and recorded service to be sufficient.

40. The stand of respondent No.16 – Project Proponent is as follows:-

. For the present project, the Project Proponent procured the sanctioned lay-out plan from Pune Municipal Corporation (PMC) on 03.01.2001 and obtained commencement certificate. On 06.09.2003, the answering respondent procured the sanctioned amalgamation and lay-out plan from PMC and obtained commencement certificate. On 07.08.2004, it obtained commencement. Thereafter, on 08.03.2006, it obtained further commencement certificate. On 01.04.2006, it obtained further commencement certificate. On 21.07.2007, it obtained plinth checking certificate. On 08.10.2007, it obtained commencement certificate. On 07.12.2007, it obtained plinth checking certificate, on 04.01.2008, it obtained commencement certificate and that all the construction carried out prior to obtaining EC is as per the said commencement certificate dated 04.01.2008 wherein total built-up area (BUA) is 13,700 sq.mtrs. (only FSI area). Hence, the same was below 20,000 sq.mtrs. It, therefore, did not require EC to be obtained. On 21.04.2015, the Principal Secretary, Environment Department in furtherance of the order from the Hon'ble High Court of Bombay in Writ Petition No.654 of 2014 issued a certificate giving clarification that the EC was not required to be obtained as long as actual construction carried out is below the threshold limit of 20,000 sq.mtrs. On 22.11.2016, the answering respondent obtained further commencement certificate. On 25.05.2017, it obtained further commencement certificate. On 10.11.2017, it obtained EC with respect to the existing project from PMC under Office Memorandum (OM) issued by the MoEF&CC dated

09.12.2017 for a total built-up area of 48,484.35 sq.mtrs. (FSI 22,689.18 + Non-FSI 25995.17) prior to obtaining the said EC, at no point of time did the answering respondent cross threshold limit of 20,000 sq.mtrs. as per the then existing definition of built-up area under EIA Notification 2006. Therefore, no violation has been committed with respect to carrying out the construction with EC. On 12.03.2018, the answering respondent obtained commencement certificate, on 12.03.2018, it obtained commencement certificate, on 07.06.2018, it obtained further commencement certificate, on 15.06.2018, it obtained revised EC for a total proposed built-up area of 51834.47 sq.mtrs. (FSI 25476.66 sq.mtrs. + Non-FSI 26357.81 sq.mtrs.). The application of the answering respondent for amendment in EC was considered by SEIAA in its meeting dated 14.06.2018 and after due deliberation and considering all the environment aspects, it granted amended EC for the project in question. On 01.11.2018, the answering respondent obtained completion certificate with respect to Part-I of the said project. On 07.01.2019, it obtained Consent to Establish, on 15.01.2019, it obtained further commencement certificate, on 25.02.2019, it obtained completion certificate with respect to Part-II of the said project, on 11.04.2019, it obtained commencement certificate, on 06.05.2019, it obtained Consent to Operate and on 11.07.2019, it obtained Consent to Establish. On 18.02.2020, it obtained commencement certificate, on 06.03.2021, it obtained completion certificate with respect to Part-III of the said project. On 17.03.2020, it obtained Consent to Operate, on 22.06.2022, it obtained commencement certificate with respect to Part-IV of the said project. On 17.05.2021, it obtained renewal of consent for construction of commercial project from MPCB. On 27.10.2021, it obtained commencement certificate. On 21.01.2022, it obtained commencement certificate with respect to Part-V of the project. On 12.07.2022, it obtained final completion certificate with respect to Part-VI of the said project.

41. The answering respondent has completed the said project and sold approximately 310 commercial units to various third party purchasers who are operating out of their respective units and the answering respondent has further executed Deed of Declaration under Section 2 of the Maharashtra Apartment Ownership Act, 1970 and formed the "93 Avenue Condominium". The said declaration is duly registered on 26.05.2022 in the office of Sub-Registrar, Haveli.

42. It is further submitted that the EC is required to be obtained only if construction is made beyond 20,000 sq.mtrs. and not below that. It has been affirmed by the Circular issued by the Environment Department dated 21.04.2015 and various judgments of the Hon'ble High Court of Bombay. By amendment dated 04.04.2011, the EIA Notification 2006 was amended, according to which the built-up area for the purpose of EC included the FSI and non-FSI area. Prior to the said amendment, the custom and common practice was only to take into consideration the FSI area for the purposes of EC and in the case in hand, the FSI of the project was below threshold limit of 20,000 sq.mtrs. Hence, there was no requirement to obtain EC. Around the year 2018, the Hon'ble Supreme Court of India in **Goel Ganga Developers Vs. Union of India; 2018 SCC OnLine SC 930**, while interpreting the term 'BUA', has held that the same would include FSI as well as non-FSI area. However, the Hon'ble Apex Court, while passing the said judgment, did not consider the prior judgment passed by the Bench of three Hon'ble Judges in the matter of **Re:Construction of Park at Noida near Okhla Bird Sanctuary, T.N. Godavarman Thirumulpad Vs. Union of India & Ors.; (2011)1 SCC 744**, wherein the Hon'ble Apex Court had categorically opined that the concept of BUA under the EIA Notification 2006 was vague and ambiguous. The MoEF&CC taking note of the judgment in **Okhla Bird Sanctuary** (supra) for the first time decided to define BUA by Notification dated 04.04.2011 providing completely different regime of calculation of BUA in building construction. The necessary consequence was that residential/commercial building projects which were earlier outside the

purview of the EIA Notification 2006, would get covered by such requirement if the amendment brought about by the Notification dated 04.04.2011 was applied retrospectively. A plain reading of the said amendment would make it indubitably clear that the amendment is prospective in nature and would not affect the projects which were sanctioned between the period 2006 and 2011.

43. The Builders Association of India (BAI) had filed Special Leave Petition No.10078 of 2019 challenging the order dated 29.03.2018 passed by the Hon'ble High Court of Bombay in Writ Petition (L) No.954 of 2019. BAI had initially filed Writ Petition No.24 of 2019 under Article 32 of the Constitution of India before the Hon'ble Supreme Court, taking up the issue of BUA and the amendment dated 04.04.2011 and its applicability. By the order dated 12.02.2019, the Hon'ble Apex Court granted liberty to BAI to approach the High Court and consequently, Writ Petition No.24 of 2019 came to be withdrawn. Thereafter Writ Petition (L) No.954 of 2019 was filed before the Hon'ble High Court of Bombay, which was decided on 29.03.2019 whereby the Hon'ble High Court dismissed the Writ Petition. Feeling aggrieved by the said order, BIA preferred Special Leave Petition No.10078 of 2019, wherein the Hon'ble Apex Court, by order dated 03.05.2019, issued notice and further directed that in the meantime, no coercive steps shall be taken against the members of BAI. The said Special Leave Petition is still pending. Further it is submitted that similar Special Leave Petition was filed by another representative Association – CREDAI, Pune Metro bearing SLP No.23143 of 2019 raising identical issue before the Hon'ble Supreme Court, wherein also, the Hon'ble Apex Court passed order dated 20.09.2019, issuing notice and directing that in the meantime, no coercive action shall be taken against the members of CREDAI – Pune Metro. The said Special Leave Petition is still pending.

44. Further it is submitted that the answering respondent obtained various commencement certificates and sanctions, which have been detailed hereinabove. However, it commenced construction as per

commencement certificate dated 01.04.2006, according to which the FSI area was 11481.84 sq.mtrs. Therefore, there is no requirement to obtain the EC. The answering respondent commenced construction and completed 17262.43 (including FSI as well as non-FSI area). Therefore, till then, there was no requirement of EC. On 04.01.2008, it further obtained commencement certificate for 13700.10 sq.mtrs. (Non-FSI area was about 2158.07 sq.mtrs.). As the FSI area was below the threshold limit of 20000 sq.mtrs., the answering respondent did not obtain EC for carrying out construction. Around the year 2010, the total FSI area constructed was about 13700 sq.mtrs. and the non-FSI area was about 18144.35 sq.mtrs. and as the amendment dated 04.04.2011 had not come into force, the BUA was treated to include only FSI area which was below 20000 sq.mtrs. till then. Hence, the answering respondent did not require to obtain EC. From the year 2010 to November, 2017, the answering respondent did not carry out any construction activity owing to the market conditions. On 22.11.2016, it obtained revalidation of the commencement certificate dated 04.01.2008, which was approved on 25.05.2017. By this time, definition of "Built-Up Area (BUA)" included FSI as well as non-FSI area. Therefore, the the total built-up area of the project exceeded 20000 sq.mtrs. Therefore, prior to carrying out any further construction, the answering respondent duly applied to Pune Municipal Corporation (PMC) for grant of EC under Notification dated 09.12.2016. The PMC granted it EC on 10.11.2017, but the Principal Bench of the NGT had quashed the Notification dated 09.12.2016 in Original Application No.677 of 2017 on 08.12.2017. The EC had been obtained by the answering respondent prior to the Principal Bench of NGT quashing the Notification dated 09.12.2016. The Hon'ble Supreme Court in M/s Saibaba Sales Vs. Union of India & Ors. declared that quashing and setting aside of the Notification dated 09.12.2016 will not affect any EC granted prior to the date of quashing order i.e. 08.11.2017. Admittedly, in the present case, the answering respondent had obtained EC on 10.11.2017, therefore, the same was valid and subsisting. The EC

granted to the answering respondent by the PMC was for total area of 48484.35 sq.mtrs. (FSI 22689.18 sq.mtrs. and non-FSI area 25795.17 sq.mtrs.). The answering respondent on 12.03.2018 and 07.06.2018, further obtained revised commencement certificate. As per the commencement certificate dated 07.06.2018, the total BUA and total FSI area was about 25476.66 sq.mtrs. and non-FSI area was 26357.81 sq.mtrs. Therefore, the approved FSI + non-FSI area was 51834.47 sq.mtrs. Accordingly, it obtained EC from SEIAA prior to commencement of the construction. Therefore, the answering respondent has a valid and subsisting EC and has carried out construction as per the said EC. It is also to be noted that the respondent No.16 has not challenged the EC under Section 16 of the NGT Act. Therefore, it ought not to have been permitted to challenge the same by way of the present Original Application and on this count itself, this Tribunal ought not to have decided the issue with respect to EC dated 15.06.2018.

45. The answering respondent had duly obtained Consent to Operate on 05.06.2019 and 17.03.2020. Therefore, the allegations contrary to that are false.

46. The answering respondent has installed rainwater harvesting pits and the local bye-law already provides for adequate rainwater harvesting which had been duly followed.

47. There are absolutely no borewells existing on the site in question. At the stage of construction, the answering respondent obtained water through water tankers and post completion of the construction, the occupants of the said project use water supplied by the PMC. The answering respondent utilizes the top soil and other excavated material within the same project itself for landfilling and landscaping.

48. The answering respondent has obtained NOC from Tree Authority on 02.03.2019 and carried out plantation and other activities related to the trees strictly as per the terms and conditions of the NOC.

49. The answering respondent has ensured that the DG sets installed at the site is completely complied with as per Rules and regulations and

the sound produced by the DG sets are within the permissible limit by providing acoustic enclosures to the DG sets.

50. The Development Plan of Pune had been sanctioned by Notification dated 05.01.1987 and the Development Control Regulations have been sanctioned as per part of the said plan. As per the Development Plan sanctioned in 2000, the plot in question is in residential zone fronting 45.00 mtr DP road. Therefore, it falls in the category of Residential-2 zone. As per the DC Rules, all commercial users are permitted to raise construction in Residential-2 zone. Building plans of commercial buildings were approved in 2007 and 2008. The Tahsildar, Pune, vide order dated 13.12.2018, directed the owner to pay an amount of Rs.9,09,486/- towards N.A. charges for commercial use and conversion of tax which was deposited on 13.12.2018. There are absolutely no borewells existing on the site. The allegations regarding occupant load, production of solid waste during construction or operation or decommissioning are false.

51. The violation of the provisions of the Maharashtra Regional and Town Planning Act (MRTP Act) and Development Control Regulations (DCR) are not mentioned in Schedule-I of the NGT Act and therefore, this Tribunal does not have jurisdiction to hear this case and that any allegation with respect to MRTP Act and DCR were not be entertained. The project was sanctioned in the year 2007 when there was a 45 mtr. DP road to the front side of the said area. The said 10% area remained constant and construction activities have been carried out accordingly. Around 2017, there was a proposed widening of about 15 mtrs. road on Pune-Solapur road, which has affected the plot in question. The building construction by the answering respondent comprised of basement + lower ground + ground + 1 + 2 + 3 + 4 + 5 floors. No-where the boundary of this project wall is shared with the wall of Defence Establishment. By order dated 04.01.2003, passed by the learned Civil Judge, Senior Division, Pune, perpetual injunction was granted restraining the Defence Department from entering into the plot of the answering respondent. As

per the applicable UCPR 2020, any construction on the road admeasuring 30 mtrs. or wider is entitled to 1.40 FSI. In the instant case, the project stands over 30 mtrs. road and thus, FSI available to the answering respondent is 1.40. The answering respondent has provided vehicular ramp in the ratio of 1:9. The Pune-Solapur road is not in the list of prohibited roads as per sanction as per the Development Control Rules and therefore, this Original Application deserves to be dismissed.

52. The stand of respondent No.1 – MoEF&CC is that EIA Notification SO 3999 € dated 09.12.2016 was challenged before the National Green Tribunal, Principal Bench in Original Application No.677 of 2016 (Society for Protection of Environment & Biodiversity Vs. Union of India), which has been disposed of on 08.11.2017 wherein MoEF&CC was directed to re-examine its Notification dated 09.12.2016 and take appropriate steps to delete, amend and rectify the clauses of the said Notification in light of the said judgment. Further it was held that the byelaws amended by the DDA vide its Notification dated 22.03.2016 can also not be given effect to unless the Notification dated 09.12.2016 is amended in terms of said judgment. Till the time the Ministry complies with the above directions and notifies the amended provisions of Regulations of 2006, it will not implement the impugned Notification. Further it was held that once the amended regulations are notified, MoEF&CC/SEIAA/Local Authorities can give effect to that, without further reference to the Tribunal. The answering respondent filed Civil Appeal No.2522 of 2018 (Union of India Vs. Society for Protection of Environment & Biodiversity) before the Hon'ble Apex Court against the order dated 08.12.2017, which is pending adjudication. No stay has been granted with respect to the order dated 08.12.2017. However, it was directed vide order dated 23.03.2018 that it is agreed between the parties that there were pending applications before the Environment Cell which may be forwarded to the SEIAA or MoEF&CC.

53. Further it is submitted that another similar case related to Civil Appeal No.595 of 2021 (M/s Saibaba Sales Pvt. Ltd. Vs. Union of India &

Ors.) was filed against the judgment dated 18.01.2021 passed by the National Green Tribunal, Principal Bench in Original Application No.83 of 2019, which pertained to demolition of the illegal structure of a housing complex set up by M/s Saibaba Sales Pvt. Ltd., Pune. M/s Saibaba Sales Pvt. Ltd. had made construction on the basis of EC issued by the Pimpri Chinchwad Municipal Corporation (PCMC) as per the Notification dated 09.12.2016 and the following directions were given in O.A. No.83 of 2019:-

“Accordingly, having regard to the facts of the present case and in endeavor to balance the perceived hardship to the PP for the constructions already carried out on the one hand and the public interest of enforcing the environmental law on the other, we direct that while no coercive action may be called for in respect of construction prior to 08.12.2017 except for enforcing environmental norms, construction thereafter be permitted only after the statutory EC and other requirements as per law.....”

54. Civil Appeal No.595 of 2021 filed by M/s Saibaba Sales Pvt. Ltd. has been disposed of vide order dated 26.11.2021 with the following observations:-

“As seen, the NGT in the impugned judgment has protected the completed construction and, on this aspect, we deem it appropriate to endorse the same, by accepting the submission of the appellant’s Counsel and the learned ASG. The four constructed buildings are resultantly to be treated to be under a valid EC with all legal consequences. It is, however, made clear that if any further construction is proposed by the appellant with the sanctioned layout, the same should not be done on the strength of the EC granted on 28.11.2017 by the PCMC. In other words, if the Project Proponent wishes to construct the remaining buildings, they must secure fresh clearance from the competent authority, as per the currently applicable framework.”

55. It is further submitted that in view of above, it is clear that the version of the applicant that the Project Proponent has obtained EC dated 10.11.2017 in pursuance of quashing Notification dated 09.12.2016 is sub-judice before the Hon’ble Supreme Court. The construction made by M/s Saibaba Sales Pvt.Ltd. was treated by the Hon’ble Supreme Court as valid as the EC was granted on 28.11.2017 by the PCMC with all legal consequences and the Project Proponent must secure fresh clearance from the competent authority as per the applicable framework.

56. The stand of respondent Nos.7 and 8 – MPCB is as follows:-

The Project Proponent has obtained EC from the Local Body on 10.11.2017 for total BUA of 48,484.35 sq.mtrs. and again obtained the EC from SEIAA on 15.06.2018 for total BUA of 51,834.47 sq.mtrs. The answering respondent has granted Consent to Establish to respondent No.16 for total BUA of 48,484.35 sq.mtrs. vide letter dated 07.01.2019 on the basis of EC dated 15.06.2018 granted by SEIAA, which is valid for the period upto commissioning of the project or five years or co-terminus with the validity of EC i.e. upto 15.06.2025, whichever is earlier. The answering respondent has granted amendment to Consent to Establish for total BUA of 51,834.47 sq.mtrs. on 11.07.2019 based on the EC granted on 15.06.2018. The answering respondent has granted renewal of Consent to Operate to Project Proponent on 17.05.2021, which is valid upto 31.10.2022. The Joint Committee of SEIAA and MPCB has submitted detailed report on 08.08.2022.

57. On the above pleadings, the following issues need to be decided by us:-

- (i) When the Environmental Clearance (EC) requirement became applicable to the project ?
- (ii) How-much construction was raised without EC ?
- (iii) When Consent to Establish (CTE)/Consent to Operate (CTO) requirement became applicable ?
- (iv) In case CTE/CTO are not obtained, the effect thereof ?
- (v) What are the environmental damages as per the applicant and the responses thereto of the Joint Committees and our estimate in that regard ?
- (vi) What is the EDC to be imposed ?

FINDING ON ISSUE OF LIMITATION :

58. Before we render our findings on the above issues, it would be appropriate to deal with the issue of limitation first.

The submission made by the learned counsel for respondent No. 16

– Project Proponent is that the present Original Application is filed under Section 14 and/or Section 16 of the National Green Tribunal Act, 2010 (“NGT Act”, for short) and that cause of action first arose on 06.09.2003 with respect to the project in question as it has been filed on 04.02.2019 much beyond the period of limitation. In the meantime, substantial rights have accrued in favour of the answering respondent as well as the third party purchasers. In the present case, there is no delay condonation application filed. According to the averments made by the applicant, cause of action is shown to have arisen on 29.10.2018, when the applicant issued notices to respondent authorities with respect to alleged violations relating to the said project. Section 14 and 15 of the NGT Act categorically provide for calculating the period of limitation from the “date of action when the cause of action first arose”. The cause of action which has been tried to be set up by the applicant will lead to absurd situation wherein it would give an opportunity to revive the period of limitation as per one’s whims by merely issuing a notice. In support of the above contentions, reliance is placed on the following citations:-

- (i) ***Graminee Environment Development Foundation V. Balaji Infrastructure Ltd. and Ors.***
2017 SCC OnLine NGT 1098
- (ii) ***Jai Javan Jai Kisan and Ors. V. Vidarbha Cricket Association and Ords.***
MANU/GT/0006/2017
- (iii) ***Surendra Waman Dhavale & Ors. V. Secretary, MoEF & Ors.***
2017 SCC OnLine NGT 1581
- (iv) ***Aradhana Bhargav & Ors. Vs. MoEF & Ors.***
Application No.11/2013 (P.B.46/2013) decided
by the National Green Tribunal, Central Zone Bench,
Bhopal on 12.08.2013
- (v) ***Mr. Ajay Jayvantrao Bhosale Vs. Union of India through MoEF&CC & Ors.***
Original Application No.63/2019(WZ)
Decided by this Tribunal on 01.12.2022

59. Per contra, the stand taken by the applicant is that the cause of action is bundle of actions. The Project Proponent has made changes in

the capacity or modification in the project lay out by carrying out the changes through subsequent amendments till 07.06.2018 in the sanction, which has given rise to new cause of action, as this is change in the previous sanction. The Project Proponent had carried out construction from 0 sq.mtrs. to 48.00 sq.mtrs. till the date of filing of this application and also had intention to go to raise further construction beyond 52,000 sq.mtrs and civil construction activity is the recurring process. Therefore, it is not the continuous cause action rather it is a recurring cause of action for building construction activity. The Project Proponent has been increasing the project capacity since 2007 till the filing of Original Application. The Project Proponent has procured the EC dated 10.11.2018 from the Environmental Cell of PMC under EIA Notification, 2016, which was quashed by the NGT vide order dated 08.12.2017, pursuant to which the EC dated 10.11.2017 became null and void. Thereafter, the Project Proponent made amendment in the plan vide Commencement Certificates dated 12.03.2018 and 07.06.2018 and procured EC dated 15.06.2018 from SEIAA. Thereafter, the applicant obtained information under the Right to Information Act between 15.06.2018 and 28.10.2018 and thereafter, sent legal notice on 29.10.2018 to the respondents inviting their attention to the violation. Therefore, the cause of action to file this Original Application arose on 29.10.2018. It is, therefore, submitted that the date of filing of the present application being 04.02.2019, the same would stand covered within the limitation as per the provisions of Section 15 of the NGT Act, which is five years.

60. In ***The Forward Foundation & Ors. Vs. State of Karnataka & Ors. (Original Application No.222 of 2014)***, decided by this Tribunal (Principal Bench) on 07.05.2015, it has been observed as follows:-

“24. The expression ‘cause of action’ as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such ‘cause of action’ should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A ‘cause of action’ might arise during

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

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

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

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

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

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

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

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between

continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will begin to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: *Khatri Hotels Private Limited and Anr. v. Union of India (UOI) and Anr.*, (2011) 9 SCC 126, *Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors*, AIR 1959 SC 798, *G.C. Sharma v. Municipal Corporation of Delhi*, (1979) ILR 2 Delhi 771, *Kuchibotha Kanakamma and Anr. v. Tadepalli Ptanga Rao and Ors.*, AIR 1957 AP 419].

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

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

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

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

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

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: Ex. Sep. Roop Singh v. Union of India and Ors., 2006 (91) DRJ 324, M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].

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

61. From the above ruling, it is absolutely clear that in a case of recurring cause of action, which is complete in itself and satisfies the requisite ingredients, to such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action

first arose' would not affect in computing the period of limitation. The concept of 'cause of action first arose' must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. In the above citation, it has also been made clear that if the order granting Environmental Clearance is amended at subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the "concept of cause of action first arose." Further it is clarified in the above citation that recurring or continuous cause of action may give a fresh cause of action resulting in fresh right to sue. In such case, subsequent wrong would be independent of first wrong and that the subsequent composite and complete cause of action would not be hit by "cause of action first arose". We do not find this position to have been unsettled by any subsequent ruling and appears to be settled law as on date.

62. In view of above position of law, if we scrutinize the matter at hand, we find that for construction of the present project, commencement certificate was initially taken on 01.04.2006 as is evident from the information given by the applicant in tabular form in paragraph No.12 of the application and thereafter, net plot area, permissible TDR and TDR claimed continued to rise from thereon on different dates upto 07.06.2018. Similarly, in paragraph No.18 of the application at clause (f), the dates of commencement certificates alongwith the BUA have also been mentioned which has been consistently rising from 22.11.2016 to 07.06.2018. It has also come on record that the Project Proponent has also planned to further raise construction in the same project. The last EC which has been obtained by the Project Proponent is dated 15.06.2018. Therefore, this appears to fall in the category of "recurring cause of action" and the cause of action which appears to have arisen on 15.06.2018 as per the grant of fresh EC, from that date and thereafter, under the Right to Information Act, the information is said to have been obtained regarding the same on 15.06.2018 and 20.08.2018 and

thereafter, a legal notice is said to have been issued by the applicant on 29.10.2018, which is a date from which the applicant has claimed to have computed the period of limitation.

63. Much objection was raised by the learned counsel for the Project Proponent that this very Tribunal had in a case decided earlier took the view the computation of limitation to be allowed from the date when the information was obtained by the Project Proponent under the Right to Information Act would be improper holding that it would allow the Project Proponent to make a date relevant for computation of limitation at his own whims. Therefore, in the present case, following the same principle, the applicant should not be allowed to reckon the period of limitation from 29.10.2018 on which he claims to have sent notice after obtaining information under R.T.I. regarding grant of EC to the Project Proponent from SEIAA on 15.06.2018 and thereafter, having sent a notice to the respondents on 20.10.2018.

64. We find substance in the argument of the learned counsel for the Project Proponent in this regard. However, we are of the view that Section 15 of the NGT Act provides period of limitation to be five years from the date when cause of action first arose and further period of 60 days is at the discretion of the Tribunal in case the delay is found to be justifiable. In the present case, there is no specific application made for seeking condonation of delay by the applicant. We find that even if the cause of action be taken to have arisen on 15.06.2018 when SEIAA granted EC to the Project Proponent from that date onwards, five years would expire on 14.06.2023 while the present application has been filed on 04.02.2019 which is well within the prescribed period of limitation i.e. five years.

65. As regards reliance placed by the learned counsel for the Project Proponent on ***Graminee Environment Development Foundation*** (supra), the facts in the case at hand are totally different from the facts in the said case. In the said case, the EC was taken on 30.09.2005 which permitted Dighi Port Ltd. to carry out reclamation within the sea. The

application to seek quashing of the same was made on 30.07.2016, which was held to be beyond the prescribed period of limitation and therefore, it was held to be barred rightly. But here in case in hand, the EC was granted by SEIAA on 15.06.2018 while the application is filed on 04.02.2019, much within limitation.

66. As far as the decision in ***Jai Javan Jai Kisan and Ors.*** is concerned, the facts of this case are also different from the facts in the case in hand. In the said case, Vidarbha Cricket Association was found to have become functional in the year 2008 against which the reliefs were being sought by filing application under Section 15 of the NGT Act on 11.04.2016, which was rightly found to be beyond limitation of five years. In the instant case, since EC was granted by SEIAA on 15.06.2018 and the application has been filed on 04.02.2019, the same is well within the prescribed period of limitation of five years.

67. Insofar as the decisions in other citations relied on by the learned counsel for the Project Proponent are concerned, those cannot be made applicable to the facts of the present case.

FINDINGS ON ISSUES NOS.(i) to (v) :

68. As far as **Issue no. (i)** is concerned, as per the site plan dated 30.08.2001 approved by the PMC relating to the present project, total BUA is shown as 7053.66 sq.mtrs. and the proposed building was to contain Stilt + First + Second + Third floor, which does not include the balcony i.e. 1054.32 sq. mtrs., passage 188.01 sq.mtrs., lift room 78.508 sq.mtrs, stair case 541.76 sq.mtrs. and parking 3197.96 sq. mtrs. Thus in terms of EIA Notification 2006, the BUA works out in the case of present project to be 12,106.918 sq.mtrs.

69. Since prior to 04.01.2006, BUA of the project in question was less than 20000 sq.mtrs., it did not require EC but the Project Proponent went for further approval in the case in hand on 04.01.2006 from PMC, which shows BUA (Floor area + excess balcony) as 13,700 sq.mtrs, which

includes only FSI area while non-FSI area comprising stair case 1262.54 sq.mtrs., passage 2881.29 sq.mtrs., lift lobby 1567.28 sq.mtrs. The balcony, lobby, lift area, lift machine room, area of AHU and Atrium were not added in the BUA by the Project Proponent, therefore, according to us, the total BUA would be 33,667.95 sq.mtrs, which obviously is above 20,000 sq.mtrs. Hence, it would require the prior EC from the Authority concerned. It would be pertinent for us to mention that the Project Proponent has tried to convince us that till the issuance of Notification dated 04.04.2011, there was no clarity with respect to the fact that BUA would include FSI as well as non-FSI area, therefore, he did not go for obtaining prior EC because on the basis of FSI area only, the area of construction was below 20,000 sq.mtrs. We do not approve of this stand taken by the Project Proponent because it was made very clear in the case of **Goel Ganga Developers** (supra) that BUA would include both FSI and non-FSI area and that the Notification of MoEF&CC of 2011 was only clarificatory. Hence, it is absolutely clear that the EC becomes applicable with respect to the present project very much with effect from 04.01.2008 when the Project Proponent had got its second approval pursuant to its submitting the application for approval on 04.01.2006. The issue no. (i) is accordingly decided.

70. As to **Issue no. (ii)**, we find from the record that as per Form-1 dated 13.06.2018, till that date, the construction which was shown to have already been done was 42,200.0 sq.mtrs. We find that the Project Proponent had applied for EC before PMC, which shows that by then, he had already constructed 13,700 sq.mtrs, which is as per sanction plan No.CC/3020/07 dated 04.01.2008 with total BUA of 33,33,667.95 sq.mtrs. Therefore, it is apparent that between 04.01.2008 and 10.11.2017, the Project Proponent had already constructed 13,700 sq.mtrs. without obtaining prior EC. It is also apparent that this construction which is shown of 13,700 sq.mtrs., does not disclose as to whether the same was including FSI or FSI + non-FSI both. We assume it to be FSI because it was mentioned as FSI in sanction plan dated

04.01.2008. Therefore, total BUA, in our estimation, which had already been done by the Project Proponent till 10.11.2017 after 04.01.2008, stands at 13,700 sq.mtrs., which would be treated to be in violation. We assume that any construction raised by the Project Proponent after 10.11.2017 would have been in accordance with the EC conditions because initially EC was from PMC and thereafter when the said Project Proponent approached the SEIAA as it was held that PMC did not have jurisdiction to grant EC, the EC was granted on 15.06. 2018 for total 51,834.47 sq.mtrs. Although we find that the applicant has raised objections on various counts saying that even pursuant to EC, whatever constructions have been made by the applicant were not made in accordance with the terms and conditions stipulated therein and they committed various violations. This issue is decided accordingly.

71. As regards **Issue Nos. (iii) and (iv)** are concerned, we have to decide as to when requirement of Consent to Establish (CTE)/Consent to Operate (CTO) became applicable in the present project and when the same were obtained and if not, its consequences. We are of the view that CTE and CTO both were required to be obtained from MPCB soon after approval from the PMC before the construction was started i.e. 04.01.2008 but from record, it is revealed that CTE was applied for to on 21.05.2018 and it was granted on 07.01.2019. Therefore, there was no CTE granted in favour of the Project Proponent from 04.01.2008 to 07.01.2019. We find from the record that there was no CTO granted in favour of the Project Proponent till date. For these violations EDC is required to be imposed. This issue is decided accordingly.

72. As to **Issue No. (v)**, according to the applicant following illegalities are said to have been committed by the Project Proponent while making constructions:-

- a. It is submitted that, the PP has used huge quantity of the natural resources for the construction of the project without any impact assessment and caused irreparable damage to the environment and ecology in substantial nature.

- b. It is submitted that GHG emissions especially carbon from the material process and its use during the construction and operation phase is huge and it has adverse impact on the environment and therefore the prior impact assessment is required for the better protection and improvement of the environment due to the activity of the project proponent. But PP intentionally failed to prepare such EIA and further neglected to implement such assessment in his project and caused huge damage to environment.
- c. It is submitted that, the PP has made excavation of two basements and this is one of the major damage to the environment.
- d. It is submitted that, the PP has admitted in Form-1 in item#4.1 there is excavation of top soil quantity to 6,189.12 Cu. Mtrs, excavation of quantity of Soft rock & Hard rock to the tune 2,7851 Cu. Mtrs. and excavation of quantity of Murum to the tune 12,348 Cu. Mtrs. and this is done without applying any impact assessment.
- e. It is submitted that, the PP is using glass for covering the buildings which will generate huge amount of heat.
- f. It is submitted that, the PP is extracting the ground water from bore wells.
- g. It is submitted that, the PP has used traditional clay bricks and PP has not used any scientific construction method.
- h. It is submitted that, the PP has suppressed actual quantity of building material required for construction in Form 1

- i. It is submitted that, the environmental issues are very complex and its restoration is more difficult than complexity. But PP has callous attitude for environmental protection and adopted careless, reckless, attitude with unapologetic behavior and manipulated the government authorities, therefore the amount of environmental damages to be imposed on this PP must be exemplary to teach the deterrent lesson.

73. After having gone through the Joint Committee reports, which have been cited by us, we studied them closely in the light of above objections by the applicant and found as follows:-

SN	Concern Raised	Remark
a.	It is submitted that the PP has used huge quantity of the natural resources for the construction of the project without any impact assessment and caused irreparable damage to the environment and ecology in substantial nature.	EC process / EC conditions do not result in reduction in construction material. Hence, there is no substance in the concern raised.
b.	It is submitted that GHG emissions especially carbon from the material process and its use during the construction and operation phase is huge and it has adverse impact on the environment and therefore the prior impact assessment is required for the better protection and improvement of the environment due to the activity of the project proponent. But PP intentionally failed to prepare such EIA and further neglected to implement such assessment in his project and caused huge damage to environment.	Building construction project of 8(a) category does not require EIA. In any case, EC process / EC conditions do not result in reduction in construction material. Hence, there is no substance in the concern raised.
C.	It is submitted that, the PP has made excavation of two basements and this is one of the	EC process does not reduce quantity of excavation required. However, EC

SN	Concern Raised	Remark
	major damage to the environment.	condition to ask for preservation of top soil. As per JC reports construction was carried out since year 2007. Hence, it is not possible to opine whether top soil was preserved or not.
d.	It is submitted that, the PP has admitted in Form-1 in item#4.1 there is excavation of top soil quantity to 6,189.12 Cu. Mtrs, excavation of quantity of Soft rock & Hard rock to the tune 2,7851 Cu. Mtrs. and excavation of quantity of Murum to the tune 12,348 Cu. Mtrs. and this is done without applying any impact assessment.	Building construction project of 8(a) category does not require EIA. EC process does not reduce quantity of excavation required. However, EC condition to ask for preservation of top soil. As per JC reports construction was carried out since year 2007. Hence, it is not possible to opine whether top soil was preserved or not.
e.	It is submitted that, the PP is using glass for covering the buildings which will generate huge amount of heat.	Use of glass for facilitating natural light is in keeping with standard design process for commercial buildings. In fact, it saves on requirement of electricity for lighting. Hence, there is no substance in the concern raised.
f.	It is submitted that, the PP is extracting the ground water from bore wells.	As per JC reports there were no borewells at the site. Hence, there is no substance in the concern raised.
g.	It is submitted that, the PP has used traditional clay bricks and PP has not used any scientific construction method.	It is not clear what is un-scientific in use of clay bricks. There is no substance in the concern raised.

SN	Concern Raised	Remark
h.	It is submitted that, the PP has suppressed actual quantity of building material required for construction in Form 1	As per EIA Notification, proposals are appraised on the basis of conceptual plan. At that stage requirement of construction material is worked out based on thumb rule calculations. Hence, quantities stated in the Form I are merely indicative. Hence, there is no substance in the concern raised.
i.	It is submitted that, the environmental issues are very complex and its restoration is more difficult than complexity. But PP has callous attitude for environmental protection and adopted careless, reckless, attitude with unapologetic behavior and manipulated the government authorities, therefore the amount of environmental damages to be imposed on this PP must be exemplary to teach the deterrent lesson.	It is generic statement not supported by any data.

74. As to **Issue No. (v)**, the above study by us in the light of the Joint Committee report would indicate that the Joint Committee had failed to render its opinion with respect to preservation of top soil as the construction was carried out long back in the year 2007. Similarly, we also could not get any evidence on record indicating that any violation was there in that regard. Apparently, on rest of the counts, the Joint Committees have not found any infirmity. We dispose of this issue accordingly.

75. As to **Issue No. (vi)**, in this regard, as per our calculation, we have worked out project cost for violation which comes to the tune of Rs.3500/- per sq.feet i.e. Rs.35,000/- per sq.mtr. The total constructed area, which has been raised in violation i.e. without obtaining

Environmental Clearance is 33,667.95 sq.mtrs. i.e. 3,36,679.5 sq.feet. Accordingly, the cost of the project works out to be Rs.117.8 Crores and 5% of the said project cost would be Rs.5.9 Crores. We deem it proper to levy this amount as compensation towards environmental damage from the Project Proponent in this case.

76. As regards the environmental compensation with respect to the violation of Consent to Establish and Consent to Operate for the aforesaid period, we leave it to the Maharashtra Pollution Control Board (MPCB) to calculate as per the law laid down in Paryavaran Suraksha's case.

77. In view of above, we dispose of this Original Application with following directions :-

(i) The Project Proponent is directed to deposit the amount of Rs.5.9 crores as assessed above, with the Maharashtra Pollution Control Board (MPCB) within a period of 2 (two) months from the date of this order.

(ii) The MPCB is directed to calculate the amount of Environmental Compensation with respect to the violation of Consent to Establish and Consent to Operate for the aforesaid period within one month and realize the same from the Project Proponent within a period of next 2 (two) months from the date of this order. MPCB shall also take action against Project Proponent under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as recommended by Joint Committee for violations and submit its report to the registrar of this Tribunal within three months.

(iii) The amount of compensation so realized shall be utilized for remediation of environmental damage caused by the project and for improving / restitution of the environment in the area in question within a period of next six months after realisation of amount and report of the same shall be posted on MPCB website.

(iv) Commissioner PMC shall investigate and take action both administrative and criminal against the officers who have granted building plan approvals/ plinth certificates/ completion certificates/ occupancy certificates without ensuring availability of requisite EC and/or compliance of environmental clearance conditions, within 3 months and if found guilty at least adverse ACR may be recorded in their service book and submit report to Registry of this Tribunal. This report shall be posted on PMC and MPCB website.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

February 22, 2023
Original Application No. 28 of 2019
npj

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

[THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)]

ORIGINAL APPLICATION NO.48 OF 2020 (WZ)

Mr. Tanaji Balasaheb Gambhire,
Age : Adult, Occu. Self-employed,
R/o CTS-296, Shukrawar Peth,
Laxmi Apartment, White House Lane,
Near Shivaji Maratha High School,
Pune – 411 002

.... Applicant

Versus

1. Union of India through Secretary,
Ministry of Environment and Forest,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi – 110 001
2. Chief Secretary,
Government of Maharashtra,
Annex Building, Mantralaya, Fort,
Madam Kama Road, Mumbai – 400 032
3. The Principal Secretary,
Environment Deptt., Government of Maharashtra,
Room No.217, 2nd Floor, Annex Building,
Mantralaya, Fort, Madam Kama Road,
Mumbai – 400 032
4. State Level Environment Impact Assessment
Authority – Maharashtra (SEIAA),
Through Member Secretary,
15th Floor, New Administrative Building,
Mantralaya, Fort, Madam Kama Road,
Mumbai – 400 032
5. State Expert Appraisal Committee (III) –
Maharashtra (SEAC-III),
Through Member Secretary,
15th Floor, New Administrative Building,
Mantralaya, Fort, Madam Kama Road,
Mumbai – 400 032
6. Mr. Anil N. Diggikar,
Principal Secretary of DoE and
Member Secretary, SEIAA,
Government of Maharashtra,
Room No.217, 2nd Floor, Annex Building,
Madam Kama Road, Mantralaya, Mumbai – 32
7. Maharashtra Pollution Control Board,
Through Member Secretary,

Kalptaru Point, 3rd Floor, Near Sion Circle,
Opp. Cine Planet Cinema, Sion €,
Mumbai – 400 022

8. Maharashtra Pollution Control Board,
Through Regional Officer,
Jog Centre, 3rd Floor, Mumbai-Pune Old Highway,
Wakadewadi, Pune – 411 003
9. The Secretary,
Urban Development Department,
Government of Maharashtra,
4th Floor, Annex Building,
Mantralaya, Mumbai – 400 032
10. Pune Municipal Corporation,
Through Municipal Commissioner,
Main Building, Shivaji Nagar,
Pune – 411 005
11. Building Permission Department – PMC,
Through City Engineer, Pune Municipal Corporation,
Shivaji Nagar, Pune – 411 005
12. Mr. Prashant Waghmare-City Engineer,
Pune Municipal Corporation,
Shivaji Nagar, Pune – 411 005
13. Collector of Pune,
As Collector and President of District
Environment Protection Committee, Pune,
Collector Office, Bund Garden, Pune – 411 001
14. M/s Yerrowda Investments Limited,
A Company registered with Corporate Identification
Numbers U65990MH1954PLC009228,
Through its Partners
14A. Mr. Deepak Amratlal Desai
14B. Mr. Krishnan Subharaman
Having registered office at : “Sai Hira”,
Survey No.93, Mundhwa, Taluka Haveli, Dist. Pune
Also Having office at : Opp. Golf Course,
Ishanya Mall, Shastri Nagar, Yerrowda,
Taluka Haveli, District Pune – 411 008
15. M/s Deepak Fertilisers and Petrochemicals
Corporation Ltd.
A company registered with Corporate Identification
Number L24121MH1979PLC021360,
Through its Partners
15A. Mr. Sailesh Chimanlal Mehta
15B. Mrs. Parul Sailesh Mehta
Having registered office at : “Sai Hira”,
Survey No.93, Mundhwa, Taluka Haveli, Dist. Pune
Also Having office at : Opp. Golf Course,
Ishanya Mall, Shastri Nagar, Yerrowda,
Taluka Haveli, District Pune – 411 008

....**Respondents**

AND

APPEAL NO.42 OF 2020 (WZ)
WITH
I.A. NO.85/2020 IN APPEAL NO.42/2020

Mr. Ram Baban Borkar,
 Age : Adult, Occu. Self-employed,
 R/o 6/1, Near Nisarga Hotel, Gudwill House,
 Swatantra Vir Savarkar Mitra Mandal,
 Erandwane, Pune – 411 004

.... Appellant

Versus

- 01.Union of India through Secretary,
 Ministry of Environment and Forest,
 Paryavaran Bhawan, CGO Complex,
 Lodhi Road, New Delhi – 110 001
- 02.Chief Secretary,
 Government of Maharashtra,
 Annex Building, Mantralaya, Fort,
 Madam Kama Road, Mumbai – 400 032
- 03.The Principal Secretary,
 Environment Deptt., Government of Maharashtra,
 Room No.217, 2nd Floor, Annex Building,
 Mantralaya, Fort, Madam Kama Road,
 Mumbai – 400 032
- 04.State Level Environment Impact Assessment
 Authority – Maharashtra (SEIAA),
 Through Member Secretary,
 15th Floor, New Administrative Building,
 Mantralaya, Fort, Madam Kama Road,
 Mumbai – 400 032
- 05.State Expert Appraisal Committee (III) –
 Maharashtra (SEAC-III),
 Through Member Secretary,
 15th Floor, New Administrative Building,
 Mantralaya, Fort, Madam Kama Road,
 Mumbai – 400 032
- 06.Mr. Anil N. Diggikar,
 Principal Secretary of DoE and
 Member Secretary, SEIAA,
 Government of Maharashtra,
 Room No.217, 2nd Floor, Annex Building,
 Madam Kama Road, Mantralaya, Mumbai – 32
- 07.Maharashtra Pollution Control Board,
 Through Member Secretary,
 Kalptaru Point, 3rd Floor, Near Sion Circle,
 Opp. Cine Planet Cinema, Sion €,
 Mumbai – 400 022

08. Maharashtra Pollution Control Board,
Through Regional Officer,
Jog Centre, 3rd Floor, Mumbai-Pune Old Highway,
Wakadewadi, Pune – 411 003
09. The Secretary,
Urban Development Department,
Government of Maharashtra,
4th Floor, Annex Building,
Mantralaya, Mumbai – 400 032
10. Pune Municipal Corporation,
Through Municipal Commissioner,
Main Building, Shivaji Nagar,
Pune – 411 005
11. Building Permission Department – PMC,
Through City Engineer, Pune Municipal Corporation,
Shivaji Nagar, Pune – 411 005
12. Mr. Prashant Waghmare-City Engineer,
Pune Municipal Corporation,
Shivaji Nagar, Pune – 411 005
13. Collector of Pune,
As Collector and President of District
Environment Protection Committee, Pune,
Collector Office, Bund Garden, Pune – 411 001
14. M/s Yerrowda Investments Limited,
A Company registered with Corporate Identification
Numbers U65990MH1954PLC009228,
Through its Partners
14A. Mr. Deepak Amratlal Desai
14B. Mr. Krishnan Subharaman
Having registered office at : “Sai Hira”,
Survey No.93, Mundhwa, Taluka Haveli, Dist. Pune
Also Having office at : Opp. Golf Course,
Ishanya Mall, Shastri Nagar, Yerrowda,
Taluka Haveli, District Pune – 411 008
15. M/s Deepak Fertilisers and Petrochemicals
Corporation Ltd.
A company registered with Corporate Identification
Number L24121MH1979PLC021360,
Through its Partners
15A. Mr. Sailesh Chimanlal Mehta
15B. Mrs. Parul Sailesh Mehta
Having registered office at : “Sai Hira”,
Survey No.93, Mundhwa, Taluka Haveli, Dist. Pune
Also Having office at : Opp. Golf Course,
Ishanya Mall, Shastri Nagar, Yerrowda,
Taluka Haveli, District Pune – 411 008

....**Respondents**

APPEARANCE IN ORIGINAL APPLICATION NO.48/2020 (WZ) :

Applicant : Applicant-in-person

Respondents : Mr. Rahul Garg, Advocate for R-1, R-10 to R-12
 Mr. R.B. Mahabal, Advocate and Mr. Aniruddha Kulkarni, Advocate for respondent Nos.3, 4 and 5
 Mr. R.B. Mahabal, Advocate for R-6
 Ms. Manasi Joshi, Advocate for R-7 and R-8
 Mr. Dhruv Mehta, Senior Counsel i/b and with
 Mr.Ajay Gadegaonkar, Advocate for R-14 & R-15

APPEARANCE IN APPEAL NO.42/2020 (WZ) :

Appellant : Mr. Saurabh S. Dongre, Advocate along with
 Mr. Chandan Sagawekar, Advocate

Respondents : Mr. Rahul Garg, Advocate for R-1, R-10 to R-12
 Mr. R.B. Mahabal, Advocate and Mr. Aniruddha Kulkarni, Advocate for respondent Nos.3, 4 and 5
 Mr. R.B. Mahabal, Advocate for R-6
 Ms. Manasi Joshi, Advocate for R-7 and R-8
 Mr. Dhruv Mehta, Senior Counsel i/b and with
 Mr.Ajay Gadegaonkar, Advocate for R-14 & R-15

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
 HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

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Reserved on : 14.07.2023

Pronounced on : 10.08.2023

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JUDGMENT

1. Since the facts involved in both these matters i.e. Original Application No.48/2020 (WZ) and Appeal No.42/2020 (WZ), grounds raised therein by the applicant/appellant and the legal position are identical, both the matters are being decided and disposed of by this common judgment.

2. By filing Original Application No.48 of 2020 (WZ), the applicant has prayed that the respondents be directed to demolish the illegal structures at the site in question and restore the area; respondent Nos.14 – M/s Yerroda Investments Ltd and respondent No.15 – M/s Deepak Fertilisers and Petrochemicals Corporation Ltd be directed to deposit

amount of environment compensation on the “polluter pays” principle; the exemplary and deterrent special damages be levied from respondent Nos.14 and 15 for not developing 10% landscape area as per norms; respondent No.9 – PMC be directed to forfeit all the benefits arising from the present project with permanent prohibition on construction; respondent No.3 – Environment Department, Govt. of Maharashtra, respondent No.4 – SEIAA, Maharashtra and respondent Nos.7 and 8 – MPCB be directed to initiate prosecution against the Project Proponents for violating the provisions of EIA Notification, 2006; respondent No.2 – Chief Secretary, Govt. of Maharashtra be directed to take legal action against respondent No.6 – Anil U. Diggikar, Principal Secretary and Member Secretary, SEIAA for withdrawing the show-cause notice and violating the principles of natural justice; respondent No.9 – Secretary, Urban Development Department, Govt. of Maharashtra and respondent No.10 – Municipal Commissioner, Pune Municipal Corporation be directed to take action against respondent No.12 – Prashant Waghmare, City Engineer, PMC for allowing illegal construction and appropriate action be directed to be taken against the erring officers of PMC, SEAC-III members, SEIAA Members and MPCB for intentional negligence.

3. The facts of Original Application No.48 of 2020 (WZ), in brief, are as follows:-

4. Respondent Nos.14 and 15 are raising construction of commercial building project by name “Ishanya Mall” at Survey No.190(P) and 192(P) CTS No.2185-A, Plot Nos. A, B and C, Shastri Nagar, Village Yerwada, Taluka Haveli, District Pune, on an area admeasuring 59,399.43 Sq.Mtrs. The Project Proponents had obtained Environmental Clearance (EC) on 10.04.2007 under EIA Notification, 1994 read with Amendment of 2004 (from record, we find that the EC dated 10.04.2007 annexed at pages 65 to 69 of the paper-book was granted also under the provisions of EIA

Notification, 2006) and Consents to Operate were obtained on 21.01.2014, 03.06.2015, 14.08.2018 and 17.05.2019. The details of the actual construction carried out in violation of the EC, Consent to Establish and Consent to Operate are as follows:

Table No.1: Actual Construction carried out at site in violation of Environmental Clearance

Description	EC 10.04.2007	Actual Construction	Excess Construction
<i>Plot Area</i>	<i>41806.35M²</i>	<i>59399.43M²</i>	<i>17593.08 M²</i>
<i>Total BUA</i>	<i>34170.82 M²</i>	<i>94568.64 M²</i>	<i>60397.81 M²</i>
<i>Total Fresh Water Requirement</i>	<i>637 CMD</i>	<i>633.43 CMD</i>	<i>-4.43 CMD</i>
<i>Total Waste Water</i>	<i>245 CMD</i>	<i>300.08 CMD</i>	<i>55.08 CMD</i>
<i>STP Capacity</i>	<i>300 CMD</i>	<i>255 CMD</i>	<i>5 CMD</i>
<i>Dry Waste</i>	<i>Not Disclosed</i>	<i>Commercial & Multiplex: 724 kg/day, Restaurant: 99 kg/day.</i>	<i>823KgPD</i>
<i>Wet Waste</i>	<i>Not Disclosed</i>	<i>Commercial & Multiplex : 483 kg/day, Restaurant: 149 kg/day</i>	<i>632 KgPD</i>
<i>Solid Waste Treatment</i>	<i>Not Disclosed</i>	<i>OWC</i>	<i>Not installed</i>
<i>Condition of EC dated 10.04.2007</i>	<i>“6. In the case of any change(s) in the project, the project would require a fresh appraisal by this Ministry.” PP has carried out the construction of 94568.64 M² against the total BUA of 34170.83 M² permitted in EC dated 10.04.2007. There illegal Excess Construction carried out by PP is 60397.81 M²</i>		

Table No.2 :- Actual Construction carried out at site in violation of Consent to Establish

Description	CTE 29.04.2006	Actual Construction	Excess construction
<i>Plot Area</i>	<i>41806.35 M²</i>	<i>59399.43 M²</i>	<i>17593.08 M²</i>
<i>Total BUA</i>	<i>34170.83 M²</i>	<i>94568.64 M²</i>	<i>60397.81 M²</i>
<i>Total Fresh Water Requirement</i>	<i>636 CMD</i>	<i>633.43 CMD</i>	<i>-3.43 CMD</i>
<i>Total Waste Water</i>	<i>255 CMD</i>	<i>300.08 CMD</i>	<i>45.08 CMD</i>
<i>STP Capacity</i>	<i>Not Disclosed</i>	<i>255 CMD</i>	<i>Not in Operation</i>
<i>Sold Waste Generated</i>	<i>295 KgPD</i>	<i>Dry: 823 KgPD Wet: 632 KgPD Total; 1455 KgPD</i>	<i>1160 KgPD</i>

Table No.3:- Actual Construction carried out at site in violation of Consent to Operate

Description	CTO-1 21.04.2014	CTO-2 03.06.2015	CTO-3 14.08.2018	CTO-4 17.05.2019	Total
<i>Validity</i>	<i>31.01.15</i>	<i>31.01.17</i>	<i>31.01.19</i>	<i>31.01.20</i>	
<i>No CTO for the period</i>		<i>From 01.02.15 to 02.06.15</i>	<i>From 01.02.19 to 16.05.19</i>	<i>From 01.02.20 to till date</i>	
<i>Plot Area(M²)</i>	<i>41806.35</i>	<i>41806.35</i>	<i>41806.35</i>	<i>41806.35</i>	<i>59399.43</i>
<i>Total BUA(M²)</i>	<i>34170</i>	<i>34170</i>	<i>34170</i>	<i>34170</i>	<i>94568.64</i>
<i>Total Water Requirement</i>	<i>636 CMD</i>	<i>636 CMD</i>	<i>636 CMD</i>	<i>636 CMD</i>	<i>Extraction of ground water</i>
<i>Total Waste Water</i>	<i>255 CMD</i>	<i>255 CMD</i>	<i>255 CMD</i>	<i>255 CMD</i>	<i>Waste Water is more</i>
<i>STP Capacity</i>	<i>80%</i>	<i>60%</i>	<i>60%</i>	<i>60%</i>	<i>STP is not in operation</i>
<i>Total Solid Waste</i>	<i>295 KgPD</i>	<i>295 KgPD</i>	<i>295 KgPD</i>	<i>295 KgPD</i>	<i>Direct dumping to PMC Dump yard.</i>

5. The completed Built Up Area (BUA) till the date of filing of Original Application is 94,568.64 M² (which finds mention in Table 1, attached with the Joint Committee report of July, 2022 at page 1528 of the paper-book) against permissible BUA of 34,170 M². Therefore there is substantial increase in total BUA to the extent of 60,398.64 M². The Project Proponent is trying to procure *ex post facto* Environmental Clearance (EC) for total BUA of 94,568.64 M² to overcome the violation of the terms and conditions of the EC dated 10.04.2007. Even after expiry of the EC dated 25.06.2017 on 09.04.2012, the re-validation of the said EC was not obtained from SEAC-III and SEIAA. The Project Proponent is attempting to obtain *ex post facto* EC. While attempting to obtain *ex post facto* EC, the Project Proponent has suppressed the actual permissible construction of BUA of 34,170 M². The Project Proponent has also not obtained Consent to Establish for total BUA of 94,568.64 M². Besides that, the Project Proponent has operated the project without Consent to Operate from 01.02.2015 to 02.06.2015 01.02.2019 to 16.05.2019 and from 01.02.2020 till date. The Project Proponent never applied for EC before starting expansion nor did it apply for the Consents from MPCB. The other violations of terms and conditions are enumerated in the application as below:

- “n. PP is illegally extracting huge quantity of ground water from **Five** bore wells without any permission from competitive authority for construction of project as well as domestic use of occupied part.*
- o. PP has not made any test for ground water contamination and quality of water and there is serious ground water contamination.*
- p. PP has not provided any solid waste management system and waste generated is dumped to PMC waste yard creating burden on public systems and solid waste is generating various greenhouse gases and there is no scientific disposal of the solid waste generated from project.*
- q. PP has not provided any energy conservation system for energy saving like solar system.*

- r. *PP has not provided any rain water harvesting system for ground water recharge against required 21 number of recharge pit.*
- s. *PP has not preserved top layer of fertile soil and there is no soil test for contamination.*
- t. *PP has not provided mandatory 10% open space for recreational purpose and not made tree plantation as per the norms and around the periphery of the project.*
- u. *Huge noise causing due to air condition equipment like AHU, exhaust fans, cooling towers etc.*
- v. *Huge traffic congestion in the air causing air pollution.*
- w. *PP has installed 8 DG sets at project site and operation of DG set is causing air pollution.*
- x. *PP has not provided any solid waste management system like OWS/ Compost pits and waste generated is dumped to PMC waste yard creating burden on public systems and solid waste is generating various greenhouse gases and there is no scientific disposal of the solid waste generated from project.*
- y. *PP has done concretization of marginal spaces, open spaces.*
- z. *PP has used traditional clay bricks and PP has not used any scientific construction method.*
- aa. *Huge quantity of sewage water is generated and there is no scientific treatment of sewage water and STP installed is just scrape skeleton.*
- bb. *PP is creating huge burden on the environment due to day to day waste generation by consumption of natural resources and it is causing huge burden on the public facilities and services on account of environmental damage.*
- cc. *PP has committed the illegal activities and given rise to the violation of environmental protection enactments and further caused degradation of environment & ecology intentionally.*
- dd. *PP has not complied the conditions of commencement certificate mandating prior environment clearance and consents from the MPCB.*
- ee. *PP has not complied the conditions of commencement certificate related to the installation of environment infrastructure to avoid the environmental degradation.*
- ff. *PP has made illegal tree cutting.*
- gg. *PP has committed the illegal activities and given rise to the violation of environmental protection enactments and further caused degradation of environment & ecology intentionally.*

- hh. PP has not provided fire and safety system at site and there is no approach road for fire engine.*
- ii. PP has not provided the ramp slope in the ratio of 1:10.*
- jj. PP has not provided site margin as per the DC Rules.*
- kk. PP has not provided mandatory 15% amenity space under DC Rules of PMC.*
- ll. PP has violated the principle of sustainable development.*
- mm. PP has caused traffic congestion in the area due to this project and cause to air pollution on account of emission from the vehicles.*
- nn. PP in connivance with PMC officer has violated the provisions of Environment enactment and PMC officers are also equally responsible.*
- oo. Involvement of bureaucratic nexus in the illegal act to help PP by misuse of their position.*
- pp. PP has not made any environment management plan.*
- qq. Therefore, PP as well as respondent authorities has violated the provisions of EIA Notification- 2006 r/w Environment Acts- 1986, Water (P& CP) Act-1974 and Air (P& CP) Act- 1981.*
- rr. PP has caused substantial damage to environment and ecology more than Rs. 600 Crores, which shall be recovered from PP.*
- ss. PP is unapologetic and PP has adopted careless and reckless attitude towards the environment protection.*
- tt. Thus it is mandatory to demolish the project construction and stop further construction permanently.*

6. The Project Proponent has carried out construction in violation of the terms and conditions of the Consent to Establish dated 29.04.2006. The details are mentioned in paragraph No.12 of the application regarding sanctions granted by PMC in illegal manner and that the Project Proponent has obtained more than 20 revisions with the last revision being on 04.04.2019. The revalidation and change of sanctions are with respect to the same project in plot-wise manner under one layout and that there is no boundary or any separation of project from each other. The entire project has been developed in single layout. The tactic adopted by the Project Proponent is to overcome the requirement of

prior EC for expansion, as the total BUA of each sanction for the individual plots is also more than 20,000 sq.mtrs. The project in question is the recurring activity and enlarging its scope from excavation of land to the full potential construction of the BUA.

7. The online application for grant of ex post facto EC by the Project Proponent was moved on 23.12.2016, wherein following description was mentioned:

Online application of PP dated 23.12.2016	
Description	Area
Total Plot Area	59,399.43 M ²
Deductions	18,743.77 M ²
Net Plot Area	40,655.66 M ²
FSI Area	33,008.80 M ²
Non-FSI Area	62,073.48 M ²
Total BUA	95,082.28 M²

8. On the basis of above violations, which have been noted, it is submitted that the environmental compensation of sum of Rs.600 Crores needs to be levied from the Project Proponent.

9. As far as **Appeal No.42 of 2020 (WZ)** is concerned, it has been preferred against the *ex post facto* EC dated 20.07.2020 granted to respondent Nos.14 and 15 – Project Proponent on the ground that the ex post facto EC is not permissible in Environmental Jurisprudence in India. If such kind of ex post facto ECs are allowed, the Project Proponent would complete his project by causing irreversible damage to the environment and then would seek EC and may render the provisions under EIA Notification infructuous. This would defeat very purpose of environmental laws. Rest of the facts, we find nothing but repetition

which have already been stated by us in the facts of Original Application, stated hereinabove.

10. This matter was taken up by us on 01.09.2021 and a direction was issued to the Registry to issue notices to respondent Nos.1, 3 to 5, 7 to 11 and 13 to 15 and in the same order, it is also noted that a Joint Committee was constituted in a connected matter i.e. Appeal No.42 of 2020, which has been preferred by the applicant of this Original Application in respect of seeking quashing of ex post facto EC dated 20.07.2020 granted to the Project Proponent. The relevant portion of the Joint Committee report of July, 2022 is as follows:

“2.0 OBSERVATIONS AND FINDINGS

2.1.2 The said EC dated 10.04.2007 was granted for total plot area of 41,806.35 sq.m for development of Shopping Mall “Ishanya” at C.S. No.190 & 192, Shastri Nagar, Yerwada, Pune, Maharashtra with a total built up area of 34,170.83 sq.m.

Table No. 01: Details of the Commencement Certificate, Plinth Check Certificate, EC granted and Construction Status

Sl. No	Particulars	Plot Area	Configuration	Total Built-up Area
1.	Commencement Certificate CC/1050/03 dated 19.12.2003	88593.06 sq.m	N-Showroom: G+2 O-Showroom: G+2 P-Showroom: G+3 Q-Showroom: G+2 S-Centre Entrance Lobby: G T-Multipurpose Hall: G Stalls (1-4): G+1	Total FSI-27561.02 sq.m Total Non-FSI [#] - 28091.31 sq.m TBUA- 55652.33 sq.m
2.	Plinth Check Certificate dated 09.11.2005	-	For Building No. ‘N’ & ‘O’ as per Commencement Certificate dated 19.12.2003	
3.	Commencement Certificate CC/4109/05 dated 27.02.2006	88593.06 sq.m	Building No. 0: 0 Building No. 1: G+4 Building No. 2: G+3 Building No. 3 & 4: G+4 Building No. 5: G+1 Building No. 6: G+2	Total FSI-28719.25 sq.m Total Non-FSI [#] -38014.91 sq.m TBUA- 66734.16 sq.m
4.	Plinth Check Certificate dated 04.03.2006	-	For Building No. ‘4’, as per Commencement Certificate dated 27.02.2006	

5.	Plinth Check Certificate dated 21.06.2006	-	For Building No. '3', as per Commencement Certificate dated 27.02.2006	
6.	Plinth Check Certificate dated 19.10.2006	-	For Building No. '0' (Part), Building No. '5' (Part) and Building No. '6' (Part) as per Commencement Certificate dated 27.02.2006	
7.	EC dated 10.04.2007 granted by MoEF&CC, GoI	41806.35 sq.m	For development of Shopping Mall "Ishanya" with a Total Built Up Area of 34,170.83 sq.m.	
8.	Commencement Certificate CC/0712/07 dated 28.05.2007	60981.55 sq.m	Building No. 0: LG+S+2 Building No. 1: LG+S+3 Building No. 2: LG+S+3 Building No. 3 & 4: LG/P+S+3 Building No. 5: LG+S+1 Building No. 6: LG/P+S+2	Total FSI-32853.24 sq.m Total Non-FSI [#] -38050.66 sq.m TBUA- 70903.90 sq.m
9.	Completion Certificate Dated 17.08.2007	-	For 21 Showrooms of Building No. 4 as per Commencement Certificate dated 16.03.1990 & 28.05.2007	

10.	Commencement Certificate CC/2804/07 dated 15.12.2007	60981.55 sq.m	Building No. 0: LG+S+2 Building No. 1: LG+S+3 Building No. 2: LG+S+3 Building No. 3 & 4: LG/P+S+3 Building No. 5: LG+S+1 Building No. 6: LG/P+S+2	Total FSI-32423.65 sq.m Total Non-FSI [#] -38480.25 sq.m TBUA- 70903.90 sq.m
11.	Completion Certificate Dated 18.12.2007	-	For 20 Showrooms of Building No. 1 as per Commencement Certificate dated 15.12.2007	
12.	Commencement Certificate CC/0163/08 dated 16.04.2008	60981.55 sq.m	Building No. 0: LG+S+2 Building No. 1: LG+S+3 Building No. 2: LG+S+3 Building No. 3 & 4: LG/P+S+3 Building No. 5: LG+S+1 Building No. 6: LG/P+S+2	Total FSI-31121.99 sq.m Total Non-FSI [#] -39781.91 sq.m TBUA- 70903.90 sq.m
13.	Completion Certificate Dated 03.06.2008	-	For 7 Showrooms with entire Building No. 0, 44 Showrooms & 2 Store Room of Building No. 2 only, 74 Showrooms & 2 warehouse storage of Building No. 3&4only, 20 Showrooms, 1 Office, Kitchens, Communications Room, Storeroom, Mall Office, Cafeteria of Building No. 5 only, 10 Showrooms, 7 Offices, Kitchen of Building No. 6 only, as per Commencement Certificate dated 16.04.2008	

14.	Commencement Certificate CC/0924/10/51 dated 15.06.2010	59399.43 sq.m	Building No. 0 (Entrance Hall): LG+S+2 Building No. 1 (Showroom): LG+S+3 Building No. 2 (Showroom): LG+S+3 Building No. 3 & 4 (Showroom): LG/P+S+3 Building No. 5 (Cafe): LG+S+1 Building No. 6 (Multipurpose Hall): LG/P+S+2 Building No. 7: (Arcade): G+3	Total FSI-32113.18 sq.m Total Non-FSI [#] -41539.76 sq.m TBUA- 73652.94 sq.m
15.	Commencement Certificate CC/2106/10 dated 30.09.2010	59399.43 sq.m	Building No. 0: LG+S+2 Building No. 1: LG+S+3 Building No. 2: LG+S+3 Building No. 3 & 4: LG/P+S+3 Building No. 5: LG+S+1 Building No. 6: LG/P+S+2 Building No. 7: LG/P+S+2	Total FSI-32838.88 sq.m. Total Non-FSI ^{''} -41539.76 sq.m. TBUA- 74378.64 sq.m.
16.	Commencement Certificate CC/4177/10 dated 15.03.2011	59399.43 sq.m	Building No. 0: LG+S+2 Building No. 1: LG+S+3 Building No. 2: LG+S+3 Building No. 3 & 4: LG/P+S+3 Building No. 5: LG+S+1 Building No. 6: LG/P+S+2 Building No. 7: LG/P+S+2	Total FSI-36847.09 sq.m. Total Non-FSI [#] -41874.27 sq.m TBUA- 78721.36 sq.m
17.	Completion Certificate CC/4177/10 Dated 15.03.2011	59399.43 sq.m.	Building No. 0: LG+S+2 Building No. 1: LG+S+3 Building No. 2: LG+S+3 Building No. 3 & 4: LG/P+S+3 Building No. 5: LG+S+1 Building No. 6: LG/P+S+2 Building No. 7: LG/P+S+2	Total FSI – 36847.09 sq.m Total Non-FSI ^{''} – 41874.27 sq.m TBUA – 78721.36 Sq.m.
18.	Plinth Check Certificate dated 16.03.2011		For Building No. `O` (Part), Building No. `6` (Part) and Building No. `7` as per Commencement Certificate dated 30.09.2010	
19.	Plinth Check Certificate dated 18.04.2011	-	For Building No. `5` (Part) as per Commencement Certificate dated 15.03.2011	
20.	Commencement Certificate CC/1875/12 dated 03.09.2012	59399.43 sq.m	Building No. 0: LG+UG+2 Building No. 1: LG+UG+3 Building No. 2: LG+UG+3 Building No. 3 & 4: LG+UG+4 Building No. 5: LG+UG+1 Building No. 6: LG+UG+2 Building No. 7: LG+UG+2	Total FSI-38624.28 sq.m. Total Non-FSI [#] -42002.30 sq.m. TBUA- 80626.58 sq.m
21.	Completion Certificate dated 12.02.2013		For 14 Showrooms, 11 Showrooms with Store, Office Storeroom, Electrical Room & Communication Room, Parking of Building No.5 as per Commencement dated 03.09.2012	

22.	Commencement Certificate dated 30.09.2013		For Lobby, Panel room, 4 Shops, 4 Anchor Shops, A.H.U.s Lift Lobbies, Electrical room, Gents & Ladies toilets, Corridors & Parking of Building No.7 only as per Commencement Certificate dated 03.09.2012	
23.	Commencement Certificate CC/1148/14 dated 14.07.2014	-59399.43 sq.m.	Building No. 0: LG+UG+2 Building No. 1: LG+UG+3 Building No. 2: LG+UG+3 Building No. 3 & 4 :LG+UG+4 Building No. 5: LG+UG+1 Building No. 6: LG+UG+2 Building No.7:LG+UG+2	Total FSI-38624.28 sq.m. Total Non-FSI"-42002.30 sq.m. TBUA-80626.58 sq.m.
24.	Commencement Certificate dated 03.11.2016		For 1 Electrical room, 2 A.H.U., 13 Showrooms, Gents & Ladies Toilet, Lift Lobby, Passage & Parking of Building No.2 only as per Commencement Certificate dated 14.07.2014	
25.	Commencement Certificate CC/0027/19 dated 04.04.2019	-59399.43 sq.m.	Building No. 0: LG+UG+2 Building No. 1: LG+UG+3 Building No. 2: LG+UG+3 Building No. 3 & 4 :LG+UG+2+Mezzanine Building No. 5: LG+UG+1 Building No. 6: LG+UG+2 Building No.7:LG+UG+2	Total FSI-32710.04 sq.m. Total Non-FSI" – 40239.55 sq.m TBUA- 72949.59 sq.m.
26.	EC dated 20.07.2020 granted by SEIAA, Maharashtra	59399.43 sq.m	SEIAA decided to grant EC for – FSI : 32710.04 sq.m., Non-FSI 62073.48 sq.m. and Total BUA 94783.52 (Plan Approval no.CC/0027/19 dated 04.04.2019)	
27.	Current Status of Project as on dated 16.05.2022 reported by PMC vide letter dated 20.05.2022			Total FSI-32710.04 sq.m Total Non-FSI [#] -61856.60 sq.m TBUA- 94568.64 sq.m.
Note - # Non-FSI areas include terrace slab, Podium, Parking, Building services area such as Overhead Water Tank, Engineering Services (Plant Room) Area, Sewage Treatment Plant Area, Cooling Tower, Organic Waster Composter, MSEB Sub-Station, Diesel Storage Tank, Diesel Generator Bank, Thermal Storage Tank, Transformer and Other Services Equipment, Sewage Collection Tank, Gas Bank, Entrance Wall, Partition Wall, Underground Water Tank.				

“2.1.7. MoEF granted EC to the PP on 10/4/2007 referring application seeking prior environmental clearance under the EIA notification 1994 as amended on July 07, 2004. The proposal has been appraised as per prescribed procedures and provisions under the EIA Notification 2006. The said EC was granted for Total Built up Area (TBUA) of 34170.83 sq.m.

Further, PMC has informed that Non-FSI area is not mentioned in the sanctioned plans as per then prevailing practice followed by Building Permission Department, PMC. It has been informed that Non-FSI areas include terrace slab, Podium, Parking and Building services area such as Overhead Water Tank, Engineering Services (Plant Room) Area, Sewage Treatment Plant Area, Cooling Tower, Organic

Waster Composter, MSEB Sub-Station, Diesel Storage Tank, Diesel Generator Bank, Thermal Storage Tank, Transformer and Other Services Equipment, Sewage Collection Tank, Gas Bank, Entrance Wall, Partition Wall, Underground Water Tank.”

“2.1.8 General Condition, as mentioned at Part B; Para 6 of the said EC dated 10.4.2007 stipulates that “In case of change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry.”

Construction of a new building structure (i.e. Building No.7) was started which was not in the application/ proposal dated 15.05.2006 (Annexure-VI) submitted while grant of EC dated 10.04.2007. The Commencement Certificate (Please, refer Table-01, Sr.No.14) for Building No.7 is issued on 15.06.2010 and obtained Commencement Certificate (Please refer Table-01, Sr.No.22) on 30.09.2013.”

“2.1.13 PP had obtained the first EC on 10.04.2007 for total plot area of 41,806.35 sq.m. and the revised EC on 20.07.2020 for total plot area of 59,399.43 sq.m. PP had added adjoining plot of area 17,593.08 sq.m. in the EC, dated 20.07.2020. Out of the total area of the plot of 59,399.43 sq.m., construction has been carried out only on plot of 41,806.35 sq.m. However, no construction is carried out on additional adjoining plot with an area of 17,593.08 sq.m. and is still vacant.”

3.0 CONCLUSIONS :

The above observations reveal the following violations –

- a) Initiating construction of more than TBUA of 34170.84 sq.m. (Please refer para 2.1.7)*
- b) Construction of a new building i.e. Building No.7 in violation of General Condition as at Part B; para 6 of the EC dated 10.04.2007 (Please refer para 2.1.8)*
- c) Construction even after the expiry of EC dated 10.04.2007 (Please refer para 2.1.9)*

4.0 RECOMMENDATIONS :

In view of the aforesaid violations as at para 3 above i.e. violations of EC dated 10/4/2007 and EIA notification 2006; Environment Department, Govt of Maharashtra may take appropriate actions as per the Standard Operating Procedure (SOP) issued by the MoEF&CC vide Office Memorandum (OM) F.No.22-21/2020-IA III dated 07/07/2021 for dealing with EC Violation cases.”

11. As per the service affidavit, service on all the respondents is sufficient.

12. From the side of **respondent Nos.14 and 15**, the **stand taken** by them by way of filing affidavit dated 09.01.2023 is as follows:

13. The application is barred by limitation. The applicant is not a victim, hence has no locus standi. In the application, he is stated to be a resident of Shukrawar Peth, which is far away from Yerwada, Pune. He has not pleaded any damage to have been caused to him. Hence, the application needs to be dismissed at the very outset on this ground. Any kind of illegal construction has been refused to have been made by the answering respondents. The name of the commercial mall, which has been constructed by the answering respondents, now named "Creativity" on the same survey number which has been alleged in the Original Application. It is admitted that the EC was granted on 10.04.2007 and the details mentioned by the applicant in Table-1, 2 and 3 are correct but it is denied that any excess construction has been made. The total area of the land, over which the project is constructed, is 41,806.35 M² and not 59,399.43 M². The total FSI area of construction is 34,170.83 M². The construction has been carried out on non-FSI area, but what is the area has not been disclosed in this reply. Further it is stated that this fact was put up for consideration while seeking EC in the year 2006. The original area, for which the PMC had granted sanction and EC was sought was 41,806.35 M², which is the plot area. At the time of grant of EC, the total sanctioned area was 34,170.83 M². The project was completed within the permissible time as per the Consent to Establish and completed the same. All violations, which are said to have been committed of the terms and conditions of the Consent to Operate, are false. Negligence is alleged to be there on the part of the officers of SEIAA

and the PMC. In the Consent to Operate and Consent to Establish granted from time to time, never ever any illegality or irregularity was observed by the MPCB.

14. From the side of **respondent No.4 – SEIAA Maharashtra**, following **stand** has been taken:

15. The EC was granted to the Project Proponent – respondent Nos.14 and 15 by MoEF&CC on 10.04.2007 for total plot area of 41,806.35 M² for development of Shopping Mall “Ishanya” at C.S. No.190 and 192, Shastri Nagar, Yerwada, Pune for a total BUA of 34,170.83 M². The proposal was appraised as per the procedure prescribed in EIA Notification dated 14.09.2006. The Project Proponent has constructed total BUA of 94,568.64 M², which is more than the approved BUA of 34,170.83 M². and therefore, is in violation of the EC and the provisions of EIA Notification, 2006. The condition in paragraph No.6 of Part B of the EC stipulated that *“in case of change (s) in the scope of the project, the project would require a fresh appraisal by this Ministry.”* The construction of a new building structure (i.e. Building No.7) was started by the Project Proponent which was not in the application/proposal dated 15.05.2006 submitted while grant of EC dated 10.04.2007 was granted. Therefore, violation is caused by the Project Proponent of the general conditions at part B, para 6 of the said EC. The validity of the said EC was for five years i.e. 09.04.2012. However in the Commencement Certificates dated 03.09.2012 and 14.07.2014 followed by obtaining Completion Certificates dated 03.09.2013 and 03.11.2016 would reveal that the construction continued beyond validity of the said EC dated 10.04.2007 and thus clause 9 of the EIA Notification, 2006 stood violated.

16. Further it is mentioned that the Project Proponent approached MoEF&CC for re-validation of the EC dated 10.04.2007 which was

transferred to SEIAA (answering respondent). The Project Proponent applied for EC on 24.12.2016 to SEIAA for expansion and change in use as referred in 175th SEIAA minutes of the meeting held on 18.09.2019. With respect to the EC dated 10.04.2007 granted by MoEF&CC – respondent No.1, whether any violations thereof were committed by the Project Proponent can be commented by them only. Further it is mentioned that according to the EIA Notification, 2006, the monitoring of the project regarding compliance of the EC conditions is in the domain of MoEF&CC as the compliance report has been submitted to them. In the present Original Application, the violation or the non-compliance of the EC dated 10.04.2007 are alleged.

17. The **stand** taken by **MoEF&CC – respondent No.1** is as follows:

18. It is submitted that the Project Proponent had submitted their proposal on 29.05.2006 for construction of Shopping Mall “Ishanya” at Shastri Nagar, Yerwada, Pune. The project involved development of Shopping Mall comprising of Amphitheatre, Art Galleries and Computer simulation area in total plot area of 41,806.35 M². The total BUA as indicated is 34,170.83 M². It is submitted that the answering respondent issued an Environmental Impact Assessment Notification Number S.O. 1533 E dated 14.09.2006 superseding the Environmental Impact Assessment Notification 1994. The EIA Notification, 2006 regulates developmental projects in different parts of the country. It is further submitted that under the provisions of the EIA Notification, 2006, Environmental Clearance for Building and Construction Projects & Township and Area Development Projects are covered under entry 8(a) & (b) of the Schedule to the EIA Notification, 2006. The entries under item 8(a) and 8(b) are qualified as category ‘B’ projects under the EIA Notification, 2006 and require appraisal by the SEACs and approval by the SEIAAs. Further it is submitted that as per the EIA Notification,

2006, in the absence of a duly constituted SEIAA/SEAC, a category 'B' project shall be considered at the Central Level as category 'B' project. It is submitted that the proposal was received prior to EIA Notification of 14.09.2006 and was processed for consideration for grant of Environmental Clearance as per procedure in EIA Notification 1994 in terms of provision of para 12 of EIA Notification, 2006 dated 14.09.2006 read with para 2.1.1 (i) of the Circular dated 13.10.2006. The proposal is of B2 category and has been considered by the Expert Appraisal Committee at Central Level as then the SEAC had not been constituted for the State. It is also submitted that public hearing in the instant case was conducted on 22.02.2006. During the public hearing, issues were raised and after detailed discussion the following was resolved:

- “(i) *The Project Proponent will build and maintain the Shopping Mall as promised and eco-friendly atmosphere will be maintained.*
- (ii) *Rain Water harvesting shall be followed wholeheartedly.*
- (iii) *As promised, the River Osmosis system shall be installed and implemented accordingly.*
- (iv) *Solar energy system shall be implemented.*
- (v) *The green belt shall be developed while constructing the project as assured in the public hearing.*

19. It is further submitted by respondent No.1 that the project proposal was submitted to the Additional Expert Committee constituted for considering Environmental Clearance for new construction projects. The Committee discussed the proposal in the eight meeting held on 15-16 December, 2006 and recommended that Environmental Clearance may be accorded to the project proposal for construction of Shopping Mall. It is submitted that, however, with respect to the allegation made by the applicant in the application, the SEIAA, Maharashtra and the Regional Office, Nagpur have been requested to undertake inspection of the

aforesaid unit in question alongwith the EC for submitting the report before the Tribunal. Lastly, it is submitted by the answering respondent that appropriate order be passed.

20. We find that in the present Original Application, after receipt of the complaint made by the applicant, an inspection was directed by the MoEF&CC to the Member, Secretary, SEIAA, but it appears that SEIAA did not conduct the said inspection and the same was conducted by the MoEF&CC itself, report of which is annexed at pages 360 to 370, the relevant portion of which is reproduced hereinunder:

S.No.	Allegation	Observations
1.	Para 8 of Page 22: Construction being carried out in violation of terms and conditions of environmental clearance, consent to establish and consent to operate. 1. Plot area increased from 41806.35 sq.m. to 59399.43 sq.m. 2. Built up area increased from 34170.83 sq.m. to 94568.64 sq.m.	PP submitted application under EIA Notification 1994 (as amended on July 7 2004) to MoEF for environmental clearance for construction of shopping mall. Ministry appraised the application under EIA Notification 2006 and granted environmental clearance for the project vide letter dated 10.04.2007. As per the clearance, total plot area was 41806.35 sq.m. The total built up area approved was 34170.83 sq.m. Increase in plot area: PP during the site inspection submitted that area of 17,593.08 sq.m. is vacant. PMC representatives also agreed with the statement of the project proponent. The vacant area was also shown during the site inspection. No development was observed in the plot area of 17,593.08 sq.m. Increase in built up area: PP during the site inspection submitted that the built up area mentioned in the clearance letter was FSI area and non-FSI

		area was not included in the clearance letter. As per the EIA report submitted to Ministry, PP mentioned built up area as 34170.83 sq.m. and non built up spaces as 19575.73 sq.m. As per the information provided, the total built up area constructed as on date is 94.568.64 sq.m. In Civil Appeal no. 10854 of 2016 in the matter of M/s. Goel Ganga Developers India Pvt. Ltd. vs. Union of India through Secretary MoEF& Others, Hon'ble Supreme Court opined that "In view of the above, we are clearly of the view that the EC granted to the project proponent on 04.04.2008 was for constructing a total built up area of 57,658.42 sq.mtrs. and this would include all covered construction not open to sky. No artificial division on the basis of FSI and Non-FSI area can be made. Therefore, the NGT was fully justified in coming to the conclusion that the construction raised by the project proponent was in total violation of the EC granted to it." In view of the above opinion of Hon'ble Supreme Court, construction of built up area of 94,568.64 sq.m. against the approved built up area of 34170.83 sq.m. is violation of environmental clearance and provisions of EIA Notification 2006. Consent to establish and consent to operates were granted by MPCB for built up area of 34170.83 sq.m.
2.	<i>Illegal extraction of ground water & no testing of ground water</i>	During the site inspection, no borewells were observed. As informed PMC is supplying water for the project. PP did not monitor the ground water level and quality. PP informed that the monitoring is not carried out as there is no source of ground water. Information provided by PP is

		enclosed as Annexure-5.
3.	Dumping of solid waste to PMC waste yard.	During the site inspection, it was observed that one OWC was provided for the treatment of wet waste. An agreement was made with Sant Gadge Baba Savyamrojgar Seva Sahkari Maryadit, Pune for the disposal of dry waste.
4.	No energy conservation system such as solar system	During the site inspection it was observed that solar PV panels were installed on roof tops of some of the buildings.
5.	No rain water harvesting system for ground water recharge against required 21 number of recharge pit.	During the site inspection, it was observed that one collection tank (of capacity 5, 00,000 liters) was provided for collection of rain water. No recharge pits were provided.
6.	No mandatory 10% open space for recreational purpose and not made tree plantation as per norms.	During the site inspection tree plantation was observed within the project area. As per the information provided by PP, green belt was developed over an area of 8759.79 sq.m.
7.	Traffic congestion causing air pollution	During the site inspection, it was observed that security deployed at the project site controls flow of traffic coming into and going out of the mall. Internal parking was provided for the project.
8.	Installation of 8 DG sets and operation causing air pollution.	During the site inspection, it was informed that DG sets were operated only during power failure/shut down. PP informed that continuous power supply is available.
9.	Huge quantity of sewage water and STP was not installed.	During the site inspection it was observed that STP was installed for the treatment of sewage. A STP of 255 CMD (working on MBBR technology) was installed and the same was in operation.
10.	PP has not provided fire and safety system at site and there is no approach road for fire engine.	During the site inspection, PMC officials informed that Fire NOC was granted for the project.
11.	Ramp slope not in the ratio of 1:10, site margin not as per DC rules.	During the site inspection, PMC officials and projectproponent informed that ramp slope and site margin were as per prevailing rules.
12.	PP did not submit any application for the revalidation of environmental clearance	During the site inspection, PP submitted that entire construction was completed within the validity period of EC i.e. before 09.04.2012. Hence EC was not revalidated. However, PMC granted occupancy certificate for

		Building no. 7 and Building no.2 vide letters dated 12.02.2013, 30.09.2013 and 03.11.2016.

Compliance status of conditions stipulated in environmental clearance granted for the construction of shopping mall " Ishanya" located at Shastri Nagar, Yerawada, Pune granted by MoEF vide letter no. 21-243/2006-IA-III dated 10.04.2007

During the site inspection, it was observed that the construction of the project completed. Compliance status pertaining to operation phase of the project is as follows:

S.No.	Condition	Compliance Status
i.	Necessary permission of competent authority shall be taken to store diesel in the premises for operation of DG set.	During the site inspection, it was observed that no diesel was stored at the project site. PP submitted that diesel is procured as per the requirement from nearby Petro Stations.
ii.	Diesel power generating sets proposed as source of backup power for lifts and common area illumination should be of "enclosed type" and conform to rules made under Environment (Protection) Act 1986, prescribed for air and noise emission standards as per CPCB guidelines. Exhausts should be discharged by stack, raised to 4 meters above the rooftop.	Partly complied. During the site inspection, it was observed that enclosed type DG sets were provided. Stack of height 6 meters was provided for each DG set. Stack emissions were monitored through MoEF&CC recognised laboratory.
iii.	During nighttime the noise levels measured at the boundary of the building shall be restricted to the permissible levels to comply with the prevalent regulations.	Not complied. PP did not submit any noise monitoring reports to this office.
iv.	Noise barriers should be provided appropriate locations so as to ensure that the noise levels do not exceed the prescribed standards.	During the site inspection, it was observed that plantation was developed in the project over an area of 8759.79 sq.m. PP did not submit any noise monitoring reports to this office.

v.	Weep holes in the compound walls shall be provided to ensure natural drainage of rainwater in the catchment area.	During the site inspection, it was informed that separate drains were provided for the storm water.
vi.	The sewage treatment plant should be certified by an independent expert for efficiency as well as adequacy and should submit a report in this regard to the Ministry before the project is commissioned for operation. The wastewater should be treated to tertiary level and after treatment reused for flushing of toilets and gardening. Discharge of treated sewage, if any, shall conform to the norms & standards prescribed by Maharashtra State Pollution Control Board.	Partly complied. Sewage generated from the project is treated in STP of 255 CMD and treated water is utilized for flushing and cooling. The STP is based on MBBR technology. PP did not submit treated water quality monitoring reports to this office.
vii.	Oil & Grease trap shall be provided to remove oil and grease from the surface run off and suspended matter shall be removed in a settling tank before its utilization for rainwater harvesting.	During the site inspection, it was observed that only one collection tank was provided for utilization of rain water.
viii.	The solid waste generated should be properly collected & segregated. Wet garbage should be composted and dry/inert solid waste should be disposed of for land filling.	Complying with. During the site inspection, it was observed that OWC was provided for the treatment of wet waste. An agreement was made with Sant Gadge Baba Savyamrojgar Seva Sahkari Maryadit, Pune for the disposal of dry waste.
ix.	Any hazardous waste including biomedical waste should be disposed of as per applicable Rules & norms with necessary approvals of Maharashtra State Pollution Control Board.	PP shall not generate any hazardous waste as per the consent granted by MPCB.

x.	<i>The green belt design along the periphery of the plot shall achieve attenuation factor conforming to the day and night noise standards prescribed for residential land use. The open spaces inside the plot should be suitably landscaped and covered with vegetation of indigenous variety.</i>	<i>Compliance status is already provided above.</i>
xi.	<i>Incremental pollution loads on the ambient air quality, noise and water quality should be periodically monitored after commissioning of the project.</i>	Not complied. <i>PP did not submit periodical monitoring reports to this office since the grant of EC.</i>
xii.	<i>The ground water levels and its quality should be monitored regularly in consultation with Central Ground Water Authority.</i>	Not complied. <i>Ground water level and quality were not monitored.</i>
xiii.	<i>A report on the energy conservation measures should be prepared incorporating details about building materials & technology, R & U factors etc and submitted to the Ministry in three months time.</i>	Not complied. <i>PP did not submit the reports as per stipulation.</i>
xiv.	<i>The values of R & U for the building envelope should meet the requirements of the hot & humid climatic location. Details of the building envelope should be worked out furnished in three months time.</i>	

General Conditions:

S.No.	Condition	Compliance Status
i.	<i>The environmental safeguards in the EIA Report should be implemented letter and spirit.</i>	<i>During the site inspection, it was observed that STP of 255 CMD was provided for the treatment of sewage. OWC was provided for the treatment of wet waste. Green belt was developed over an area of 8759.79 sq.m. Solar panels were installed at the project site. One collection tank of capacity</i>

		5,00,000 liters was provided. A violation w.r.t. construction of built up area was observed as per Hon'ble Supreme Court judgement mentioned above.
ii.	Provision should be made for the supply of kerosene or cooking gas and pressure cooker to the laborers during construction phase.	Project is in operation phase.
iii.	All the laborers to be engaged construction works should be screened for construction works should be screened for health and adequately treated before the issue of work permits	
iv.	6 monthly monitoring reports should be submitted to MoEF should be forwarded to the CCF, Regional office of MoEF, Bhopal.	Not complied. PP did not submit the six monthly compliance reports regularly.
5.	Officials from the Regional Office of MoEF, Bhopal who would be monitoring the implementation of environmental safeguards should be given full cooperation, facilities and documents/data by the project proponent during their inspection. A complete set of all the documents submitted to MoEF should be forwarded to the CCF, Regional office of MoEF, Bhopal.	PP agreed upon.
6.	In the case of any change (s) in the scope of the project, the project would require a fresh appraisal by this Ministry.	A violation w.r.t. construction of built up area was observed as per Hon'ble Supreme Court judgement mentioned above.

7.	The Ministry reserves the right to additional safeguard measures subsequently, if found necessary, and to take action including revoking of the environment clearance under the provisions of the Environment (Protection) Act, 1986, to ensure effective implementation of suggested safeguard measures in a bound and satisfactory manner.	PP agreed upon.
8.	All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department (if required), CRZ Regulations, State Forest Department, Wild Life Act, 1972 Act. Shall be obtained by project proponents from the competent authorities.	Fire Department of PMC granted NOCs for the buildings.
9.	A copy of the environmental clearance letter would be marked to the local NGO(s), if any, from whom suggestion/representation were received at the time of public hearing.	No information was provided regarding submission of copy of clearance to NGO.

10	The project proponent should advertise in at least two local Newspapers widely circulated in the region, one of which shall be in the vernacular language informing that the project has been accorded environmental clearance and copies of clearance letters are available with the Maharashtra State Pollution Control Board and may also be seen on the website of the Ministry of Environment and Forest http://www.envfor.nic.in. The advertisement should be made within 7 days from the day of issue of the clearance letter and a copy of the same should be forwarded to the Regional office of this Ministry at Bhopal	Not complied. PP did not publish advertisement as per the stipulation after obtaining clearance.
11	These stipulations would be enforced among others under the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification, 1994 including the amendments.	MPCB granted renewal of consent to operate vide letter dated 08.07.2020.
12.	The project authority will enter in to MOU with all buyers of the property, flats/shops etc. to ensure operation and maintenance of the assets handed over to the society formed by the residents/owners of the buildings.	No information was provided by project proponent.
13.	Under the provisions of Environment (Protection) Act 1986, legal action shall be initiated against the project proponent if it was found that construction of the project had started without obtaining environmental clearance.	Not complied. As per the Google Imageries prior April 2007 show that the construction of the project was initiated before April 2007. Details are enclosed as Annexure-6.

21. The **stand** taken by **respondent No. 6** – Mr. Anil U. Diggikar, in his affidavit dated 22.11.2022 is that when the Department and Authority have been impleaded as the formal parties, there was no reason to implead respondent No.6 as nothing was done by him. Only bald allegations have been made against him in order to harass him. He has denied all the allegations made against him by the applicant.

22. The **stand taken by respondent No.7 – MPCB** is that the answering respondent has granted Consent to Establish to the Project Proponent on 29.04.2006 for Plot Area 42,000 Sq.Mtrs and first Consent to Operate on 24.11.2009 for Plot Area 41,806.35 Sq.Mtrs and Total Built Up Area 34,170.83 Sq.Mtrs and the said Consent to Operate was renewed on 08.07.2020 for Total Plot Area of 41,806.35 Sq.Mtr and Built Up Area of 34,170 Sq.Mtrs, which was valid upto 31.03.2022.

23. From the side of **respondent Nos.10 to 12 - PMC**, following **stand** is taken as per their affidavit dated 25.02.2023:

The plans are sanctioned on an application made by the Project Proponent under Section 44 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act, 1966", for short) through a licensed Architect. Thereafter, the proposals are sanctioned under Section 45 of the MRTP Act. In 2014, Environment Department, Govt. of Maharashtra made it mandatory that EC would be granted only after sanctioning of it. Earlier the EC was granted on conceptual plans and after 2014, it is granted only after sanctioning of Plans from the Planning Authority. All the sanction/commencement certificates (CCs) granted by the answering respondents, which also find mention in the report reproduced above by us. Therefore, we are not re-producing the same here again. In paragraph No.14 of the affidavit, the details of Occupation Certificate (OC) issued by the answering respondents are given, which are as follows:

Sr. No.	Building No.	Occupation Certificate No.	Occupation Certificate Date	As per Sanctioned Plan
1	4	BCO/03/45	17/08/2007	CC No.5777 dtd. 16/03/1990 & CC/0712/07 dtd 28/05/2007 for 21 showrooms of Bldg No.4
2	1	BCO/03/092	18/12/2007	CC/2804/07 dtd 15/12/2007 for 20 showrooms of Bldg No.1
3	0,2,3,4, 5 and 6	BCO/YWO/02	03/06/2008	CC/0163/08 dtd. 16/04/2008 for 7 showrooms with entire bldg.. no.0 only, for 44 showrooms & 2 storeroom of bldg.. no.2 only., for 74 showrooms & 2 warehouse storage of Bldg No.3 & 4 only, for 20 showrooms, 1 office, Kitchens, communication rooms, storeroom, mall office, cafeteria of Bldg. No.5 only & for 10 showrooms, 7 offices, Kitchen of Bldg No.6 only..
4	5	OCC/1424/12	12/02/2013	CC/1875/12 dtd 03/09/2012 for 14 showrooms, 11 showrooms with store, office, storeroom, electrical room & communication room, parking of Bldg No.5.
5	7	OCC/0936/13	30/09/2013	CC/1875/12 dtd 03/09/2012 for Lobby, Panel room, 4 shops, 4 anchor shops, A.H.U.s Lift, Lobbies, Electrical room gents and ladies toilets, corridors & parking of Bldg.

				No.7.
6	2	OCC/1491/16	03/11/2016	CC/1148/14 dtd 14/07/2014 for 1 Electrical Room, 2 A.H.U., 13 Showrooms, Gents and Ladies toilet, Lift Lobby, Passage and parking of Bldg. No.2 only.

24. It is further mentioned in the affidavit by respondent Nos.10 and 12 that there was no provision related to Environmental Clearance in DC Rules, 1987, which was only in year 2017, the concept of Environmental Clearance was inserted as Rule 13.5 of Development Control Rules, 2017, which states that Environmental Clearance certificate shall be issued for the project, which needs clearance from the said Authority as may be prescribed by the Ministry of Environment from time to time. It is further submitted that 10% open space and 15% amenity space is provided as per the provisions of D.C. Rules. The PMC has abided by the D.C. Rules, MRTP Act, 1966 and Maharashtra Provincial Municipal Corporation Act, 1949 and has also granted all the permissions accordingly.

25. We have heard the arguments of the applicant-in-person, learned counsel for the appellant and learned Senior Counsel Mr. Dhruv Mehta for respondent Nos.14 and 15 – Project Proponent.

26. Learned senior counsel Mr. Dhruv Mehta has drawn our attention to the Environmental Clearance dated 10.04.2007, which is at page 65 of the paper-book, wherein total built up area (TBUA) is recorded as 34,170.83 Sq.Mtr. As against this, the construction made by the Project Proponent is found to be 94,568.64 Sq.Mtrs, which find mention in the Joint Committee report at page 362 of the paper-book. Having pointed out that, it was stated by him that at the relevant point of time when this EC was granted, normal practice was that only FSI area should be taken

into consideration and accordingly, the same i.e. 34,170.83 Sq.Mtrs was mentioned in the said EC. Thus the construction of 60,397.91 Sq.Mtrs (94,568.64 – 34,170.83) should not be treated to be violation of the EC. However, an application was moved on 23.12.2016, for grant of ex post facto EC for the entire project, which is at pages 1393 to 1424 of the paper-book, showing therein the Total BUA to be 95,082.28 Sq.Mtrs wherein this Built-up area has been shown for ex post facto grant of EC sought, which has been considered in the SEAC Meeting dated 15.07.2017, minutes of which are filed at pages 1425 to 1434 of the paper-book, wherein the Committee decided to defer the matter as per the order of MoEF&CC dated 07.07.2017. The said O.M. of MoEF&CC dated 07.07.2017 in paragraph No.4 lays down as follows:

“The definition provided in the Ministry’s notification will have its effect from the prospective date of the notification only. The projects which are not covered in the period of above notifications should be assessed as per the definition of built up area provided in the building bye-laws or Development Control Regulation (DCR) of the local authorities in the States.”

27. It appears that in the meeting dated 15.07.2017, SEAC has wrongly interpreted O.M. dated 07.07.2017 to mean as follows:

“Accordingly, MOEF&CC by their order dated 07/07/2017 concurred that the environmental clearance for building and construction projects up to 1.50,000 square meter stand integrated with Development Central Regulations (DCR) of all Municipal Corporations, Municipal Councils and all Special Planning Authorities in Pune and Kokan Division.”

Because we find that such interpretation cannot be made of the stipulation made in paragraph No.4 of the O.M. dated 07.07.2017, quoted above.

28. This matter was taken up in the next meeting dated 24.08.2018, minutes of which are annexed at pages 1435 to 1444 wherein the

Committee decided to refer the proposal to SEIAA for further action because it was found by SEAC that the EC had lapsed and required revalidation, which could have been done only by SEIAA.

29. The matter was considered by SEIAA, in its meeting held on 18.09.2019, minutes of which are annexed at pages 1445 to 1454 of the paper-book, in which it was decided that the Project Proponent had obtained EC dated 10.04.2007 from MoEF&CC. The proposal was considered by SEAC-III in its 68th meeting, which asked the Project Proponent to revalidate EC dated 10.04.2007 and referred the proposal to SEIAA for further action. The Project Proponent stated that they have applied to MoEF&CC for revalidation of EC, but MoEF&CC transferred the proposal of revalidation to SEAC. The Project Proponent then applied through EC portal for revalidation and also stated that there is change in use in their proposal, which is not apprised by SEAC-III. Hence, SEIAA, after deliberation, decided to refer the matter back to SEAC-III for fresh appraisal.

30. Thereafter the matter was considered by SEAC in its meeting dated 11.12.2019, minutes of which are annexed at pages 1455 to 1465 of the paper-book, wherein information with regard to several points was required to be furnished by the Project Proponent, which are enumerated at page 1465 from point Nos.1 to 12, for which the Project Proponent sought time and the matter was deferred for consideration.

31. SEAC-III again considered the matter in its meeting dated 10.06.2020, minutes of which are annexed at pages 1475 to 1485, wherein it recommended the proposal for prior Environmental Clearance to SEIAA subject to three conditions which are contained therein at page 1485 from Sr. No.1 to 3.

32. The SEIAA, thereafter, considered the recommendations made by the SEAC in its meeting dated 23.06.2020, minutes of which are annexed

at pages 1486 to 1497, wherein it decided to grant EC for FSI 32,710.04 Sq.Mtrs, non-FSI 62,073.48 Sq.Mtrs and total BUA of 94,783.52 Sq.Mtrs., subject to the conditions that the Project Proponent shall ensure that CER plan gets approved from the Municipal Commissioner and the Project Proponent shall comply with Standard EC conditions mentioned in the Office Memorandum issued by MoEF&CC dated 04.01.2019, as well as few specific conditions as well which are enumerated therein at Sr. No.1 to 3

33. The SEIAA considered the recommendations made by the SEAC in its meeting dated 23.06.2020, minutes of which are annexed at pages 1486 to 1497, wherein it decided to grant EC for FSI 32710.04 sq.mtr, Non-FSI 62073.48 sq.mtr and total BUA 94,783.52 sq.mtr, subject to the conditions that Project Proponent shall ensure that CER plan gets approved from Municipal Commissioner and it shall comply with standard EC conditions mentioned in the Office Memorandum issued by MoEF&CC vide F.No.22-34/2018-IA.III dt. 04.01.2019 as well as on few specific conditions as well, which are enumerated therein at Sr.No.1 to 3, which are at page 1497 and SEIAA has decided to grant the proposal for prior Environmental Clearance, pursuant to to the recommendations of SEAC, EC dated 20.07.2020 has been granted to the Project Proponent, which is annexed at pages 1498 to 1511.

34. On the basis of the above details, it is argued by the learned counsel for the Project Proponent that there is no violation committed on their part because whatever construction was found to be in excess, for that, they have already taken *ex post facto* EC.

35. Next, to the argument on behalf of respondent Nos.14 and 15 – Project Proponent that the Original Application is time barred, it was vehemently argued by the learned counsel for the applicant that the application is not time barred as it was filed on recurring cause of action.

36. On the basis of pleadings of respective parties as well as arguments advanced before us on their behalf, we are of the view that the following issues need to be framed for being decided by us while disposing of the Original Application as well as Appeal:

- (i) Whether the Original Application is barred by limitation ?
- (ii) Whether there was violation of EIA Notification, 2006 ?, If yes, its effect ?
- (iii) Whether, in case it is found that there was violation of Environmental Clearance dated 10.04.2007, what will be the amount of Environmental Damage Compensation (EDC), to be levied from respondent Nos.14 and 15 – Project Proponent ?
- (iv) Whether the *ex post facto* Environmental Clearance (EC) dated 20.07.2020 is liable to be set aside ?

Issue No. (i) :

37. On this issue namely, “*whether the Original Application is barred by limitation?*”, the submission made from the side of respondent Nos.14 and 15 – Project Proponent is that Section 15 of the National Green Tribunal Act, 2010 provides limitation period of five years since the cause of action first arose, which means that the action should be brought within five years from the date of commencement of the action being reported. The answering respondents commenced construction of the project on 28.05.2007. Hence the cause of action first arose would reckon from the said date and this Original Application should be treated to have been filed 13 years after the said date. The construction was completed by them on 30.09.2013 as is noted by the Joint Committee in its report at paragraph 2.8.8. Therefore, even if that date i.e. 30.09.2013 is taken to be starting point of limitation, this Original Application has been filed seven years thereafter. As against this, the applicant is seeking reckoning

of the limitation from the date 20.07.2020 when the second Environmental Clearance (EC) was obtained by the Project Proponent.

38. We find from pages 41 and 42 of the Original Application that the Project Proponent has made changes in the project layout by carrying out subsequent amendment in sanction plan of PMC till 04.04.2019 and thereafter SEIAA decided to grant EC to the Project Proponent in its meeting held on 23.06.2020, which gave rise to cause of action which first arose. Further it is mentioned by the applicant that the Project Proponent has carried out illegal construction from 0 sq.mtr to 94,568.64 sq.mtr and this construction activity is a recurring cause, which is in violation of the terms and conditions of the EC dated 10.04.2007 and Consent to Establish dated 29.04.2006. The cause of action should, therefore, be treated to have arisen on 23.06.2020 when SEIAA had decided to grant EC to the Project Proponent.

39. We may rely on the judgment dated 07.05.2015 passed by the Principal Bench of this Tribunal in **Original Application No.222 of 2014** in the matter of ***The Forward Foundation & Ors. Vs. State of Karnataka & Ors*** , which was also relied upon by us in Original Application No.28 of 2019, decided on 22.03.2023. In the case of ***the Forward Foundation*** (supra), following was observed:

“24. The expression ‘cause of action’ as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such ‘cause of action’ should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A ‘cause of action’ might arise during the chain of events, in establishment of a project but would not be construed as a ‘cause of action’ under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, ‘being cause of action first arose’. A dispute giving rise to a ‘cause of action’ must essentially be an environmental dispute and should relate to either one or more of the Acts stated in

Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

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

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

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

"5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is

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

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

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

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there

is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will begin to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: *Khatri Hotels Private Limited and Anr. v. Union of India (UOI) and Anr.*, (2011) 9 SCC 126, *Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors*, AIR 1959 SC 798, *G.C. Sharma v. Municipal Corporation of Delhi*, (1979) ILR 2 Delhi 771, *Kuchibotha Kanakamma and Anr. v. Tadepalli Ptanga Rao and Ors.*, AIR 1957 AP 419].

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

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

event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

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

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

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each

payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1.”

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: Ex. Sep. Roop Singh v. Union of India and Ors., 2006 (91) DRJ 324, M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].

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

amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose.”

40. In view of above position of law, if we scrutinize the present matter, we find that for construction of the project in the present case, the first Commencement Certificate was issued by PMC on 19.12.2003 for total FSI area of 27,561.02 sq.mtrs, Non-FSI area of 28,091.31 sq.mtrs and total BUA of 55,652 sq.mtrs. This certificate was for 4 show rooms with G+2 configuration, entrance lobby at ground level, multiplex hall at ground level and 4 stalls with G+1 configuration. First plinth check certificate for 2 buildings was issued on 09.11.2005. This makes it clear that construction had started even before issuance of EC dated 10.04.2007.

41. As per Commencement Certificate dated 27.02.2006 project scope changed to 6 buildings with Total FSI area 28,719.25 sq.m., Non-FSI area 38,014.91 sq.m. and Total BUA 65,734 sq.m. However, we are puzzled to know that application for EC dated 10.04.2007 submitted on 29.05.2006, i.e. after CC dated 27.02.2006 and EC was obtained for only Total BUA 34,170.83 sq.m. It is not clear what project configuration was submitted by the PP and appraised by EAC while granting the said EC.

42. There was change in the project configuration time and again as is evident from CCs issued on 28.05.2007 (TBUA 70,903.9 sq.m.), 15.12.2007 (TBUA 70,903.9 sq.m. but FSI/Non-FSI area changed), 16.04.2008 (TBUA 70,903.9 sq.m. but FSI/Non-FSI area changed again), 15.06.2010 (TBUA 73,652.94 sq.m.), 30.09.2010 (TBUA 74,378.64 sq.m.), 15.03.2011 (TBUA 78,721.36 sq.m.), 15.03.2011 (TBUA 78,521.36 sq.m.), 03.09.2012 (TBUA 80,626.58 sq.m.), 14.07.2014 (TBUA 80,626.58 sq.m.), 04.04.2019 (TBUA 72,949.59 sq.m.).

43. The last CC was granted in 04.04.2019 for building configuration which was changed as compared to CC dated 14.07.2014 (building 3 & 4 configuration changed from LG+UG+4 to LG+UG+2+Mezanine and Building for engineering added).

44. Environmental impact of building construction project in construction phase includes air pollution due to transport/storage/handling of construction material and construction/demolition waste, increase in noise levels in surrounding areas due to operation of plant/machinery/vehicles, liquid/solid waste due to sanitation facilities for construction workers, change in hydrology that may affect run-off from the area, safety risk due to increase in traffic, water/power requirement for construction purpose, excavation/filling of land for land preparation / foundation/basements, and tree cutting. So long as construction continues, these impacts are recurring cause of action.

45. In view of above facts and the position of law, we are of the view that the present case would be covered under the category of 'recurring cause of action', which is held to be complete in itself and satisfies the requisite ingredients. The phraseology "cause of action first arose" would not affect in computing the period of limitation. The concept of "cause of action first arose" must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. If the order granting EC is amended at subsequent stage, then the appellant/applicant can challenge the subsequent amendments at the later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of "cause of action first arose". In the case in hand, the first EC was granted on 10.04.2007 and the Project Proponent has obtained Commencement

Certificates on different dates, which have been mentioned by us, in the course of construction which has been completed in phases. But the Project Proponent has further taken Commencement Certificate even after 2019, which shows that the version of the Project Proponent that he had concluded the construction by the year 2013 seems to be erroneous. During argument, it was also stated by the learned counsel for the Project Proponent that one multiplex he intended to build but the same has yet not been started to be built and probably, this is the reason why he has gone for ex post facto EC, but it is not made clear by him as to whether the said multiplex would be covered within the total BUA, which has been approved in ex post facto EC dated 20.07.2020 or multiplex would require additional area for its being constructed, for which he would again have to seek modification of the EC. He kept this matter very vague during the argument. In this view of the matter, it is quite apparent that the first EC was granted in 2007 and the amended EC which has been granted in the year 2020 also shows the same area to have been included in that, would indicate that it is one single project which has been challenged by the applicant. Therefore, this would be a case for being covered in the 'recurring cause of action' and the date which has been taken by the applicant as the date for reckoning of the period of computation of limitation, does not appear to be wrong to us. The Original Application does not appear to be barred by limitation. Issue No. (i) is decided accordingly.

Issue No. (ii) :

46. As per this issue, we have to decide as to "*whether there was violation of EIA Notification, 2006 ?, If yes, its effect ?*". In this regard, we would like to take into consideration the role of EC for ensuring environmentally sound building construction. We wish to refer Report of

the Committee constituted under the Chairmanship of Shri J.M. Mauskar, Additional Secretary, MoEF&CC to examine the comments / suggestions on the Draft Amendments to EIA Notification, 2006 submitted to MoEF&CC on October, 2009 which is available at http://moef.gov.in/wp-content/uploads/2017/09/FinalReport_EIA.pdf.

In para 3.7.17 & 18 under clause (vii), the Committee observed that -

“vii. Each of the State Governments is launching major construction projects and development of townships as well as multi-storeyed constructions going up to 30 floors and above as prestigious land marks. In this context the provisions of the item 8a and 8b are to be considered. 20,000 sq.mts. itself is a fairly large area in the Indian conditions and it almost amounts to 200 apartments in a composite apartment building and the project population would be 1000 which would require 140000 ltrs. /day of water supply and in-turn sewage treatment requirement of 112000 ltrs. /day of sewage....”

Further in clause (xi), the Committee recorded how EC process will help environmentally sound development and observed –

“xi. Our track record in managing urban areas has been quite poor. Not even one-third of wastewater from our cities is treated to acceptable levels. The energy and water efficiencies of our buildings are very poor. Our cities are choking with pollution and congestion. If we want to make our urban areas habitable, then we will have to ensure that our new building, construction, township and area development projects are designed in an environmentally-sound manner. Currently, environmental clearance is the only process in which the regulator can put conditions on water and energy efficiency, water harvesting, waste management, wastewater treatment etc. on new projects. The municipal authorities/town planning departments in most cities are ignoring these issues while granting the building/site clearance.....”

Hence, change in the project scope may result in requirement of fresh water, generation of sewage/effluent, generation of solid waste, parking space, internal traffic movement, open area, tree plantation space, inadequacy of environmental infrastructure (wastewater treatment, OWC, renewable energy) planned earlier. Hence, MoEF&CC has wisely directed

reappraisal in the case project scope changes. If these precautions are not taken, project will result in recurring cause of action during entire project life.

47. EC dated 10.04.2007 directs in General Condition No 6 that “In the case of any change(s) in scope of the project the project would require a fresh appraisal by the Ministry. PP did not approach MoEF&CC/SEIAA for change in the scope as directed.

48. The learned counsel for the Project Proponent has vehemently argued that the concept of TBUA did not include non-FSI area at the time of grant of EC in the year 2007. We have dealt with this issue at length in our order dated 22.03.2023 in OA-28-2019. We had recorded as follows:-

*“42. By amendment dated 04.04.2011, the EIA Notification 2006 was amended, according to which the built-up area for the purpose of EC included the FSI and non-FSI area. Prior to the said amendment, the custom and common practice was only to take into consideration the FSI area for the purposes of EC and in the case in hand, the FSI of the project was below threshold limit of 20,000 sq.mtrs. Hence, there was no requirement to obtain EC. Around the year 2018, the Hon’ble Supreme Court of India in **Goel Ganga Developers Vs. Union of India; 2018 SCC OnLine SC 930**, while interpreting the term ‘BUA’, has held that the same would include FSI as well as non-FSI area. However, the Hon’ble Apex Court, while passing the said judgment, did not consider the prior judgment passed by the Bench of three Hon’ble Judges in the matter of **Re:Construction of Park at Noida near Okhla Bird Sanctuary, T.N. Godavarman Thirumulpad Vs. Union of India & Ors.; (2011)1 SCC 744**, wherein the Hon’ble Apex Court had categorically opined that the concept of BUA under the EIA Notification 2006 was vague and ambiguous. The MoEF&CC taking note of the judgment in **Okhla Bird Sanctuary** (supra) for the first time decided to define BUA by Notification dated 04.04.2011 providing completely different regime of calculation of BUA in building construction. The necessary consequence was that residential/commercial building projects which were earlier outside the purview of the EIA Notification 2006, would get covered by such requirement if the amendment brought about by the Notification dated 04.04.2011 was applied retrospectively. A plain reading of the said amendment would make it indubitably clear that the amendment is prospective in nature and would not affect the projects which were sanctioned between the period 2006 and 2011.*

43. The Builders Association of India (BAI) had filed Special Leave Petition No.10078 of 2019 challenging the order dated 29.03.2018 passed by the Hon’ble High Court of Bombay in Writ Petition (L) No.954 of 2019. BAI had initially filed Writ Petition No.24 of 2019

under Article 32 of the Constitution of India before the Hon'ble Supreme Court, taking up the issue of BUA and the amendment dated 04.04.2011 and its applicability. By the order dated 12.02.2019, the Hon'ble Apex Court granted liberty to BAI to approach the High Court and consequently, Writ Petition No.24 of 2019 came to be withdrawn. Thereafter Writ Petition (L) No.954 of 2019 was filed before the Hon'ble High Court of Bombay, which was decided on 29.03.2019 whereby the Hon'ble High Court dismissed the Writ Petition. Feeling aggrieved by the said order, BIA preferred Special Leave Petition No.10078 of 2019, wherein the Hon'ble Apex Court, by order dated 03.05.2019, issued notice and further directed that in the meantime, no coercive steps shall be taken against the members of BAI. The said Special Leave Petition is still pending. Further it is submitted that similar Special Leave Petition was filed by another representative Association – CREDAI, Pune Metro bearing SLP No.23143 of 2019 raising identical issue before the Hon'ble Supreme Court, wherein also, the Hon'ble Apex Court passed order dated 20.09.2019, issuing notice and directing that in the meantime, no coercive action shall be taken against the members of CREDAI – Pune Metro. The said Special Leave Petition is still pending.”

49. From the Joint Committee Report, based on various commencement certificates issued by PMC, it is clear that PP and PMC were aware of the concept of FSI area, non-FSI area and TBUA all along. There is unacceptable inconsistency in FSI, Non-FSI and TBUA mentioned in various CCs. Project scope kept of changing. In spite of this PP did not approach MoEF&CC/SEIAA for EC amendment till the year 2016. Amended EC was issued on 20.07.2020. The last commencement certificate was issued on 04.04.2019 when application for EC was pending with SEIAA. As per Joint Committee Report as on 16.05.2022 total construction carried out was FSI area 32,710.04 sq.m., non-FSI area 61,856.60 sq.m. and TBUA 94,568.64 sq.m. We hold that construction carried out beyond TBUA 34,170.83 sq.m. i.e. $94568.64 - 34170.83 = 60,397.81$ sq.m. is in violation of EIA Notification 2006. Issue No. (ii) is decided accordingly.

Issue No. (iii) :

50. According to this issue, we have to decide as to “*Whether, in case there was violation of Environmental Clearance dated 10.04.2007, what will be the amount of Environmental Damage Compensation (EDC), to be*

levied from respondent Nos.14 and 15 – Project Proponent ?” We have worked out the amount as follows:

$$(a) \text{ Total Project Cost} \div \text{Total Built-up Area (TBUA)} \times \text{Excess Constructed Area}$$

$$\text{i.e. } 285.35 \div 95,082.28 \times 60,397.81 = \text{Rs. } 181.22 \text{ Crores}$$

(b) 5% of Rs.181.25 Crores works out to be Rs.09.06 Crores

Considering the above facts, there is violation of Environmental Clearance dated 10.04.2007 on the part of the Project Proponent. Therefore, we deem it proper to levy this amount of Rs.09.06 Crores from the Project Proponent – respondent Nos.14 and 15 towards Environmental Damage Compensation. The issue No. (iii) is decided accordingly.

Issue No. (iv) :

51. As per this issue, we have to decide as to “whether the *ex post facto* Environmental Clearance (EC) dated 20.07.2020 is liable to be set aside ? It is apparent the project in question has been constructed which involves various violations, which we have already noted and also Environmental Damage Compensation (EDC) has been calculated and quantified by us to be levied from the Project Proponent. In ordinary case, if any project is constructed without prior EC, the same would need to be demolished, but in the case in hand, we find that the project is stated to have been completed as far back as in 2013 and that the Project Proponent has obtained *ex post facto* EC on 20.07.2020. In this regard, we may refer to and rely upon the judgments of the Hon’ble Apex Court in the following cases:

- (i) ***Electrosteel steels Limited Vs. Union of India;***
(2021 SCC OnLine SC 1247)
- (ii) ***D. Swamy Vs. Karnataka State Pollution Control Board & Ors.***
(2022 SCC OnLine SC 1278)
- (iii) ***M/s Pahwa Plastics Pvt.Ltd. & Anr. V. Dastak Ngo & Ors.***
(2022 SCC OnLine SC 362)

52. In ***Electrosteel Steels Limited*** (supra), the Hon'ble Apex Court held as follows:

“82. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.”

“83. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the environment. Ex- Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time Ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.

84. The 1986 Act does not prohibit Ex post facto Environmental Clearance. Some relaxations and even grant of Ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.”

53. In the matter of ***D. Swamy*** (supra), the Hon'ble Apex Court held as under:

“40. As held by this Court in Electrosteel Steels Limited (supra) ex post facto EC should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of a Notification under the EP Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of mines, running factories and plants.

41. The EP Act does not prohibit ex post facto Environmental Clearance. Grant of ex-post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our

view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

42. In *Lafarge Umiam Mining Private Limited v. Union of India* , a three-Judge Bench of this Court held:—

“119. The time has come for us to apply the constitutional “doctrine of proportionality” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of “margin of appreciation” in favour of the decision-maker would come into play.”

43. In *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, 2020 SCC OnLine SC 347, this Court observed:—

“27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial

activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development.”

44. Even though this Court deprecated ex post facto clearances, in *Alembic Pharmaceuticals Ltd. (supra)*, this Court did not direct closure of the units concerned but explored measures to control the damage caused by the industrial units. This Court held:—

“However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court.”

45. The Notification being SO. 804(E) dated 14 March 2017 was not in issue in *Alembic Pharmaceuticals Ltd. (supra)*. In *Alembic Pharmaceuticals Ltd. (supra)* this Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27 January 1994, which was statutory. The EIA Notification dated 27 January 1994 has, as stated above, been superseded by the Notification dated 14 September 2006.

46. There can be no doubt that the need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment.

47. Ex post facto environmental clearance should ordinarily not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of ex post facto approval outweigh the consequences of regularization of operations by grant of ex post facto approval, and the establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable

Rules, Regulations and/or Notifications. In a given case, the deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

48. It is reiterated that the EP Act does not prohibit ex post facto EC. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in Electrosteel Steels Limited (supra), this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units for their survival.

49. Ex post facto EC should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations.

54. In **M/s Pahwa Plastics Pvt.Ltd. & Anr.** (supra), the Hon'ble Apex Court held as follows :

“63. Ex post facto environmental clearance should not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of ex post facto approval outweigh the consequences of regularization of operations by grant of ex post facto approval, and the establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

64. The question in this case is, whether a unit contributing to the economy of the country and providing livelihood to hundreds of people, which has been set up pursuant to requisite approvals from the concerned statutory authorities, and has applied for ex post facto EC, should be closed down for the technical irregularity of want of prior environmental clearance, pending the issuance of EC, even though it may not cause pollution and/or may be found to comply with the required norms. The answer to the aforesaid question has to be in the negative, more so when the HSPCB was itself under the misconception that no environment clearance was required for the units in question. HSPCB has in its counter affidavit before the NGT clearly stated that a decision was taken to regularize units such as the Apcolite Yamuna Nagar and Pahwa Yamuna Nagar Units, since requisite approvals had been granted to

those units, by the concerned authorities on the misconception that no EC was required.

65. *It is reiterated that the 1986 Act does not prohibit ex post facto EC. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in Electrosteel Steels Limited (supra), this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units in their survival.*

66. *Ex post facto EC should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations.”*

55. In above cases, it has been held that *ex post facto* EC may be granted in exceptional cases. Therefore, we are of the view that it would not be just in the present case to order demolition of the construction, which has been completed or setting aside of the *ex post facto* EC. The issue (iv) is decided accordingly.

56. Before parting with this judgment, we would like to observe that it is clear from chronology of the events that SEAC and SEIAA were well aware that Project Proponent did not have valid EC extension, yet, it went ahead with the construction; SEAC and SEIAA also were well aware that the Hon’ble Apex Court had quashed O.M. dated 07.07.2017, which stipulated that the notification dated 04.04.2011 would be applicable prospectively. It would be pertinent to refer here that the notification dated 04.04.2011 had defined that the built-up area for the purpose of EIA Notification 2006 would include “the built-up area or covered area on all the floors put together including its basement and other service areas, which are proposed in the building or construction project”, which means that the built-up area would include both FSI area and non-FSI. The quashing of O.M. dated 07.07.2017 would mean that the FSI area and

non-FSI area were to be counted towards total built-up area from 14.09.2006. Despite above specific position of law being in the knowledge of both the authorities i.e. SEAC and SEIAA, they proceeded to grant the EC as if it was a new proposal, which is a serious dereliction of duty on the part of all concerned. Such lackadaisical working encourages violation of regulations.

57. We are aware that as per EIA Notification Section 3 clause 7, Para substituted *vide* S.O. 3067(E), dated the 1st December, 2009–

“3. State Level Environment Impact Assessment Authority: -

- (1) *A State Level Environment Impact Assessment Authority hereinafter referred to as the SEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member – Secretary to be nominated by the State Government or the Union Territory Administration concerned.*
- (2) *The Member-Secretary shall be a serving officer of the concerned State Government or Union Territory administration familiar with environmental laws.*
- (3) *The Chairman shall be an expert in terms of eligibility criteria given in APPENDIX VI in one of the specified fields, with sufficient experience in environmental policy or management.*
- (4) *The other member shall be an expert fulfilling the eligibility criteria given in APPENDIX VI in one of the specified fields.*
- (5) *The State Government or Union Territory Administration shall forward the names of the Members and the Chairman referred in sub- paragraph 3 to 4 above to the Central Government and the Central Government shall constitute the SEIAA as an authority for the purposes of this notification within thirty days of the date of receipt of the names.*
- (6) *The non-official Member and the Chairman shall have a fixed term of three years (from the date of the publication of the notification by the Central Government constituting the authority). Provided that wherever considered necessary and expedient, the Central Government may extend the term for a further period not exceeding twelve months.*
- (7) *All decisions of the SEIAA shall be taken in a meeting and shall ordinarily be unanimous;*

Provided that, in case a decision is taken by majority, the details of views, for and against it, shall be clearly recorded in the minutes and a copy thereof sent to MoEF.”

Hence, Chairman, Member Secretary and Members of SEIAA are all equally responsible for decisions of SEIAA. In the present application the Applicant has prayed for action against then Member Secretary SEIAA. We can not hold him alone responsible for decision of SEIAA. Moreover, our observation is, benefit of doubt can be extended to both SEAC and SEIAA as nature of environmental legislation is dynamic, there are many grey areas even today and clarity on the same is evolving with intervention of judiciary.

58. In view of above we direct Secretary MoEF&CC to personally look into working of all SEIAAs and issue appropriate directions to ensure that requirements of EIA Notification 2006 as amended from time to time as also directions of this tribunal are brought to the notice of members of SEIAA/SEACs/EACs as first item in Agenda for the meeting of these authorities by the Member Secretary of these authorities, within 2 weeks of this order.

59. In the result, we dispose of the Original Application with following directions:

- (a) Respondent Nos.14 and 15 – Project Proponent are directed to deposit an amount of Rs.09.06 Crores, towards Environmental Damage Compensation (EDC), as assessed above, with the Maharashtra Pollution Control Board (MPCB) within a period of two months from the date of uploading of this order.
- (b) The MPCB is directed to calculate the amount of Environmental Compensation with respect to the violation of Consent to Establish

and Consent to Operate for the aforesaid period and realize the same from respondent Nos.14 and 15 – Project Proponent, within a period of two months from the date of uploading of this order. MPCB shall also take action against the Project Proponent under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as recommended by Joint Committee for violations and submit its report to the Registrar of this Tribunal within three months.

- (c) The amount of compensation so realized shall be utilized for remediation of environmental damage caused by the project and improving / restitution of the environment in the area in question within a period of next six months and report of the same shall be posted on MPCB website.
- (d) In case of default on the part of Project Proponent in depositing the amount towards Environmental Damage Compensation (EDC), as directed above, 12% interest shall be payable by the Project Proponent on the unpaid amount till its realization.

60. For the reasons stated hereinabove, the Appeal is dismissed.

61. In view of dismissal of Appeal No.42/2020, I.A. No.85/2020 filed therein is rejected.

62. No order as to costs.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

AUGUST 10, 2023

OA NO.48/2020(WZ)-APPEAL NO.42/2020 (WZ)

npj