BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
APPEAL NO. 49/2018

IN THE MATTER OF:-

Conservation Action Trust & Anr. …Applicants

Versus

Union of India & Ors. …Respondents

INDEX

6.	**ANNEXURE E:** A copy of the judgment of the Hon'ble Supreme Court in Jal Mahal Resorts (P) Ltd. vs. K.P. Sharma, (2014) 8 SCC 804.	1603-1641
7.	**ANNEXURE F:** A copy of the judgment of the Hon'ble Supreme Court in Anuman Laxman Aroskar vs. Union of India, (2019) 15 SCC 401.	1642-1710

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PLACE: NEW DELHI
DATED:

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
APPEAL NO. 49/2018

IN THE MATTER OF:-

Conservation Action Trust & Anr.	...	Applicants
VERSUS		
Union of India & Ors.	...	Respondents

ADDITIONAL AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 4 GUJARAT MARITIME BOARD (GMB), GANDHINAGAR, GUJARAT.

I, Atul A. Sharma, age 56 years, Deputy General Manager (Environment), Gujarat Maritime Board, Respondent No. 4, do hereby solemnly affirm on oath as under:-

1. I am the Deputy General Manager (Environment) and I am also duly authorised officer to swear this Affidavit on behalf of the Respondent No. 4. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.

2. That I say that as per the direction of the Hon'ble Supreme Court of India contained in its order, dated 17 February 2006 in Writ Petition (Civil) No. 657/1995, the Ministry of Environment & Forests, (MoEF), Government of India appointed a Committee of "Technical Experts" to submit a report on Ship Breaking Activities. In light thereof, a committee was constituted of various technical experts.

3. The said Committee after examining various materials and details submitted a report namely 'Report of the Committee of Technical Experts on Ship breaking activities' dated 30.08.2006 was prepared by the said Committee.

   A Copy of the 'Report of the Committee of Technical Experts on Ship breaking activities' dated 30.08.2006 is annexed herewith marked as **ANNEXURE-A**

4. The Committee had undertaken a very elaborate and detailed study of the problems and has also suggested valuable norms and solutions. It had focused

on the "Hazards Associated with Ship-Breaking". In the said report, references have been made to hazards in ship-breaking industry, occupational and health issues, primary preparation and breaking, occupational health hazards associated with different stages of ships, secondary breaking and sorting and handling of hazardous materials. Further, the Committee has relied upon studies conducted by National Institute of Occupational Health and Workers, evaluation of State and the demonstration facility for asbestos removal.

5. The said report was accepted by the Hon'ble Supreme Court in its final judgment dated 06.09.07, pursuant to which the Hon'ble Supreme Court issued various directions in relation to Anchoring, Beaching and Ship Recycling.

A Copy of the judgment dated 06.09.07 passed by the Hon'ble Supreme Court in WP(C) 657/1995 is annexed herewith marked as **ANNEXURE-B**

6. It is further stated that the Respondent No. 4 had prepared a Power Point Presentation on 6th January, 2016, on the best practice approach to Shipbreaking at Alang, which they crave leave to refer to and rely upon during arguments.

A Copy of Power Point Presentation dated 06.01.2016 is annexed herewith marked as **ANNEXURE-C**

A Copy of the judgment of this Hon'ble Tribunal dated 14.01.2015 in Nirma Ltd. vs MoEF & Ors: Appeal No. 4 of 2012 is annexed herewith marked as **ANNEXURE-D**

A Copy of the judgment of the Hon'ble Supreme Court in ***Jal Mahal Resorts (P) Ltd. v. K.P. Sharma*, (2014) 8 SCC** 804 is annexed herewith marked as **ANNEXURE-E**

A Copy of the judgment of the Hon'ble Supreme Court in ***anuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401*** is annexed herewith marked as **ANNEXURE-F**

7. I state that the documents hereto are true copies of the documents referred to and relied upon by the Answering Respondents.

DEPONENT
Dy. General Manager (Env)
Gujarat Maritime Board
Gandhinagar

VERIFICATION:

I, the above-named deponent do hereby verify on this 21th day of November, 2020 that the facts stated hereinabove are true and correct to my information as derived from the records and no part of it is false and nothing material has been concealed therefrom.

DEPONENT
Dy. General Manager (Env)
Gujarat Maritime Board
Gandhinagar

Regi No. 2
Page No. 40
Serial No. 4029
Date 21/11/2020
ILA B. KANTARIA
NOTARY
GOVT OF GUJARAT

IDENTIFIED BY ME
ADVOCATE / PERSON
NAME
ADD

SOLEMNLY AFFIRMED
BEFORE ME
ILA B. KANTARIA
NOTARY
GOVT. OF GUJARAT
21/11/2020

Date. 21/11/2020
place. Gandhinagar

NOTARY GOVT. OF GUJARAT

Let us work for Golden Gujarat

Government of Gujarat

Sardar Bhavan Sachivalaya, Gandhinagar

Name	ATUL A. SHARMA
Designation	DY. GENERAL MANAGER
Organization	GUJ. MARITIME BORD
Blood Group	O+ve
ID No	GJ/OTHERS/28/412283
Valid Upto	31/01/2021

Authorised Signatory Signature of Holder

Report

of the

Committee of Technical Experts

On

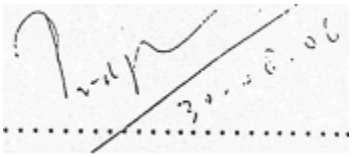
Ship Breaking Activities

Chairman:
Dr. Prodipto Ghosh,
Secretary,
Ministry of Environment & Forests

Writ Petition No.657 of 1995
Research Foundation for Science, Technology and
Natural Resource Policy
v/s
Union of India and Others

30 August 2006

The Committee of Technical Experts on Ship Breaking Activities constituted by the Hon'ble Supreme Court of India by its Order dated 17th February, 2006, do hereby Submits its Report. The Committee is greatly honoured by the confidence placed in it by the Hon'ble Supreme Court and have made every effort to fulfill the task assigned to it.



Dr. Prodipto Ghosh
Chairman

Foreword

1. As per the direction of the Hon'ble Supreme Court of India contained in its order, dated 17 February 2006 in Writ Petition (Civil) No. 657/1995, the Ministry of Environment & Forests, (MoEF), Government of India appointed a Committee of "Technical Experts" to submit a report on Ship Breaking Activities with special reference to Alang. The composition of the Committee along with its terms of reference is given in Annexure-1A. Shri A. Chatterjee, Additional Director General cum Chief Surveyor, Directorate General of Shipping and Shri Kumar Arvind Singh Deo, Joint Secretary, Ministry of Steel participated in the meetings as Special Invitees. Annexure I B provides brief CVs of the members.

2. The Committee had its first meeting on 8 April 2006 at MoEF, visited the Alang-Sosiya Ship Breaking Yard and held three rounds of discussions with various agencies concerned as well as other stakeholders who wanted to resent their views on the subject. In all, the Committee held nine meetings. The 9th meeting was held during 18-19 August 2006 at Ahmedabad.

3. The agencies/individuals with whom discussions were held include:

   a) Representatives of the; Alang-Sosiya Ship Breakers' Association;
   b) Gujarat Maritime Board (GMB);
   c) Dept. of Ports, Govt. of Gujarat;
   d) Gujarat Pollution Control Board (GPCB);
   e) Dept. of Customs, Alang;
   f) Directorate of Industrial Safety & Health (DISH) Govt. of Gujarat;
   g) Assistant Labour Commissioner, Govt. of Gujarat;
   h) Representatives of Workers at Alang-Sosiya Yard;
   i) Gujarat Enviro Protection and Infrastructure Ltd (GEPIL), operator of the TSDF at Alang;
   j) Samvardhan Trust, Bhavnagar;
   k) Shiv Sena, Bhavnagar;
   1) Saurashtra Chamber of Commerce;
   m) Shri Gopala Krishna of Occupational & Environmental Health Network of India;
   n) Shri Ravi Aggarwal of Toxic Links; and
   o) Shri Sanjay Parikh, Advocate, Supreme Court - only written submission.

4. The Committee had the benefit of the report of the High Power Committee on Management of Hazardous Wastes headed by Prof. M.G.K.Menon (March 2002), Guidelines of the Central Pollution Control Board on ship breaking (December 1997), the Gujarat Maritime Board Regulations of 2003, dated 05 July 2003 and also report of MECON (September 2001) on, 'Assessment of Pollution Potential from Ship breaking Activities'. The Committee also kept in view the draft guidelines on ship recycling of the International Maritime Organization (IMO), the International Labour Organization (ILO), and the Basel Convention.

5. The Committee acknowledges the support provided by officials of the Ministry of Environment & Forests, in particular, Shri M. Subba Rao, Additional Director, and the Officials of Central Pollution Control Board (CPCB), in particular, Shri N. K. Verma, Additional Director, and Shri J. Chandra Babu, Assistant Environmental Engineer. The support provided by Gujarat Maritime Board,(GMB), and Gujarat Pollution Control Board (GPCB), in making

arrangements for the visit of the Committee to the Alang-Sosiya Yard and organizing meetings with various stakeholders is also acknowledged.

6. The Committee constituted seven sub-groups to deliberate on specific issues based on the expertise of the members and to provide inputs to the Committee for preparation of the report including recommendations for upgradation of existing facilities at the Alang ship breaking yard.

7. This report is submitted for the consideration of Hon'ble Supreme Court of India.

(Dr. Prodipto Ghosh)
Secretary,
Ministry of Environment and Forest, &
Chairman, Committee of Technical Experts on
Ship Breaking Activities

List of Abbreviations

ACMs	Asbestos Containing Materials
AERB	Atomic Energy Regulatory Board
BARC	Bhabha Atomic Research Centre
BSF	Benzene Soluble Fractions
COD	Chemical Oxygen Demand
CPCB	Central Pollution Control Board
CSMCRI	Central Salt and Marine Chemicals Research Institute
DG, FASLI	Director General, Factory Advisory Services and Labour Institute
DISH	Directorate of Industrial Safety & Health
DoE	Department of Explosives
EIL	Engineers India Ltd.
FPSO	Floating Production Services & Offshore
GEPIL	Gujarat Enviro Protection and Infrastructure Ltd.
GMB	Gujarat Maritime Board
GPCB	Gujarat Pollution Control Board
GRT	Gross Registered Tonnage
HRCT	High Resolution Computerized Tomography
IDLH	Immediately Dangerous to Life and Health
IMC	Inter-Ministerial Committee
IMDG	International Maritime Dangerous Goods
IMO	International Maritime Organization
ILO	International Labour Organization
LDT	Light Displacement Tonnage
LEL	Lower Explosive Limit
LPG	Liquefied Petroleum Gas
MoEF	Ministry of Environment & Forests
MoS	Ministry of Steel
MT	Million Metric Tonne
NAA**A**QS	National Ambient Air Quality Standards Net Registered Tonnage
NIOH	National Institute of Occupational Health
ODH	Oxygen Deficient Hazards
ODS	Ozone Depleting Substances
OSH	Occupational Safely & Health
PAH	Polycyclic Aromatic Hydrocarbons PCBs Polychlorinated Biphenyls
PFT	Pulmonary Function Test
PPESs	Personal Protective Equipments
PEL	Permissible Exposure Limits
RSPM	Respirable Suspended Particulate Matter
SLF	Secured Land Fill
SMB	State Maritime Board
SPCB	State Pollution Control Board
SPM	Suspended Particulate Matter
TBT	Tributyltin
TSDF	Treatment, Storage and Disposal Facility
VOCs	Volatile Organic Compounds
Pb	Lead
Sn	Tin
Cd	Cadmium

COD	Chemical Oxygen Demand
Cr	Chromium
Zn	Zinc
Ni	Nickel
As	Arsenic
Cu	Copper
Hg	Mercury
CN	Cyanide
As	Arsenic
Mn	Manganese

Some Frequently Used Terms

"Shipowner" means the person or persons or company registered as the owner of the ship or, in the absence of registration, the person or persons or company owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company. This term also includes those who have ownership of the ship for a limited period pending its sale to a recycling facility.

"Ship Recycling" means all associated operations including mooring or beaching dismantling, recovery of materials and reprocessing.

"Ship Recycling Facility" means a site, yard or facility used for the breaking and or recycling of ships which is authorized or permitted for this purpose by the competent Authority of the State where the site, yard or facility is located (Recycling State).

“Waste" means materials eliminated or discarded as no longer useful or required (Oxford Dictionary, 10"'. Edition, page 1626).

"Yard" means an area 'consisting of a number of plots in which ships are broken with common infrastructural and waste disposal facilities.

`Plot' means an area leased out to a ship recycler for the purpose of ship recycling

Note: it may be mentioned that the words ‘Ship breaking’, ‘Ship recycling’ and’ Ship dismantling’ have been used synonymously in various s reports as well as in this report

Contents

1. Introduction

1.1. Background:

Recycling is one of the key elements of sustainable development, and recycling of old ships, which have seen an operating life of 20 - 25 years or more is considered the best option for their disposal. The steady withdrawal of older ships and their replacement by new ones is a natural commercial process, which provides the opportunity for environment friendly recycling of steel, used oil, etc. and reuse of various equipment onboard the ships. Since steel constitutes the main component of a' ship's structure, its recovery from the ship offers both economic as well as environmental advantages. In particular, the resources required in steel making from iron ore and the environmental, health and safety problems in steel production are of a much greater magnitude as compared to ship breaking. Nevertheless, concerns have been voiced about the potential problems related to health and safety of workmen engaged in this activity as well as protection of the environment. The problems arise from the fact that some hazardous substances used in building of old ships need to be handled safely, and also due to the difficult working conditions that are characteristic of ship breaking.

This report is aimed at identifying the potential areas of concern in ship breaking keeping in view the current dismantling practices at Alang-Sosiya and status of infrastructure, suggesting systems and procedures to be adopted in carrying out the activities in a safe and environmentally sound manner, and making specific recommendations for augmentation/upgradation of facilities in individual plots, and common facilities at the yard. Alang accounts for nearly 90 % of the ships broken in the country, with other centers located in the States of West Bengal, Andhra Pradesh, Kerala, Tamil Nadu, and Maharashtra accounting for the rest.

1.2. Ship:

A ship is a vessel of any type whatsoever operating under its own power or otherwise in the marine environment, including hydrofoil boats, air-cushion vehicles, and submersibles, floating craft, and fixed or floating platforms, and a vessel that has been stripped of equipment, or is towed. A profile view of a merchant ship along with description of various terms used in the context of merchant ships is given at .Appendix-2. This appendix also contains brief descriptions of some related terms such as ship owner, ship breaking, ship recycling, yard, plot, etc.

1.3. Classification of Ships:

Based on their use, ships may be categorized as:

a) Bulk carriers
b) IMDG/Tankers
c) Passenger ships
d) Other Cargo Ships
e) FPSO/Offshore fixed or floating platforms
f) War Ships
g) Factory Ships

1.4. Ship Breaking Process:

Ship Breaking is the process of dismantling a vessel's structure for scrapping or

disposal whether conducted at a beach, pier, dry dock or dismantling slip. It includes a wide range of activities, from removing all gear and equipment, to cutting down and recycling the ship's infrastructure. A description of various methods adopted in ship breaking along with their relative merits is given at Appendix 3.

1.5. Description of slang-Sosiya Ship Breaking Yard:

The Alang-Sosiya Ship breaking yard along a 10 KM stretch of the coast of Gujarat in the Gulf of Cambay is one of the largest ship breaking yards In the world. Ship breaking started here in 1982 because of some natural advantages. It picked up in the 1990s. Thus in 1995-96, a total of 183 ships (total LDT of 1.25 MT (Million Metric Tonnes)) were broken and 15,000 workers were engaged in this activity. The business peaked by 1998 when 361 ships (totaling LDT of 3.04 MT) were broken giving employment to 35,000 workers. The Tempo of activity at Alang was maintained up to 2003-04.

The scale of ship breaking activity all over the world, including at Alang, has gone down over the years. In 2005-06, only 101 ships (totaling LDT 0.48 MT) were available for breaking, and only 5000 workers were engaged. This is due to the nature of ship breaking business, which is cyclic. As per Gujarat Maritime Board's projection, the tonnage is expected to go up to 1.5 MT by 2010, 2 MT by 2015 and 3 MT by 2020.

Table 1.1. Ship Breaking Statistics

No.	Year	No. of ships	LDT (MT)	No. of workers
1	1995-96	183	1.25	15000
2	1996-97	348	2.64	30000
3.	1997-98	347	2.45	28000
4	1998-99	361	3.04	35000
5.	1999-00	296	2.75	32000
6	2000-01	295	1.93	22000
7.	2001-02	333	2.73	30000
8	2002-03	300	2.42	28000
9	2003-04	294	1.99	23000
10	2004-03	196	0.94	5000
11	2005-06	101	0.49	5000

During the site visit of the Committee, the local organizations emphasized that this industry has made a very positive significant impact on the economy of the area, and needs to be encouraged. Apart from providing direct employment to thousands of workers from different parts of the country, the activity provides indirect employment to about one faith people in the services sector and in the downstream industries, such as steel re-rolling.

It is understood that the infrastructure at Alang till about three years back was very inadequate. However, during the visit of the Committee it was observed that the following facilities were available:

a) 10 km long concrete access road to all the plots
b) Water supply to the plots by tankers - work on piped water supply nearing completion.
c) Electricity
d) Fire station
e) Training cum welfare centre
f) Hospital run by Red Cross
g) Mobile medical van
h) Secured landfill for hazardous waste disposal
I) Sanitary blocks for workers.
j) 30-bedded hospital under construction at Bhavnagar.

Since handling of asbestos and its impact on health of workers has emerged as a major area of concern, the Committee commissioned the NIOH for carrying out the following studies:

(a) Assessment of health status of workers engaged in ship breaking at Alang, in particular, those engaged in removal of asbestos/Asbestos Containing Materials (ACMs)
(b) Performance valuation of "State-of-the-Art" infrastructure for removal of asbestos, which M/s. GEPIL demonstrated as a model.

The above two reports were considered by the Committee.

The report is spread over nine sections covering the seven thematic areas identified. Specific recommendations in respect of facilities and services which need to be augmented, systems and procedures that need to be improved, capacity building necessary in SMB, etc have been given at the end. A compilation of the provisions of various laws, regulations, and guidelines applicable to ship breaking has also been incorporated.

2. Hazards Associated with Ship Breaking

2.1. Hazards in the Ship Breaking Irdustcy:

Ship breaking is considered to be one of the hazardous industries. This is because of a number of features inherent in the process of ship breaking as follows:

a) Some work is to be carried out at considerable heights.

b) The initial stages of the dismantling work are carried out in the inter-tidal zone in the beaching method, and this makes inspection by regulatory authorities a difficult task.

c) The work is carried out by casual labourers provided by the contractor with the following characteristics:

   i) High degree of labour turn over.
   ii) Migrant labourers from Orissa, Bihar, Uttar Pradesh, Tamil Nadu.
   iii) Language problems, rendering understanding of instructions, as well as imparting training difficult.
   iv) Lack cf pre, placement training.
   v) Lack of awareness among workers of the hazardous nature of work and materials (e.g., asbestos, PCBs etc.).

d) Potential presence of inflammable/explosive vapors and gases and hazardous material associated with use of torches as the most frequently used working tool for cutting of ship's structure.

e) Difficulty in using Personal Protective Equipment (PPEs) even when they are supplied because of:

   i) Hot and humid climate.
   ii) Difficulty in free movement and work.
   iii) Inadequate supervision.
   iv) Lack of awareness of potential benefits (lack of safety culture)

f) Difficulty in evacuation in the event of fire or blast.

2.2. Occupational and Health Issues:

Occupational health hazards associated with different stages of ship breaking are depicted diagrammatically in Fig.2.1 and are elaborated below. These hazards are as follows:

2.2.1. Primary Preparation and Breaking:

(a) Preparations for and actual breaking of the ship and removal of major blocks takes place in the inter-tidal area. The processes carried out include the removal of oils and other liquid and gaseous wastes, removal of asbestos, dismantling of reusable machinery and equipment, cutting of large, segments of the ship's structure, etc. Hazards encountered at this stage are:

i) Dangers due to inhalation of toxic gases and fumes arising from flame cutting operations which assume greater danger when carried out in confined spaces.

ii) Risk of fire and explosion; risks posed by falling objects; falls, trips and slips.

iii) Inhalation of air containing free asbestos fibres during removal of asbestos.

iv) Exposure to hazardous liquids and gases e.g. oil and cleaning compounds, redundant gases - Ammonia, PCBs.

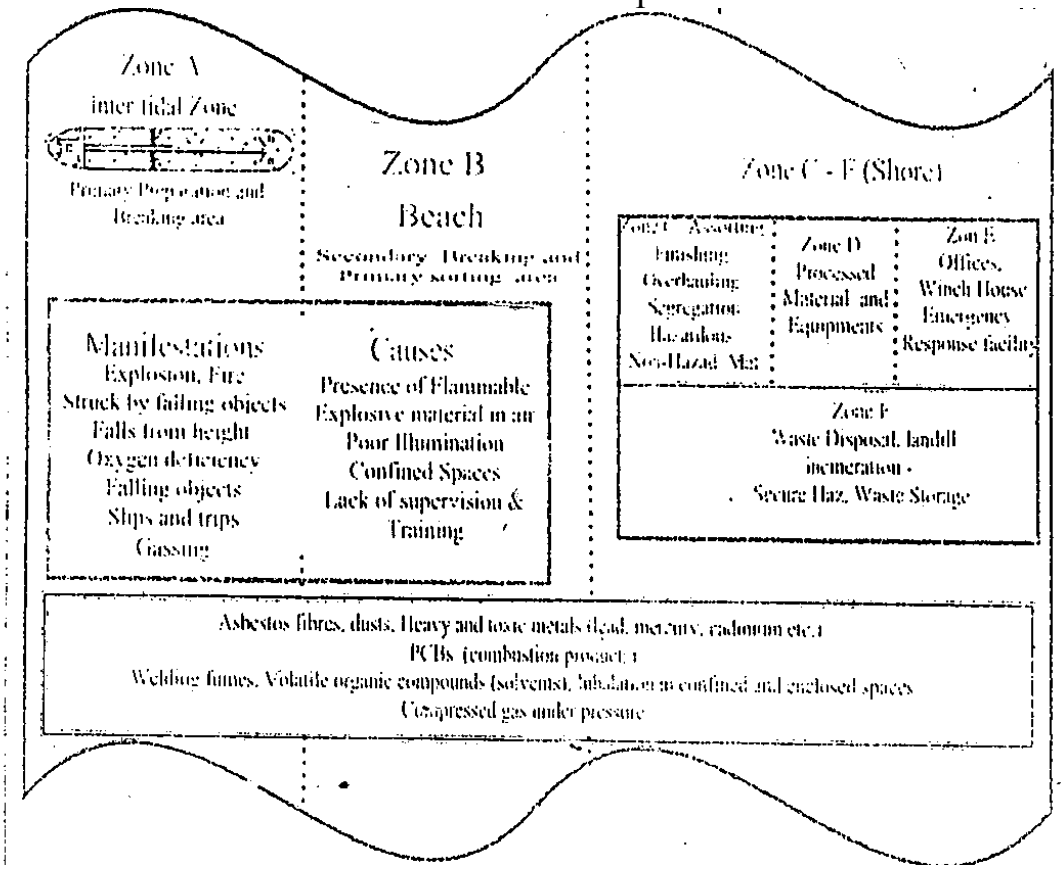
v) Drowning of workers in case of floating or partially floating structure

(b) Accidents due to darkness

(c) Discomfort due to inadequate ventilation in confined spaces on board the vessel.

Figure 2.1. Occupational Health Hazards Associated with-Different Stages of Ship

Activities in Different Zones and Associated Occupational Health Hazards



2.2.2 Secondary Breaking and Sorting:

This activity is carried out on shore. Processes carried out are likely to involve cutting of large sections into smaller sections, sorting of components, and lifting and transport of smaller sections to the re-rolling mills. Hazards encountered in this zone include:

a) Risk of fire and explosion.
b) The inhalation of toxic fumes and gases.
c) Exposure due to handling of hazardous liquids.
d) Falls, trips and slips.
e) Exposure to asbestos fibers during removal of asbestos.

2.3. Handling of Hazardous Materials: Issue

2.3.1. Sorting, finishing and overhauling, segregation of hazardous and non-hazardous materials:

These activities are carried out on shore. The hazards include fumes and toxic gases (from gas cutting, stripping, dismantling operations); trips and slips; manual lifting and handling of heavy objects, and handling of asbestos. The occupational hazards mentioned above have been summarized in Annexure 2(1).

2.4. Ships of Special Concern:

2.4.1. Types of ships of "Special Concern":

For certain ships, which need exceptional treatment for recycling, a few critical aspects will predominate and call for special care which the recycler and the port should to provide. Categories of ships of "Special Concern" are given in Table 2.1.

Table-2.1. Categories of Ships of "Special Concern"

Sl. No	Category	Nature of Concern	Essential Infrastructure and Precautions Necessary
1	Warships	Large quantities of PCBs, ACMs	Adequate infrastructure at the yard to handle the identified quantities, adequate approved infrastructure of disposal facilities nearby, adequately trained staff, strict monitoring by SPCB/SMB
2	Large Passenger Liners	Large quantities of PCBs, ACMs	Adequate infrastructure at the yard to handle the identified quantities, adequate approved infrastructure of disposal facilities nearby, adequately trained staff, strict monitoring by SPCB/SMB

3	Nuclear Powered Ships	Residual Radiation Level	Monitoring by AERB/ Health Physics Department of BARC of residual radiation level and if found higher than the permissible limits, to recommend measures for decontamination. Reactors, cores and all radioactive wastes to be removed by owner before last voyage for breaking.
4	Deep Draft Ships requiring to be beached at 1.5 KM or more from the shore base line	Distance from the Beach during beaching	Extra precautions in transferring hazardous materials or materials containing hazardous substances to avoid spillage into the sea.
5	IMDG	Hazardous Residues in Cargo Tanks	Adequate infrastructure at the yard to handle the identified quantities, adequate approved infrastructure of disposal facilities nearby adequately trained staff, strict monitoring by SPCB/SMB
6	FPSO/Offshore	Beaching difficulties	Extra precautions in transferring hazardous materials or materials containing hazardous Substances to avoid spillage the sea.

2.4.2 "Ships of Special Concern" - Assessment of Hazardous Wastes/Potentially Hazardous Materials:

(a) The principal ship building materials used/equipment etc on board ships undergo almost complete recycling and reuse (e.g., ferrous and non-ferrous, metals, equipment, handling facilities, panels, usable fuel oils and lubricants, stores, super structures, fire fighting equipment, navigation equipment, instruments, lead acid batteries, etc.) and do not pose significant concern for the environment or safety and health of workers. However, during the process of ship breaking, some wastes are generated' which may contain hazardous substances. It is necessary to ensure that adequate facilities to handle all types of hazardous wastes, excepting radioactive wastes are available. The assessment of hazardous wastes and materials containing hazardous substances for ships of "special concern" should therefore not only identify types of hazardous wastes and materials containing hazardous substances, but also make a fair judgment of the quantities of substances such as ACMs, asbestos dust and fibre, PCB containing materials, etc, to be handled before anchoring permission can be granted. For other categories of ships, while identification of all areas containing hazardous substances/wastes would be necessary, quantification need not be insisted upon. Accordingly, the documents to be submitted for desk review would vary depending on the category of ships.

(b) In making an assessment of potentially hazardous materials in the structure and on board all types of ships, two Appendices may be referred, as follows:

(i) **Appendix 4:** List of Ha:ardous Wastes and Substances that are relevant to Ship Recycling, and
(ii) **Appendix 5**: Potentially Hazardous Materials, which may be on board vessels delivered to recycling yards.

2.5. Occupational Health and Safety Issues at the Alang-Sasiya Yard:

The ship breaking industry is associated with several potential occupational health hazards mentioned above. Accidents and health hazards arising from handling of asbestos and other hazardous substances deserve attention on priority. The following historical/empirical evidence is available regarding the actual incidence of these hazards at Alang -Sosiya:

2.5.1. Accidents:

(a) The data of fatal accidents during the last 10. years (1995 to 2005) in ship breaking at Alang and other industries in Gujarat made available by the Directorate of Industrial Safety and Health, Gujarat, shows that the average annual incidence of fatal accidents in ship breaking industry is 2.0 per 1000 workers while the All India incidence of fatal accidents during the same period in mining industry, which is considered to be one of the most accident prone industries, is 0.34 per 1000 workers. The cause-wise analysis of fatal accidents in ship breaking industries during the last decade reveals that the most frequent causes of injuries were fall from height (21%), fire (20%), struck by falling objects (18%), gassing (11%), striking against objects (11%), and explosions (6%).

(b) It may be noted that the ship breaking industry falls within the purview of Factories Act 1948. Rules under sections 88 and 88f1 of this Act prescribe compulsory notification of all accidents, which result either in death or non-fatal injuries or result in more than 48 hours absence from work. Generally, the overall proportion of reported fatal and nonfatal occupational injuries is about 1:100. For example, in 2001, there were 71585 non-fatal and 893 fatal injuries from various industries reported under the Factories Act (Source: presentation by DG, Factory Advisory Services and Labour Institute. Mumbai, 2005) (Report submitted by MECON Ltd, states that there were 218 fetal accidents and 169 non-fatal accidents reported between 1984 and 1999). Apparently the lower proportion of the reported non-fatal injuries in ship breaking industry indicates gross under reporting of non fatal injuries.

(c) Gujarat Maritime Board in its presentation on 2 May 2006 before the Committee at Alang stated that the hospital services for ship breakers run by the Rea Cross Society treated 976 orthopedic cases, 917 burn cases and 10,666 cases of wound dressing during the last ten years i.e. between 1995 and 2005. The data may also include patients from nearby villages. This data indicates the possibility of high incidence of non-fatal injuries requiring hospital treatment, as these medical conditions are most likely to be caused by an accident. Therefore, the hospital data needs to be analyzed with respect to the occupational history, the relationship between the medical condition and accident, date of occurrence, etc, to get some insight into the unreported cases

of non-fatal injuries and the causes thereof for preventive action.

2.5.2. Asbestos Related Issues:

In older ships, free asbestos was used for thermal insulation of steam, hot water pipes, boilers and floor tiles, ACM panels were in the passenger cabins, roof and galley walls for fire protection. Asbestos fibres when removed from free asbestos may become air borne and cause' potential health hazards to the workers. The likelihood of such exposure in handling ACM panels is much lower. Long tern inhalation of asbestos leads to irreversible fibrosis of the lungs called asbestosis, which is characterized by shortness of breath, restrictive type of lung abnormality wh -h can be detected by a pulmonary function test (PFT), and linear shadows in chest X-ray, and thickening of pleura. Asbestos exposure can also lead to cancer of the lung and pleura.

2.6. Studies Conducted by National Institute, of Occupational Health (NIOH):

NIOH examined the health records of the workers exposed to asbestos in the past. These records were available with the Directorate of Industrial Safety and Health (DISH), Gujarat. NIOH was also asked to carry out a health study of the asbestos workers (known locally as "Godadiwala") engaged at present in asbestos removal. The Gujarat Maritime Board also submitted a list of such workers to NIOH. NIOH was also asked to carry out performance evaluation of "State-of-the-Art System" for removal of asbestos set up by M/s. GEPIL. The salient findings/observations of NIOH arising from the health status study and performance evaluation of "State-of-Art System" for asbestos removal are as follows:

2.6.1. Health Status Study:

(a) The X -ray examination by NIOH showed linear shadow on chest X--rays of 15 (16.0%) of 94 of workers occupationally exposed to asbestos. These are consistent with asbestosis, but could also be caused by other lung conditions. All cases of the radiological abnormalities reported by NIOH belonged to ILO category I (early asbestosis) and were not associated with pulmonary function abnormalities. It may be noted that the absence of abnormal PFT does not exclude the possibility of asbestosis, but calls for further investigation of the cases, and careful follow up. It is also suggested that a larger study involving study design to eliminate sources of bias, including healthy worker bias and comparison with similar control population occupationally not exposed to asbestos should he undertaken.

(b) It may be noted further that exposure to all kinds of free asbestos can lead to occurrence of cancer of lung and pleura (mesothelioma). Workers with radiological changes suggestive of asbestosis are at a higher risk than the workers with normal chest X - rays. Based on "Precautionary Approach" as stated in the National Environment Policy, 2006 and the rules under the Factories Act, we suggest the following measures:

i) Workers showing radiological abnormalities suggestive of

asbestosis should be submitted to High Resolution Computerized Tomography (HRCT), which is a better diagnostic tool than chest radiography for asbestosis.

ii) The directives of Hon'ble Supreme Court (1995) for asbestos exposed workers and the asbestos schedule of Factory Rules should be strictly followed.

iii) All stakeholders including medical professionals need awareness and training on the health issues related to asbestos exposure.

2.6.2. Performance Evaluation of "State-of-the-Art" Demonstration Facility for Asbestos Removal:

M/s GEPIL conducted a demonstration of a "State-of-the-Art" facility for removal of asbestos in an enclosed chamber under negative pressure, with provision for filtering of exhaust air and wastewater. NIOH undertook an evaluation of the facility during demonstration. The findings are as follows:

a) This study was carried out under controlled conditions for the purpose of demonstration and indicates the usefulness of the system. However, the usefulness under actual field conditions needs to be tested.

b) Asbestos fibre concentrations are found to be lower than the permissible exposure level.

c) BIS has recommended Standards for Cleaning of Premises and Plants using Asbestos Fibres (IS 11767:1986). This consists of wetting of asbestos fibres, use of vacuum cleaners and PPEs. The BIS standards should be compared with the method followed by GEPIL in respect of feasibility, efficacy, acceptability and cost effectiveness.

3. Recommended Processes for Anchoring, Beaching and Breaking:

Upon entry into the Port area, a ship is allowed to be anchored by dropping one or more anchors to the seabed. This prevents drifting of the ship, tethers it to one spot, and enables boarding from boats. A ship at anchor may lift its anchors, and sail away. Anchoring of ships is thus fully reversible.

Beaching refers to running aground on the beach a ship meant for breaking by the beaching method. This ship is sailed into the beach under its own power or is towed by barges. A beached ship is rendered immobile, and cannot usually be refloated. Beaching is thus irreversible.

"Ship Breaking" is the process of dismantling a vessel'; structure for scrapping or disposal whether conducted at a beach, pier, dry clock or dismantling slip. It includes a wide range of activities, from removing all gear and equipment to cutting down and recycling the ship's infrastructure.

It may be mentioned that a ship at anchor, or while otherwise afloat, requires to be fully manned, with at least generators running. These involve significant costs. There is little possibility of hazardous materials embedded in the ship's equipment or structure being released to the environment, till the stage of ship breaking. Accordingly, the Committee considered that it is not necessary to require ships to remain outside Port limits, or outside the territorial waters, or the Exclusive Economic Zone (EEZ), pending decision on its being permitted to anchor, or beach.

3.1. Recommended Process for Anchoring:

The ship owner or recycler should submit the following documents well in advance of the arrival of the ship for recycling for a desk review by the SMB in consultation with SPCB and Customs Department:

a) Name of the Ship
b) IMO Identification No.
c) Flag
d) Call Sign
e) Name of the Master of the Ship and his nationality
f) List of the crew
g) GRT/NRT/LDT of the ship with supporting documents
h) Assessment of hazardous wastes / hazardous substances: In the structure of the ship, and on board as far as practicable by reference to the ship's, drawings, technical specifications, ship's stores, manifest, in consultation witn the ship builder, equipment manufacturers and others as appropriate. In tt e case of ships of special concern, in addition to identification and marking of all areas containing hazardous wastes/hazardous substances, quantification of such wastes/substances would also be necessary.

After desk review by SMB/SPCB/Customs, a decision will he taken regarding permission for anchorage of the ships. In case, permission is refused by any one of these three agencies, the ship owner would be entitled to both a review and appeal, SMB and Customs Dept. would separately notify the procedure therefor along with the time frames and consequences of not adhering to the time frames. In the case of SPCB, while review would be done by an appropriate authority of

the SPCB itself, the appeal would lie with the CPCB since there are no specific legal provisions governing this. Once a decision is taken to accord permission for anchorage, instructions for safe anchorage would be issued by the SMB.

3.2 Recommended Process for Beaching:

For obtaining beaching permission, the recycler has to submit documents as per *Annexure-I* of the GMB notification dated 05 July 2003. At anchorage, the ship would be boarded by representatives of Customs Dept./ SPCB/ Explosives Dept/ AERB to verify the submissions/data provided for desk review. If considered necessary, an adequate and representative sample may be used for the verification. For oil tankers, Gas Free and Fit for Hot Working certificate should also be submitted in respect of oil cargo tanks and slop tanks.

After verification, beaching permission will be given to SMB based on clearance granted by all the above/concerned departments / agencies. Again, in the event of refusal to grant permission for beaching, the ship owner shall be entitled to a review and appeal on the lines of provisions governing anchorage. Thereafter, the recycler pays customs duty and takes charge of the ship.

3.3 Recommended Process for Breaking:

The ship recycling plan is an important document: It has two components i.e. Ship' Specific Dismantling Plan, and Recycling Facility's Management Plan. To obtain: ✓ permission for recycling, the recycler is currently required to submit application in Form 2 of GMB's notification dated 05 July 2003 along with the documents specified therein. In addition, the ship recycler should also submit a Dismantling Plan and 'a copy of the Recycling Facility;s Management Plan, along with approval of SPCB therefor.

3.3.1. Recycling Facility Management Plan:

Before granting authorization to the recycling facilities, the SPCB should ensure that the Plan has been adopted by the Board, or the appropriate governing body o the company and should include:

(a) A policy with focus on adequate worker safety and the protection of human health and environment, including the establishment of goals leading to the minimization, and ultimately elimination of the adverse effects on human health and the environment caused by ship recycling.

(b) A system for ensuring the implementation of the requirements set out in national regulations, the achievement of goals set out in the policy of the company, and a commitment to continual improvement of the procedures used in ship recycling operations.

(c) Identification of roles and responsibilities of supervisors, contractors, and workers.

(d) A programme for appropriate training of workers and availability of adequate PPEs, and material handling equipment.

(e) An emergency preparedness and response plan for the plot.

(f) A system for monitoring the performance of the ship recycling operations.

(g) A system for reporting how the ship recycling operations would be performed, including system for reporting discharges, emissions, and accidents causing damage or potential to cause damage to workers' safety, human health and the environment, due to handling of hazardous wastes, and materials containing hazardous Substances.

3.3.2. Ship Specific Dismantling Plan:

Before starting the recycling process, the recycler should submit Dismantling Plan to the authorities, which should include:

a) Details about the ship, and in particular, a fair assessment of hazardous wastes hazardous materials.
b) Ship breaking schedule with sequence of work
c) Operational work procedures.
d) Availability of material handling equipment and PPEs.
e) Plan for removal of oil and cleaning of tanks.
f) Hazardous waste handling and disposal plan.
g) "Gas-free and fit for hot work" certificate issued by the Department of Explosives, or any competent agency authorized by the Department of Explosives
h) Identification and marking of all non-breathable spaces by the Recycler.

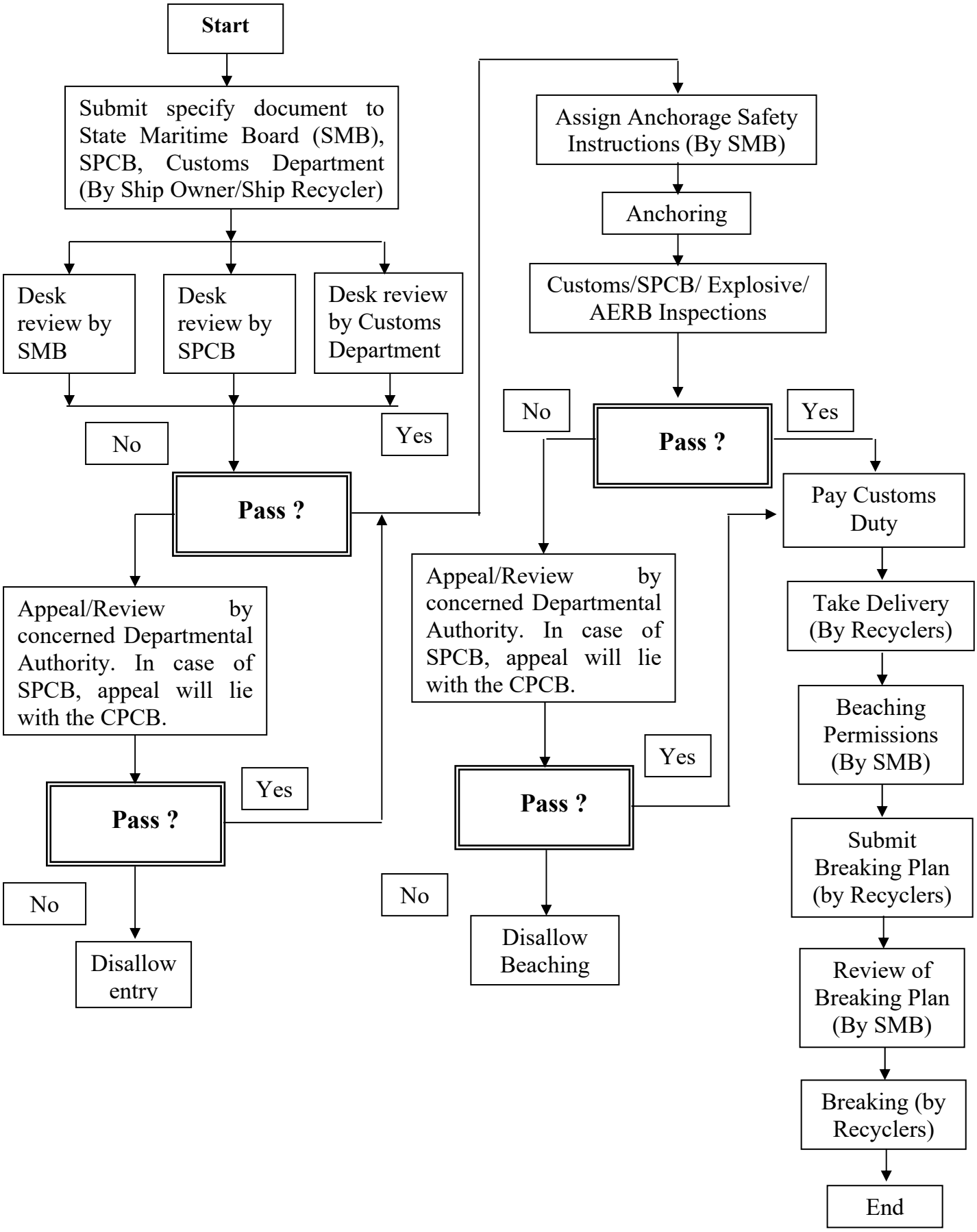
i) Identification and marking of all places containing/likely to contain hazardous substances/hazardous wastes.
j) Confirmation to the effect that ballast water has been exchanged in the high seas. The tasks should address all the three phases of recycling, i.e.

   i) Preparation phase.
   ii) Dismantling phase,
   iii) Waste stream management

k) Asbestos being a major area of concern, the scheme for removing asbestos, and asbestos containing materials (ACMs) on board, and on shore, should be specifically provided. The plan should include arrangements for handling, treatment and disposal. Locations having asbestos/ACMs should be marked before commencing dismantling operations.
l) Systems and procedures to be followed to document and keep track of all hazardous waste generated during recycling, as well as hazardous substances found onboard the ship, and their transport to the disposal facility or registered recycling facility should be provided,

3.4. **Flow Diagram for the Complete Process**. The suggested procedure covering all the three stages, namely, anchorage, beaching and breaking is shown schematically in Fig. 3.1.

Figure 3.1. Suggested sequence of steps/process for Grant of Clearances by the SMB/SPCB/Customs Department for Ships Destined for Dismantling at Alang Breaking Yards



4. Recommendations on Management of' Occupational Safety and Health Issues:

4.1. Occupational Safety and Health (OSH) Management Practices:

Occupational safety and health and the protection of the working and living environments are the responsibility of the owners of ship breaking facilities, as prescribed by the Factories Act and various Environment related Acts. The employer should show strong leadership and commitment for OSH activities that may be exercised through the establishment of an OSH management system specifically designed for the ship breaking facility as mentioned below:

a) Declare OSH policy covering disclosure of information as prescribed under Section 41 B of the Factories Act.

b) Make arrangements for the identification and periodic assessment of the hazards and risks to safety and health from hazardous ambient factors at each permanent or temporary workplace, arising from different operations, involving use of tools, machines, equipment, and substances.

c) Implement appropriate preventive and protective measures required to prevent those hazards and risks, or to reduce them to the lowest reasonable and practicable level, in conformity with Factories Act.

It is imperative that the above mentioned arrangements should include measures to provide and maintain workplaces, equipment, tools and machinery safe and without risk to health and organize work to eliminate or control hazardous ambient factors at work.

It is also necessary to make arrangements to provide for

(a) Adequate and competent supervision of work and work practices by a qualified Safety Officer.

(b) The application and use of appropriate control measures and the periodic review of their effectiveness.

(c) Appropriate and periodic OSH education and training to workers.

(d) Health surveillance of all workers and, where necessary, surveillance of the working environment.

(e) Set up arrangements to deal with work related injuries and diseases, ill health and incidents, which may involve hazards of risks to safety and health.

4.2. Occupational Safety and Health Management System:

4.2.1. Work Area Control:

It is prudent to establish a system of 'Separate Work Area Permits', which shall be issued by the supervisory staff of the recycling facility for the following high risk jobs:

i) Working at height.
ii) Working it,, enclosed potentially oxygen deficient areas.
iii) Working in flammable environments.
iv) Working with toxic, corrosive, irritant or fumigated atmosphere or residues.
v) Crane operations.
vi) Asbestos waste removal. vii) Removal of ACMs.

In order to reduce accidents due to darkness while working on the beached vessel and to avoid discomfort the recycler should provide portable electric lines and adequate lights and fans. Additionally, portable water hoses with dedicated water pump on the beach with adequate take-off points for attaching additional hoses, should be provided at all times when working on the beached vessel, for imediate water supply in the event of fire, for cleaning of oil tanks and for wetting the asbestos before its removal from the vessel.

The issues, which need to be considered in granting 'work permits', are elaborated as follows:

(a) Working at Heights:

Workers certified to work at heights may only be issued permits for working above 3 m from the relevant floor. The following aspects must be ensured:

i) Stability and design of scaffolding at heights ensuring rigidity and stability of the scaffolding.

ii) Use of safety belt while working at height.

iii) Use of fall arrestors while working at height.

iv) Safety helmet for working at height to have head band holding at back and chin strap.

(b) Working in Enclosed Areas:

Oxygen deficient hazard (ODH) is the main concern. Only workers certified to work in ODH areas may be given permits to operate in such spaces -The following aspects must be ensured:

i) ODH signs shall be pasted where they best serve to warn potentially exposed individuals.

ii) The minimum ventilation rate during occupancy should be established during the ODH risk assessment. This may be accomplished by any reliable means, e.g., industrial ventilation fans with secure and reliable external source of power.
iii) Mandatory confined space limit of 19.5% ambient oxygen shall be maintained by a calibrated oxygen monitor by the Safety Officer.
iv) All individuals present shall have ready access to self-rescue and supplied respirators if escape is-not possible
v) More than one individual shall be present at all times in each ODH area.
vi) First aid respiratory apparatus must be available at OHS center

(c) Working in Flammable Environment:

Only workers certified to work in flammable environment may be issued permits for such areas. The ship recycler shall ensure that spaces and adjacent spaces that contain or have contained combustible or flammable liquids or gases are:

i) Inspected visually by the Safety Officer or other specially trained person to determine the presence of combustible or flammable liquids.
ii) Tested by the Safety Officer or other specially trained person prior to entry by workers to determine the concentration of flammable vapors and gases within the space.
iii) If the concentration of flammable vapors or gases in the space to be entered is equal to Cr greater than 10% of the lower explosive limit, the space shall be labeled "NOT *SAFE* FOR WORKERS" and "NOT SAFE FOR HOT WORK".
iv) Ventilation shall he provided at volumes and flow rates sufficient to ensure that the concentration of flammable vapor is maintained below 10% of the LEL
v) The warning labels may be removed when the concentration of flammable vapor is below 10% of the LEL.

(d) Working with Toxic, Corrosive, Irritant or Fumigated Atmosphere or Residues:

Only workers certified to work in these environments may be issued permits for such areas. The ship recycler **shall ensure** that spaces or adjacent spaces **that contain or** have contained liquids, gases or solids that are toxic, corrosive or irritant are:

i) Inspected visually by the Safety Officer or other specially trained person prior to entry by workers to determine the presence of toxic, corrosive or irritant residue contaminants.
ii) Tested by the Safety Officer or other specially trained person prior to entry by workers to determine the air concentration of toxic, corrosive or ii rants within the space. "
iii) If a space contains air concentration of a material which exceeds permissible exposure limit (PEL) or is Immediately Dangerous to Life & Health (IDLH) concentration, tI e space shall be labeled "NOT SAFE FOR WORKERS".
iv) Ventilation shall be provided at volumes and flow rates, which will

ensure that air concentration is maintained within the PEL or below IDLH.

(e) Gas Cutting:

Only workers certified for Gas Cutting may be issued permits for such work. The following aspects must be ensured:

i) Gas cutting may generate toxic fumes from left out paints if paints are not first removed properly along the line of cutting,
ii) The space should be well ventilated to reduce the concentration of toxic fumes to below PEL level.
iii) Gas cutting of pipes, tanks, etc. which are known or suspected to contain combustible or inflammable liquids or gases, or toxic, corrosive, or irritant, or fumigant substances or residues, should in addition be handled as per requirements of (c) and (d) above, as applicable.

(f) Crane Operation:

Only workers certified for crane operations/crane rigging may be issued permits to work cranes. The following aspects must be ensured:

i) Inspection and testing records of cranes and lifting tackles to be maintained as per statutory norms.
ii) SMB to maintain or authorize specialized teams for inspection of cranes and lifting facilities,
iii) Appropriate type of PPEs to be made available and used while handling sharp and/or heavy objects/equipment.
iv) Close supervision should be maintained while heavy loads are manually lifted.

(g) Handling Asbestos Wastes and ACMs:

Only workers certified for asbestos/ACMs removal may be given permits to undertake this activity. The following aspects must be ensured:

i) The removal of asbestos dust and fibres and its handling should be done in a wet condition.
ii) On shore removal of asbestos should be done in enclosures maintained under negative pressure, with filters for outgoing air and wastewater. The applicable BIS specifications should be adhered to in respect of such enclosures.
iii) For ships of "Special Concern", where asbestos/ACMs quantities are the Special Concern, asbestos/ACMs removal on board should be done in enclosures maintained under negative pressure with arrangements for filtration of outgoing air and wastewater. For other ships, the practice of wet removal, of asbestos onboard may be adequate with the use of appropriate PPEs.
iv) The asbestos and broken pieces of ACMs sheets/panels thus removed should be packed in leak proof synthetic packets and disposed of at secured landfills where the packets should be solidified by mixing with cement. Recovered and usable ACMs

sheets/panels may be sold for reuse as permitted by law.

v) PPEs like masks under positive pressure (or masks or respirators meeting BIS specifications for asbestos handling) should be provided to all the workers engaged in asbestos removal.

vi) Asbestos fiber concentrations should be monitored regularly.

4.2.2. Worker's Training and Endorsement of Permits:

It is necessary to train workers for undertaking high risk jobs in the work areas highlighted in para 4.2.1 above. It is also necessary to evolve a 'Training History Sheet' for individual workers to record the details of training imparted and making necessary endorsements. A worker may have training and endorsement for more than one of the high risk work areas mentioned above. Unless separate training and certification arrangements are in existence, the SMB should set up facilities for training and certification, or authorize a competent agency to do so.

4.3 Specifications for PPEs:

In respect of PPEs for which BIS standards have been notified, SMB should ensure that only PPEs conforming to such standards are used. In case specifications have not been notified by BIS for some essential types of PL Es, they should do the same as early as possible.

5. Recommendations on Handling of Hazardous Materials and Potentially Hazardous Materials:

5.1 Assessment and Verification of Hazardous Wastes:

Assessment of potentially hazardous materials on board a ship after all the •:argo has been removed, can be classified as follows:

(a) Part l: Potentially hazardous materials in the ship's structure and equipment.

(b) Part 2: Operationally generated wastes.

(c) Part 3: Stores

The principal materials/equipment of any old ship meant for recycling undergo almost complete recycling/reuse (e.g., ferrous and non-ferrous metals, equipment, handling facilities, panels, usable fuel oils and lubricants, stores, super structures, fire fighting equipment, navigation equipment, instruments, lead acid batteries etc. and are not of major concern from the point of view of environment as well as health and safety of workers. However, there are a number of potential sources of concern arising from nor-recyclable/non-reusable wastes/substances.

The main items on a ship that may potentially contain substances of concern are given in Table-5.1.

In preparing an assessment of potentially hazardous materials on board ships, two Appendices may be referred:

a) Appendix 4: List of Hazardous Wastes and Substances that are relevant to Ship Dismantling; and
b) Appendix 5: Potentially Hazardous Materials, which may be on board vessels, not being cargo, delivered to recycling yards.

Materials containing potentially hazardous substances fit for reuse or recycling, would need careful handling at the yard for safely handing over to the authorized recycler/user. The nature and quantity of hazardous substances in the structure, of the ships will be dependent on the type of the ship, its size, its vintage, and the place of manufacture. The main hazardous substances of concern, due to quantities involved and handling precautions necessary, are asbestos/ACMs and the insulation of cables, which may contain PCBs. In respect of ACMs and cables, only some portion will be waste for disposal, and the 're.: would be fit for reuse. To give an idea of the quantities involved, it may reasonably be assumed that, depending on the type and size of the ships, ACMs may vary from a few tonnes to about a thousand tonnes. Out of this, the quantity of unusable items will again vary depending upon the size and nature of the ships.

Table-5.1. Main Items of Ships and Substances of Concern with Disposal Options

Sl. No.	Main items of ship that may contain Substances of Concern	substances of concern	Appropriate Disposal Option(Reuse/Recycle/Incineration/ Treatment & Disposal to secured landfill) of substances of concern
(a)	(b)	(c)	(d)
1	Electric equipment e.g. transformer, batteries, accumulators	Dielectric fluids containing PCBs	Incineration/Disposal in Secured Landfill after stabilization /solidification
		Lead/electrolyte in unusable batteries	Recycling of Lead through registered recyclers; treatment and disposal of electrolyte
2	Air conditioners and refrigeration machines '	Residual refrigerants as ODSs	Recovery through authorized unit
		Evaporator dosing / descaling acids	Recovery or treatment and disposal through authorized units /facilities
3	Tank	Fuels, lubricants	Reuse, Rerefining/Recycling through Registered recyclers /re-refiners
		Sludge	Recycling by registered recyclers and disposal of residue in authorized facilities
		Oil and grease	Reuse; treatment and disposal of bilge water
		Foreign aquatic organisms in ballast tank sediments	Exchange of ballast water in high seas.
4	Partition walls	ACMs	Reuse
		Paints containing PCBs, Lead	Disposal in an authorised secured landfill after solidification / stabilisation
		Broken pieces containing ACMs	Disposal in an authorised secured landfill after solidification / stabilisation
5	Cables	Cables containing PCBs in insulation	Reuse; disposal of waste cable insulation in an authorised, secured landfill after stabilisation /solidification
6	Heat exchangers	Asbestos insulation on surfaces	Disposal of asbestos in an authorised secured landfill after solidification / stabilisation
7	Storage facilities for chemicals	Residues of toxic chemicals / reagents	Incineration/disposal in a secured landfill after treatment.
8	Stored solvents and other chemical stocks	Residues of toxic chemicals, solvents, thinners, kerosene, white spirit, water treatment chemicals	Incineration; disposal in a secured landfill in case of water treatment chemicals after treatment / stabilisation

		Acetylene/ propane/ butane	Incineration
		Miscellaneous medicines	Incineration of unusable medicines
9	Paint scrap	PCBs, TBT, Lead	Disposal of paint scrap in a secured landfill
10	Sacrificial anodes	Heavy metals	Disposal in as secured landfill after pre-treatment for immobilisation,
11	Fire extinguishing and fire fighting equipments	Halons	Recovery and Banking for recycling through authorised facilities
		CO2 cylinders	Recycle /Reuse
12	Piping, valves and fittings	Asbestos as insulation/ gaskets	Disposal to SLF after Solidification/Stabilisation
13	Pumps and compressors	Asbestos in gaskets	Disposal to SLF after Solidification / Stabilisation
14	Engines and generators	Asbestos as insulation	Disposal to SLF after Solidification/Stabilisation
		Residual of lubricant oils/coolants	Incineration; disposal to SLF after treatment for coolants.
		Anti freeze compounds	Treatment and disposal to SLF
15	Oil sumps	Sediments	Disposal to SLF
16	Hydraulic system	Residual fluids, Anti freeze fluids	Rerefining through registered/authorised units
17	Light fittings and fisures	PCBs	Waste material to SLF
18	Instruments	Mercury	Recovery by distillation; reuse of recovered mercury, and residue to SLF
		Radioactive materials	Disposal as per AERB norms

Nate: Except as specified in Column (d), all ltems in column (b) may be recycled/reused.

Some estimates of the quan.ity of waste materials generated from ship-breaking activities have been made by GMB. Based on these estimates the landfill at Alang has been designed and constructed. This is given in Table 5.2.

Table 5.2. Typical Quantities (if Waste Material Generated from Ship Breaking Activities (for 350 ships broken per year)

SI. No	**Type of wastes**	**Quantity in TPA**
1	Asbestos	175
2	Glass wool	2000
3	Sludge residue & Contaminated material	400

4	Plastics and cables with paint chips)	20
5	Rubber	49
6	Fiber Glass	40
7	Rexene	50
8	Iron Scales	900
9	Chicken Mesh	175
10	Cardboard and making material	35
11	Glass	175
12	MSW Landfill	5000
13	Cement Tiles	10000

Source: Presentation made by GMB to the Members of Technical Expert Committee on May 02, 2006

5.2 Creation/Enhancement of Facilities for Removal, Storage and Disposal of Hazardous Materials and Hazardous Wastes:

5.2.1. Present Practices:

Based on visit to the Alang Sosiya Ship Breaking Yards undertaken by the Technical Committee and further discussions field, the following observations are made in respect of on site removal and handling of hazardous material and final disposal of hazardous waste:

a) GMB has developed a secured landfill having three cells for disposal of hazardous waste at Alang and managed by an operator (M/s. GEPIL) selected by GMB. The capacity of this facility is about 50,000 MT. Landfillable hazardous waste **is sent to** this landfill site. Incinerable wastes are taken to an incineration facility operated by the same company at Surat. Some hazardous materials such as used oil, plastic etc. are sold to the registered recyclers. However, the accounting and tracking system of hazardous. wastes generated, handled and sent for disposal to TSDF site or for incineration or sold to recyclers needs to be improved.

b) No facility for treating the bilge water at the yard is available. The bilge water is discharged to the sea after mixing with ballast water.

c) Oil and sediments remaining in the tanks after pumping out oil to. containers for sale are scraped with cotton rags after spraying mud or wood dust. The cotton soaked with oil is sent for incineration.

d) The reusable ACMs panels etc are removed by trained workers (Gudadiwalas) and sent for reuse. Unusable asbestos such as those found on insulated hot surfaces is also removed by Gudadiwalas who use PPEs. The asbestos waste so generated is solidified with cement in pipes/drums and the solid.fied mass is sent for disposal to the secured landfill. It was informed that all asbestos handling operations are carried out in wet condition.

e) The cutting bf steel plates is done from inside the vessel using gas cutters after scraping of paints along the line of cutting from the inside. The paint chips, which fall inside the ships are paci°d and sent to the secured landfill for disposal. Trained workers using masks and eye protection equipment do the cutting. There is no facility for collection of paint chips on the outer side of the ship which fail on the beach at the time of cutting.

f) The cables are removed carefully so that they can be reused. Small pieces are separated and stripped off insulation materials by pealing/scraping so that the collected copper can be recovered and recycled. Insulation material obtained after removing copper cables is sent to tha secured landfill for disposal.

5.2.2. Proposals for Upgradation of Facilities /Setting up of New Facilities:

a) A land based common facility for treating bilge water should be setup by the SMB or agencies authorized by it and made available to the recyclers for use on cost-recovery basis. Alternatively, a mobile facility may also be provided by the SMB or authorized agencies. The sediments should be sent to the secured landfill for disposal.

b) The ballast water is required to be exchanged at high seas to avoid entry of foreign organisms into the local environment. However, the sediments are generally disposed of at yard/ inter tidal zone. It is to be ensured by the Master of the ship that the sediment is also disposed along with the ballast water by churning the mass. Alternatively, the sediment must have a reception facility at the yard to be set up by the SMB or authorized agencies on cost-recovery basis.

c) Oil sediment removal practices should be modernized to avoid workers getting exposed to unhygienic environment. The yards should use mobile tank cleaning systems to clean the tank surfaces by adopting modern methods in which detergents and high pressure jets are used. Such systems are common in ship repairing yards.

d) For removal and disposal of asbestos, the procedure recommended in Section-4 should be followed.

e) While the quantity of paint chips from the hull that may fall on the beach is likely to be small, and any toxic constituents of such paint may be expected to have largely already leached out during the ship's operating life, nevertheless, owing to the possibility of some residual leaching and risk to marine organisms, a means of collection of paint chips from the hull falling on the beach shall be explored by the ship recycler to avoid their getting carried into the sea. All the collected paint chips should be sent to a secured landfill for stabilization, solidification and disposal.

f) Toxic paints or coatings should be removed up to a distance of 10

cnm from the cutting line. If removal is not possible or feasible, cutting can proceed provided that the operators are equipped with respiratory protective equipment such as airline respirators. For removal of paints and coatings from the surfaces at the yard, a centralized facility should be developed with funding from the "Ferrous Scrap Fund". Modalities for development of centralized facility should be de::tlnned by the Minis'L,y of Steel in consultation with SMB as a long term measure using abrasive blasting, it ::hich a surface is blasted with abrasives (slag, grit or steel shot:.). As blasting involves high pressure equipment, periodic checking of pressure equipments/tools should be mandatory. Abrasive blast material after use is a hazardous waste material and should be disposed of in a secured landfill. Alternatively, mechanical removal may be practiced using power tools but not thermal tools.

g) All waste insulation from cables should be disposed off in SLF,.since testing for PCBs is expensive.

h) A scientific waste accounting system should be maintained by the ship recycler and the wastes should be sold or disposed of through a manifest-system in accordance with the Hazardous Waste (M & H) Rules.

6. Recommendations on Environmental Monitoring:

6.1. Ambient Air Quality Monitoring at Alang Ship Breaking Yards:

Ambient Air quality monitoring is carried out by Gujarat Pollution Control Board at Alang Ship Breaking Yards at one location i.e at the office of Gujarat Maritime Board for the parameters - Suspended Particulate Matter (SPM), Respirable Particulate Matter, Sulphur Dioxide (SO2), and Nitrogen Dioxide (NOx). Monthly average values of the monitored ambient air quality parameters during the period April 2005 to March 2006 given below (Table 6.1) indicate that the annual average values for the parameters SO2 and NO., are well within the limits when compared with the Annual National Ambient Au Quality Standards (NAAQS) (i.e. 80 tg/m') applicable to Industrial areas. As far as SPM and RSPM values are concerned, the results obtained from monitoring , xceed the limits of NAAQS (i.e. 360 and 120 µg/m3 respectively). Ship Breaking activities will not be expected to generate significant magnitude of SPM/RSPM. Accordingly, the reported elevated levels of SPM/RSPM may be due to natural dusty conditions. In any case, a single monitoring station-1, iav not be representative of the Alang-Sosiya yard.

Table-6.1. Ambient Air Quality Monitoring Analysis Data of GMB at Alang (2005-2006)

Sl. No	Month	SPM µg/m3	RSPM µg/m3	SO2 µg/m3	Nox µg/m3
1	April, 2005	558.75	374.38	6.25	4.75
2	May, 2035	526.56	335.78	6.56	4.78
3	June, 2005	277.57	163.29	6.86	4.86
4	July, 2005	. 382.75	228.63	13.96	15.11
5	August, 2005	291.67	112.56	14.37	14.54
6	September, 2005	279.44	123.56	14.9	16.23
7	October, 2005	295.38	164.5	12.53	11.93
8	November, 2005	370.25	161.13	22.13	16.76
9	December, 2005	341.88	172.5	13.97	16.8
10	January, 2005	399.75	209.63	14.61	15.9
11	February, 2005	366.75	155.13	15.58	17.26
12	March, 2005	417.4	240.9	16.7	17.69
	Annual Average	375.68	203.5	13.2	13.05
	Range	277.57-558.75	112.56-374.38	6.25-22.13	4.75-17.69
	NAAQS (Annual Ave	360	**120**	**80**	**80**

Data Source: GPCB, Gundlitnagar.

6.2 Sea Water Quality and Sediment Monitoring at Alang Ship Breaking Yards:

6.2.1. Status of Sea-Water Quality:

Sporadic monitoring of -seawater along the Alang-Sosiya ship breaking yard, and in the sea (typically at a distance of approximately 2 km from

the shore) is .done by GPCB. Monitoring results furnished by GPCB are furnished in Table-6.2. The applicable water quality criteria is SW-V (navigation and controlled waste disposal). Among the reported parameters (Lead, Cadmium, Chemical Oxygen Demand, Colour), only 'Colour' (in qualitative terms) is covered by the criteria for SW-V. This parameter does not appear to be in exceedance of the (qualitative) criteria for Colour for SW-V usage.

Table 6.2. Data on Seawater Quality Monitoring at Alang Ship Breaking Yards, during the year 2005-2006

Sl. No	Sea Water Sampling location	Parameters In m /1							
		Colour		Pb		Cd		COD	
		Range	Ave	Range	Ave	Range	Ave	Range	Ave
1	Near Plot No. 84/C,SBY Alang, Bhavabna ar.	5-30	11.3	0.05-1.534	0.798	Nil-0.11	0.053	07-304	207
2	Near Plot No. 6, SBY, Alan g.	5-30	10	Nil - 1.281	0.849	Nil - 0.11	0.057	75-326	209
3	Near Plot No.I 10 SBY. Aianl;.	5-30	11.7	Nil-1.273	1.003	Nil - 0.11	0.066	80-241	I80
4	Near Plot No.V-7, Alang.	5-30	10	Nil-2.64	1.023	Nil - 0.23	0.073	75-282	183
5	Samples collected (at surface and 10' depth) opposite light house of Ghogha Port at a distance of 0.506 NM from Sea shore of Ghogha Port	40	40	0.065-0.166	0.116	0.065 -0.07	0.068'	Not provided	
6	Sea water Collected at (surface and 10 ' depth) a distance of 0.887 NM from Sea shore of Alang (Opposite shore of Alan end)	40	40	0.415-0.47	0.043	0.06-0.07.	0.065	Not provided	
7	Sea water Collected at (surface and 10 ' depth) a distance of 1.462 NM from sea shore of Alang (Opposite Bridge of Sosiya)	40	40	0.16-0.305	0.24	0.065	0.065	Not provided	
8	Sea water collected at(surface and 10 ' depth)a distance of 1.487 NM(End of Sosiya	40	40	0.1-0.24	0.17	0.065 - 0.100	0.088	Not provided	
	Sea water Collected at (surface and 10	40	40	0.24-0.495	0.368	0.06-0.065	0.063	Not provided	

	depth) a distance of 1.525 NM from Sea shore (LightHouse of Alan Port)				
	Limits asper SW-V	*None in such concentrations that would impair any usage specifically assigned to the class SW-V*	*No limits suggested under criteria of SW -V of Sea water*	*No limits suggested undercriteria of and SW -V of Sea water*	*No limits notifiedunder criteria of any class of Sea water*

Note: SW - : Sea***water*** *used for navigation and controlled waste disposal.*

6.2.2. **Sediments**:

No sediment monitoring results have been provided by GPCB. However, sediment samples were analyzed by M/s. MECON in he year 1997 & 2001 and by CSMCRI in the year 2005. The results indicated presence of metals (Pb, Cr, Ni and Zn) and Oil & Grease. No standards for concentration of metal wastes in sediments have been notified in India. The analysis results are given in the Table 6.3

Table 6.3. Alang Seawater Sediment Analysis Results

Parameter (mgkg)	MECON 1997	MECON 2001	CSMCRI 2005
Oil & Grease	-	104 - 344	
Pb	2.5-20	29-80	
Cr	7.2-12.9	31-51	ND-69.1
Ni	20-44	54-79	ND-33
Cd	ND	3-4	ND -10.3
Zn	4.0 - 77.3	68 - 273	ND - 120
As	-	<3	ND - 0.046
Sediment Oxygen Demand	0.26-0.5	6.1-21.5	-
Tin	-	<50	-

6.3. Ground Water Monitoring at Alang Ship Breaking Yards:

6.3.1. **Status of Ground** Water Quality:

Recent results of ground water monitoring are not available. The ground water quality of tube wells and open sells in nearby areas analyzed by M/s. MECON in the years 1997 and 2001, and by CSMCRI in the year 2005, indicated that the levels of Oil & Grease and MPN of fecal coliform and, in ore case, for Cadmium are not meeting the drinking water standards. The presence of fecal coliform is likely due to lack of sanitary facilities for the workers/village population, while the presence of Cadmium nay be related to leaching from ship breaking activities. These results are given in

the Table 6.4

Table 6.4. Ground Water Monitoring Results Around Alang

Parameter (mg/l except pH and coliform)	MECON 1997	MECON 2001	CSMCRI 2005	Reference Value IS: 10500-1991 Permissible Limits
pH	7.0-7.8	6.7-7.0	7.4-8.2	6.5-8.5
TDS	326 - 750	-	93 - 986	2000
Chloride	42 - i26	250 - 845	-	1000
Oil & Grease	ND - 0.01	<1.0	0.01 - 12.0	0.03
Pb	<0.05	<0.05	ND	0.05
Cu	<0.01	<0.01	-	1.5
Cr	<0.05	<0.05	ND	0.05
Cd	<0.005	<0.01 - 0.02	-	0.01
Ni	-	<0.05	ND	-
Zn	0.05-0.86	<0.01 - 0.32	-	15
Coliform MPN/ 100 ml	Nil-7	Nil - 10	Nil - 1450	

Note:

- *95% sample should not have any coliform*
- *No sample should contain > 10 MPN/100 ml*
- *No Coliforin* in any *two consecutive samples*

6.4. Proposed Monitoring Protocol:

While the reported levels of pollutants in the ambient air/sea-water/ground water do not seem to pose serious concern, it is necessary to carryout an enhanced monitoring programme to more precisely determine the long-term health risks posed to the population at Alang-Sosiya and nearby villages, and to ascertain the impacts of the various environmental management measures proposed in this report.

6.4.1. Ambient Air Quality Monitoring:

(a) Number of Monitoring Stations:

The number of ambient air quality monitoring stations should be increased to at least 2 in order to ensure adequate coverage of the yards at Alang and Sosiya. Location of monitoring stations may be decided by the SPCB in consultation with CPCB.

(b) Additional Parameters to be monitored:

It is recommended to include additional parameters, namely, Volatile Organic Compounds (VOCs), Polycyclic Aromatic Hydrocarbons (PAH), metals (such as Pb, Cd, Sn in particulates & gaseous form), and asbestos fibers, to align the monitoring

programme with the potential impacts of ship breaking activities.

(c) Frequency of Ambient Air Quality Monitoring:

i) Parameters, namely, SPM, RSPM, NOx and SOx should be continued to be monitored as per NAMP criteria (minimum of i04 measurements in a year taken twice a week, 24 hourly).

ii) Asbestos Fibers, metals (Pb, Cd & Sn), VOCs, and PAH should be monitored once a month.

6.4.2. Sea Water Quality and Sediment Monitoring:

(a) Parameter: to be Analyzed in Seawater and Sediments:

Although no standard for COD has been prescribed under the criteria for any class of sea water, the recorded value of COD ranges between 7-304, 75 - 326, 80-241, and 75-282 mg/l at the four locations during 2005-2006. Since COD levels may be elevated due to discharges from ship breaking activities, there is a need to monitor toxic organic parameters: PAH, PCBs and TBT in and around the ship breaking yards in addition to other parameters, namely, pH, Colour, Odour, Suspended solids, turbidity, Oil & Grease, DO, BOD, Heavy metals (Pb, Cd, Zn, Ni, Cr), Dissolved Iron, Dissolved Manganese, Fecal Coliform.

(b) Frequency of Seawater Monitoring:

The seawater monitoring should be carried out at least once every quarter up to a distance of 5 KNI from the shore. The sampling should be carried out in a grid of size of I km X I km in the above area.

(c) Frequency of Monitoring of Sediments:

It is also recommended to collect and analyze the sediment samples once in three months.

(d) Bio- Accumulation:

Locally available sea fish should be analyzed for PCBs, PAH, Hg and Pb at least once in three months.

6.4.3. Ground Water Monitoring:

(a) Parameters to be analyzed:

It is recommended that ground water should be analyzed for pH, Colour, SS, TDS, DO, BOD, COD, 0 & G, heavy metals (Pb, Cd, Cu, Zn, Cr, Hg, Ni), CN, F, As and vIn. Of these, heavy metals and COD may be relatable to ship breaking activities.

(b) Sampling Locations:

It is recommended that the ground water samples should be collected at least up to a distance of 5 Kin from the shore. If no open wells or tube wells are available, action needs to be taken io provide at least five monitoring wells.

(c) Frequency of Monitoring:

It is recommended to monitor ground water at least once in 3 months.

6.4.4. Monitoring Period:

Above suggested frequency of monitoring should be followed for on:. year and reviewed subsequently by SPC13 in consultation with the CPCB keeping in view the. results obtained.

7. Institutional Issues:

7.1. Stakeholders:

The responsibility for dismantling of a ship in a safe and environmentally sound manner complying with notified national regulations lies with the ship recycler, who has been leased the plot at the ship recycling yard. The Agencies responsible for ensuring compliance of the regulations in Gujarat are Gujarat Maritime Board (GMB); Directorate of Industrial Safety & Health (DISH), Govt. of Gujarat; Gujarat Pollution Control Board (GPCB); Customs; and the Petroleum Safety Organization.

7.1.1. Recyclers

There are at present l74 ship recyclers at Alang who have been given plots on lease by the GMB. It is learnt that only about 65 of '.hem are active at present. The recyclers have formed an association, which is reported to have provided funds for workers' welfare and development activities. As per the Factories Act, the regulations notified by GMB and regulation under Environment (Protection) Act, 1986, the recyclers have the responsibility and duly to ensure health and safety of the workers and protection of the environment. In addition to providing PPEs to the workers, recyclers should provide PPEs to inspecting officials and visitors also.

7.1.2. Gujarat Maritime Board (GMB):

At present GMB has been designated by the Gujarat Government as the "Regulatory Authority" for the Ship Recycling Yards. The GMB, in turn, has promulgated the Gujarat Maritime Board Ship Recycling Regulations 2003 for safety and welfare of workers and protection of environment with regard to ship recycling. It has also been stated in the subject Regulations that the Port Authority appointed and authorized by OMB shall be the authority for granting permissions under these regulations to the plot holders for beaching and Ship Recycling Work at their respective plots.

It is observed that multiple roles are being performed by GMB at present i.e. it is the landlord the regulator, and the nodal agency to serve as a link between the industry and concerned authorities/agencies. It is also observed the Post Authority at Alang is under the administrative control of GMB and has been designated as the competent authority for granting permissions to undertake ship breaking operations.

It is understood that apart from Alang Sosiya-Ship breaking yards, GMB is also the regulatory authority) for all the 12 minor ports in the state of Gujarat. The GMB is also involved in developmental works aimed at growth of the infrastructure at all the existing ports of Gujarat, as also those envisaged as `' Greenfield Projects yet to be established on ground.

In view of the multiple roles of GMB, its organizational structure vis-a-vis its responsibilities need to be reviewed and strengthened Ship breaking activities require involvement of professionals with experience and

exposure to ship building/design and ship repairs. At present the yard people with inadequate professional skills are managing recycling yards and the actual industrial activity is being supervised by senior industrial workers with hands on experience (8-10 years of experience).

Since, the Port Authority is responsible for reviewing and approving the ship breaking plan, it is 'necessary that it employs professionals (marine engineers/naval architects) with experience in shin building/ship repairs. Alternatively GMB may consider involving Institutions recognized by the erector Genera l of Shipping in scrutinizing/vetting of the ship breaking plans.

7.1.3. Directorate of Industrial Safety & Health (DISH):

DISH have one f«-tory inspector for the yard as well as for other industries in the region. DISH has the responsibility of overseeing the implementation of the Factories Act. They are also required to investigate **causes of all** accidents and take necessary **action** against recycla**rs. Here again** the inspection capability needs to be enhanced substatially. The number of inspectors earmarked for supervision of Alang-Sosiya yards should be increased to at leas 3.

7.1.4. Gujarat Pollution Control Board:

The Gujarat Pollution Control Board (GPCB) has already created a regional office at Bhavnagar and a senior officer assisted by other technical staff has been appointed. Apart from ensuing compliance with the provisions of the Air Act, Water Act and the Hazardous Waste (Management & Handling) Rule; they also carry out periodical environmental monitoring. Compliance with Hazardous Waste (Management & Handling) Rules needs to be strictly enforced. Record of waste generation and its disposal to the TSDF should be maintained by all recyclers as per provisions of the HW Rules and submitted to the Board. It is suggested that a few scientists of the State Board may be trained in the use of radiation survey instruments for preliminary survey of ships. For ships, which are expected to contain radioactive material, assistance of AERB/BARC may be taken.

7.1.5. Petroleum Safety Organization:

The enforcement of rules in respect of gas cylinders and for storage of petroleum products, if any, removed from the ships is the responsibility of the Inspector of Explosives of the Petroleum Safety Organization (the new name of the Dept. of Explosives). For issuing of Gas Free and Fit for Hot Working Certificates, the Petroleum Safety Organization may authorize suitable agencies.

7.1.6. Customs:

The role of the Customs Department is to ascertain dutiable goods on the ship and to see that no contraband items are on board. Normally no cargo is supposed to be on the ship destined for recycling. This has to be ensured by the owner of the ship. Only essential items required for the crew such

as the fuel required for the ship's propulsion and other items for sailing till its arrival at the destination should be present.

7.2. Inter-Ministerial Committee (IMC):

As per the direction of the F. on'ble Supreme Court, an Inter-Ministerial Committee of the Ministries of Steel, Shipping & Surface Transport, and Environment & Forests has been constituted. This Committee has held five meetings so far and has recommended measures to be taken by the respective implementing agencies. An Inter-departmental Committee may be set up at the State level to follow-up on ehe recommendations of the IMC. 11.

7.3. Overall Management of Ship Breaking Industry:

It is observed that overall management of ship breaking industry at Alang-Sosiya is with the individual plot holders who do not have adequate professional expertise, and is reflected the track record of the industry.

There is a need to review the existing management structure and evolve an alternate organizational structure to develop the ship breaking industry to meet the emerging challenges.

It is, therefore, proposed that a 'Ship-breaking Industry Review Committee' under the aegis of OMB be constituted with the participation of various stakeholders, i.e. recyclers, GPCB and inspecting authorities to evolve an alternate management structure with the help of a competent Management Institute. The professional guidance of a reputed management institute/consultant may be taken for this purpose.

7.4. Quality, Environment and Health Management Systems:

It is observed that adequate emphasis and attention has not been paid by the recyclers to 'Total Quality Management Systems'. In order to demonstrate their commitment to 'Quality, Environment and Health Management' all ship-breaking plot holders need to progressively adopt the ISO/OSHA Standards. It may be prudent to adopt the following step-by-step measures to promote 'Quality Management' and establish Alang-Sosiya Ship-breaking Yard' with commitment to high standards in quality of their operations:

a) The Ship-breaking yards be encouraged to adopt modern work practices with special emphasis on lab6ur, safety, health and quality in all operations. Towards this end, the Training Institute at Alang could develop special 'training modules' for the industrial workers and their supervisors/managers.

b) All ship recyclers be encouraged to obtain ISO 9001/ISO 14000/OSHA 18000 certification to cover all operations being undertaken at their premises.

c) GPCB may evolve a scheme of incentives linked to frequency of randomized mandatory inspections by their representatives. Other

regulatory authorities may evolve similar or alternate schemes also.

d) GMB may consider institution of suitable Awards, Recognition and Monetary Incentives for promoting Quality, Occupational Safety and Health Management Systems to recyclers.

7.5. Capacity Building:

It is observed that the training efforts at Alang are aimed at improving technical skills of workers and also impart safety inputs. It was noted that very few personnel of GMB, GPCB etc had previous experience o: ship building/ship repairs or ship breaking industry. It is, therefore, suggested that al: personnel in GMB, GPCB, etc dealing with the ship breaking industry be trained and imparted professional inputs associated with duties the- are expected to perform. GMB could liaise with DG Shipping, Govt. of India, for developing appropriate training programmes.

7.6. Model Ship Breaking Facility:

It is observed that development of individual plots for ship breaking operation has been left to the discretion of plot holders. This arrangement has led to establishing sub-optimal ship recycling facilities.

There is a need to rationalize plot size and layout of the recycling facilities so that the ship-breaking operations could e undertaken in a well regulated and better organized manner with- particular attention being paid to requirement of safety, health and ship-breaking operations management.

It is, therefore, proposed that serious consideration be given to setting up of a Model Ship-Breaking Facility under the aegis of GMB. This Model Facility may function as a demonstration/training facility, while being leased out to prospective plot holders for undertaking ship-breaking operations.

It is imperative that the institutional framework for regulating and promoting the ship breaking industry is reviewed at the earliest with a view to segregating the regulatory and promotional roles. Management of ship breaking activities at each plot needs to be undertaken in a more professional manner. Serious consideration needs to be given by the 3MB to association of Naval Architects/Marine Engineers and Ship Surveyors with management and supervision of ship breaking. The present low levels of ship breaking activities offers a chance to all stake holders to introspect and evolve alternate organizational structures and methods for managing the ship breaking industry more efficiently and professionally.

8. Workers Welfare Issues:

8.1. Present Scenario:

A recent report published by the 'International Metalworkers' Federation, South Asia Office, New Delhi which is based on their survey carried out in Alang- Sosiya in 2005 has highlighted the following socio-economic conditions- of the ship breaking workers.

i) Migrant Population:

Most of the ship breaking workers at Alang/Sosiya has migrated from different states of India. The state-wise distribution is as follows: UP-41%, Bihar- 22%, Orissa-31%, Other States (Jharkhand, Maharashtra, Gujarat, Rajasthan, Punjab, West Bengal) - 6%.

ii) Employment:

Recent decrease in the ship breaking activities at Alang - Sosiya has led to unemployment and possible exploitation of he workers. The ship breaking workers do not get work continuously. They get work for around 180 days in a year. During the period of non-employment, very few ship breaking workers could find alternate employment and that too at lower wages. Many of the ship breaking workers prefer going to their native places during the periods of non-employment.

iii) Working Hours:

The workers usually work for 10 hours which includes 2 hours of compulsory overtime.

iv) Wages:

The daily wages earned by-the workers are as follows - Rs.50 to Rs.100 - 81 %, Rs.101 to Rs.150 -11 %, Rs.151 to Rs.200- 7%, Rs.201 to Rs. 250 - 1%.

v) Housing:

Villagers refuse to give any accommodation to the individual migrant workers due to some social reasons. A few workers staying in the nearby villages on rental basis also face problems of non-supply of potable water and lack of sanitation facilities. The ship breaking workers residing in the hutment areas (slum area) pay a house rent ranging from Rs.200-500 per month to slum owners,

vi) Marital Status:

88% married; living without family members - 84%.

vii) HIV and other Sexually Transmitted Diseases:

High incidence of HIV infection has been reported in ship breaking workers and alcoholism is rampant. According to the local Bhavnagar

Blood Bank office at Alang, besides 38 confirmed cases of AIDS, about 50-55 new cases of sexually transmitted diseases are being reported every week among the labourers. (Labour File, Mar-Apr 2004)

viii) Literacy in Workers:

The figures are as follows: Illiterates 23%, Primary School level - 32%, Middle School level - 32%, senior Secondary level -10% and Higher Secondary level and Graduates -3%.

ix) Education in Children of the Workers:

Illiterate - 9%, Primary school level - 7%, Secondary school level - 38%, Senior Secondary level - 12% and Higher Secondary and above - 4%.

8.2. Welfare Issues for the Workers:

Taking into consideration the practices followed in industries and also the recommendations of ILO, 'the following steps are necessary to improve the socio economic conditions and productivity of the workers:

8.2.1. Housing Facilities:

Adequate dormitory facilities should be constructed and made available by SMB or an agency identified by it at suitable locations with cost-recovery by way of rent from the occupants, with facilities for supply of drinking water, sanitation, electricity and shopping centres.

a) As workers are mostly migrants, no permanent allotment of houses may be made. As such, single room with toilet and kitchen and a limited number of two room apartments for use by families should be built and made available to workers on rent basis for limited periods with provision for extension.

b) Subletting of houses by allotted workers shall be strictly monitored and prohibited by SMB. The dormitories may be either managed by the SMB or an operator to be engaged by the SMB.

c) Adequate urinals, WCs, bath rooms would be provided at each plot along with rest rooms and supply of drinking water. The individual plot owners would be responsible to ensure creation of these facilities.

8.2.2. Health Care and Health Monitoring System:

(a) Occupational Health Services (OHS) Centre:

SMB should ensure that at Alang a fully equipped OHS Centre is developed. The equipment, etc needed may be decided in consultation with an agency such as NIOH. The operating costs maybe met by charging for various services from the ship recyclers whose workers are referred to OHS as part of regular health check up. In the event of workers falling ill due to occupational exposure

or suffering injuries, etc from accidents, the expenses incurred on their treatment should also be met through insurance claims. The following essential requirements need to be kept in view in setting up of the Centre:

i) Burn wards should be established at the OHS center. (the burn wards need a specialist like plastic surgeon and should be kept separate from OHS.) The 01-IS should concentrate more on preventive aspects like early recognition of work related illness by way of periodical medical examination, etc. It should provide only emergency medical care like treatment of burns and injuries and at the most, treatment of minor illness through out patient department.

ii) There is also a need to develop expertise at local level to monitor asbestos exposure in the work environment. Alternatively, such work could be outsourced.

iii) OHS center should have information on hospitals which have developed specialized departments.

iv) Health status of all workers engaged in ship breaking should be maintained and updated. It would be prudent to establish an elaborate computer based Data Management Systems for maintaining the health record of the workers which would need to be updated at periodic intervals.

v) Availability of medicines in sufficient quantities, especially, life-saving medicines, should be ensured.

(b) Audit of OHS Centre:

GMB should commission NIOH or any other reputed organization to conduct periodical audit of the OHS Centre. The auditing should pay particular attention to upkeep of records of health status of workers, in particular, those engaged in removal of asbestos.

(c) Health Awareness.

The following measures need to be adopted for promoting Awareness as well as good health of the workers:

i) Smoking inside ship recycling yards to be banned by SMB.
ii) Video cassettes on health education to be produced by GMB with the help of NIOH or DG, FASLI, Mumbai or any other reputed agency.
iii) Booklets on preventive health care to be printed and distributed by SMB.
iv) Health education programmes to highlight preventive care, physical fitness, etc. Should be conducted by SMB.
v) Health education materials may be prepared on the lines of ILO in local language/Hindi/Bengali/Oriya considering the background of workers.

(d) Health Hazard Survey and Study:

(i) OHS doctors to take up need based applied research as well as new health projects/studies for the welfare of employees.

(ii) Study on occupational health should be directed towards occupational diseases considering that ship breaking involves handling of asbestos, PCBs other chemicals and working in areas affected by dust, heat, noise, it flammable substances, corrosive residues, toxic gases, oxygen deficiency etc. and should aim at total health protection.

(iii) Psychosocial problems of workers living away from their homes to be studied.

8.3. Registration of Workers:

All workers must be registered. The employment of unregistered workers must be prohibited. For registration of a new worker, a letter offering employment from registered plot holder would be necessary, but otherwise no numerical limits should be adopted, as this may lead to rest-seeking. Registration would involve the following facilities/benefits to the workers:

a) A photo-identity card carrying personal particulars, including blood group, permanent address, and next of kin.

b) Medical, Life and Disability Insurance Details on Group Insurance basis.

c) Certification (including affixing stickers on the photo-identity card) in respect of training undergone/certification for jobs.

d) Opening of a local bank account for receipt of all wages/dues.

e) Annual Health check-up at the OHS Centre.

Costs in respect of the above facilities/benefits may be met from a cess on the lease rent from the plot holders scaled in terms of total person days of employment provide by each plot holder.

The Registration System a ,'id Data Base may be maintained by SMB, or by an agency authorized by the SMB. The SMB/Agency would maintain a complete database of all registered workers, covering training and certification, health status, employment, insurance and other details.

New workers should be registered only for jobs not requiring any particular training and issued permits for specified jobs only after appropriate training and health check up which suggest that worker has the capability to meet the physical and mental requirements of the job, and is not suffering from any medical condition which makes him vulnerable to exposure conditions.

8.4. Payment of Proper Wages:

Following essential and necessary measures are required to be implemented by

the Recyclers:

(a) Payment of relevant minimum wages as per statutory requirements should be ensured by the labour inspectors through enhanced, randomized inspections. All wages/dues to workers must be remitted to their Bank Accounts furnished in their Registration Photo ID Card.

(b) Daily attendance register should be maintained in each yard.

(c) Deduction and depositing of PF to be done as per rules and ensured by the Provident Fund Commissioner through enhanced and randomized inspections.

9. Summary of Recommendations:

Immediate : within three months
Short-Term : within six months
Medium-Term : within two years
Long-Term : within five years

Table-9.1. Recommendations, Tine Frame and Enforcement Agency/ Implementing agency

S. No.	Activity	Time-Frame [Immediate / Short-Term / Medium-Term / Long-Term]	Enforcement Agency/Implementing agency
1	**Assessment of Hazardous Wastes/substances for considering anchoring permissions**		
	a) Ships of special Concern: In addition to hazardous wastes and materials and their location a fair judgment of quantities involved (including residual radiation level in case of nuclear powered ships) also to be provided for desk review.	Immediate	SMB, SPCB. Customs, AERB where necessary.
	b) Other ships: Identification of types of hazardous wastes and materials and their locations in the ship.	Immediate	SMB, SPCB, Customs
2	**Activities During Pre-recycling Phase:**		
	Recommended procedure as per Fig. 3.1. to be followed for granting permission for anchoring, beaching/ docking and breaking.	Immediate	SMB, SPCB, Customs, DoE
	Verification of hazardous materials/wastes by way of inspection of the ship at anchoring	Immediate	SMB, SPCB, Customs
	Gas Free and Fit for Hot Working Certificate: (a) In case of -oil tankers, certificate in respect of oil cargo tanks and slop tanks to be provided before beaching (b) for others, certificate covering all storage tanks to be provided after beaching and prior to breaking	Immediate	DoE or an agency duly authorized/recognized
	In addition to other documents as required at present, ship dismantling plan and recycling facility management plan also to be submitted after beaching and before dismantling	Immediate	SMB

	Authorization of the Ship recycling facility at the plot	Immediate	SMB
	Personnel involved in ship recycling processes are trained and aware of HSE (health, safety and environmental) hazards	Immediate	SMB
	Adequate emergency response procedures in place and to be verified	Immediate	SPCB, DISH
	All hazardous materials are marked by the recycler and verified after **beaching and** prior to breaking	Immediate	SMB, SPCB
	Verification **of non-breathable spaces identified**	Immediate	SMB, DISH
	Availability of **material handling equipment and PPEs to be ensured**	Immediate	SMB/ DISH.
	Procedures for handling of hazardous wastes and other wastes must be a roved	Immediate	SPCB
3.	**Occupational Safety & Health (OSH Management Practices:**		
	Establishment of Occupational Safety and Health (OSH) management system and implementation of appropriate preventive and protective measures to reduce hazards and risks to the minimum practicable level in conformity with the Factories Act	Short-term	SMB, DISH
	Specifications to be laid down for PPEs	Medium-Term	Bureau of Indian Standards (BIS)
	Adequate and competent supervisor of work and work practices by engaging a qualified safety officer.	Short-term	SMB, DISH
	Instruction of appropriate OSH education and training to workers at regular intervals.	Short-Term	SMB
	Issuing of separate work emits for risky jobs	Short-Term	SMB
	Workers showing radiological abnormalities suggestive of asbestosis to be subjected to I-IRCT	Short-Term	SMB
4.	**Institutional Issues:**		
	Review Role and Functioning of SMB (Internally)	Medium-Term	SMB
	(i) Constitute Ship Breaking Industry Review Committee' under the aegis of SMB with participation of stake holders, SPCB, Customs and other Inspecting Authorities, (ii) evolve an alternate management structure with the help of a Management Institute and (iii) implement alternate management structure	(i) Short-Term SM (ii) Medium-Tern (iii) Long-Term	SMB, SPCB
	Progressively encourage ship breaking yards to- obtain ISO 9000 & 14000 Certification and OSHA 18000	Medium-Term	Ship Recycler

	SPCB to evolve scheme of incentives for reduced number of inspections for ISO/OSHA certified recyclers	Short-Term	SPCB
	Development of Training Modules for ship breaking activities in association with DG shipping	Short-Term	SMB
	Training of SMB/SPCB personnel and others responsible for overseeing/supervising ship breaking yards	Short-Term	SMB, SPCB
	Induction of Professionals with experience in ship breaking/ship repairs for approval and ensuring compliance with ship breaking plans.	Medium-Term	SMB
	Number of DISH inspectors to be increased to three	Medium-Term	Department of Labour
	A few scientists of SPCB to be Short-Term trained in use of radiation instruments	Short-Term	SPCB
	Setting up of an inter- departmental Committee at the State level to follow up on recommendations of IMC	Short-Term	Government of Gujarat
5.	Handling of Hazardous Material and Hazardous Wastes:		
	Exchange of ballast water at high seas	Immediate	Master of vessel
	Land based or mobile oil water separation facility (centralized) for treatment of bilge water	Medium Term	SMB
	Oil sediment removal system using detergents and high pressure jets	Medium Term	Ship Recycler/Private Service Provider
	On shore enclosures for removal of asbestos as per BIS specifications	Short Term	Ship Recyclers / Service Provider
	Removal of asbestos waste on board from ships of special concern where asbestos/ACMS quantities are the Special Concern, using enclosed chambers under negative pressure and providing masks under positive pressure to workers (or masks/respirators as per BIS Specifications); On board removal of asbestos for other ships may be done by wetting surfaces,	Short Term	Ship Recycler/Service Provider
	Centralized Facility for removal of paints and coatings from the surfaces	Long term	SMB/Ministry of Steel/Private Investor
	Manifest system for disposal of hazardous waste in Secured Landfill	Immediate	SPCB/Ship recycler
6.	Environmental Monitoring:		
	Ambient Air Quality Monitoring:		
	a) Air Quality Monitoring to be done at two locations as per NAMP protocol with	Immediate	SPCB

	additional parameters - Volatile Organic Compounds(VOCs), metals (Pb, Sn, and Cd in particulates & gaseous form), and asbestos fibres to be monitored once a month for a period of one year.		
	Monitoring of Sea water and sediment quality:		
	a) Monitoring of seawater quality every quarter for toxic organic parameters, namely, PAH and PCBs in addition to pH, Colour, Odour, Suspended solids, turbidity, Oil & Grease, DO, BOD, Heavy metals, Pb, Cd, Zn, Ni, Cr, Dissolved Iron, Dissolved Manganese, Fecal; Coliform up to a distance of five KMs in grid size of I KM x 1 KM for a period of one year	Immediate	SPCB
	b) To assess every quarter bioaccumulation in locally available sea fish for PCBs, PAH, Hg and Pb for a period of one year	Immediate	SPCB
	c) Sediment to be analyzed every quarter for additional parameters namely, PAH, PCBs and biocides (TBT) besides metals for a period of one year.	Immediate	SPCB
	Ground Water Monitoring		
	The groundwater samples should be collected every quarter at a minimum of five locations and analyzed for pH, Colour, SS, TDS, DO, BOD COD, O & G, metals (Pb, Cd, Cu, Zn, Cr, Hg, Ni), CN, F, As and Mn for a period of one year.	Immediate	SPCB
7.	Workers' Welfare Issues		
	To provide on rental basis to workers housing facilities with provision for drinking water, sanitation, electricity and shopping	Medium-Term	SMB/Agency Authorized by SMB
	Adequate - urinals, WCs, bathing places, rest rooms and supply of drinking water at individual plots.	Short-Term	Recyclers
	Development of OHS centre with facility of burn wards and maintenance of health register and availability of medicines and life saving drugs	Medium-Term	SMB/Service Provider
	Health awareness and education programmes for workers and studies to be undertaken to assess correlation between occupational risk factors and health status of workers	Short-Tern	SMB
	Registration System and linked facilities/benefits to workers and maintenance of database.	Short-Term	SMB/Service Provider

Appendix 3

Ship Breaking Methods

There are a number **of techniques** and methods **used far** ship breaking based or, infrastructure facilities. **I have grouped them into three**, **main sub-groups based on infrastructure.**

(i) Ship breaking in water (Afloat**, either moored to a bucy or berthed aion-side quay)**

(ii) Ship breaking on land (In a dry deck)

(iii) Ship braking at the land-water interface**•(Beaching method)**

A very broad comparison between tl.c three methods is given below:

Ship breaking method	In water	On land	At water - land interface
Infrastructure	Buoy, Quay side, (man-made)	Dry-dock (man-made)	Beach with large tidal Variation (natural)
Energy spent for Infrastructure	Medium	Large (Making of dry-dock using **cement**, steel etc**.)**	Nil(Tidal energy is **naturally** available)
Environmental Impact (assuming same standards of workmanship)	---------- Almost Same --		
Occupation Hazard **(assuming same** standards of workmanship)	---------- Almost Same ----------		
Environmental **Impact due to de-commissioning of infrastructure**	Medium(re-used with proper repair)	Large (dry dock, 'dumped')	Nil(Beach remains as such)

It can be seen that the beaching method is the least harmful of all the three methods considering long term effects on environment and from energy-consumption considerations. Therefore, the beaching method practiced at Alang should be encouraged

Appendix 4

LIST OF HAZARDOUS MATERIALS AND SUBSTANCES THAT ARE RELEVANT TO SHIP RECYCLING

Table 1 Hazardous Materials that may be inherent in the ship structure

Materials	Possible Location on the Ship
Metal and metal-bearing materials _	
Metals consisting of alloys of any of the following:	
Antimony	alloys with lealtl in lead-acid storage batteries, solder
Beryllium *	hardening agent in alloys, fuel containers, navigational systems
Cadmium *	bearings
Lead	connectors, couplings, bearings
Mercury	thermometers, bearing pressure sensors
Tellurium *	in alloys -
Any of the following:	
Antimony: antimony compounds	fire retardation in plastics, textiles, rubber etc.,
Cadmium; cadmium compounds	batteries, anodes, bolts and nuts
Lead; lead compounds	batteries, paint coatings, cable insulation
Arsenic; arsenic compound	Paints on the ships' structure
Mercury; mercury compounds	thermometers, light fittings, level switches
Hexavalent chromium compounds	paints (lead chromate) on the ships' structure
Zinc residues, containing lead and cadmium in concentrations sufficient to exhibit-characteristics exceeding norms of Schedule-2 of HW (M L H) Rules.	anodes (Cu, Cd, Pb, Zn)
Lead acid batteries, whole or crushed	batteries: emergency, radio, fire alarm start up, lifeboats
** Electrical and electronic assemblies or scrap containing components such as accumulators and other batteries mercury-switches, glass from cathode-ray tubes and other -activated glass and PCB-capacitors, or contaminated with I constituents (e.g., cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they possess any of the characteristics contained in HW (M&H) Riles, Schedule-2	level switches, light tubes and fittings (capacitors), electrical cables
Materials containing principally inorganic constituents, which may contain metals and organic materials Glass from cathode-ray tubes and other activated glasses	TV and computer screens
Asbestos (dusts and fibres) Material containing principally organic constituents, which may contain metals and inorganic materials	thermal insulation, surfacing material, sound insulation

Mineral oils unfit for their originally inter led use	hydraulic Fluids, oil sump (engine, lub. oil, gear, separator, etc.), oil tank, residuals (cargo residues)
Non-halogenated or organic solvents	antifreeze fluids
Substance articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB), polychlorinated terphenyl (PCT), polychlorinated naphthalene (PCN) or polybrominated biphenyl (PBB), or any other polybrominated analogues of these compounds, at a concentration level of 50 mg/kg or more	Capacitors in light fittings. PCB in residuals, gaskets, couplings, wiring (plastics inherent in the ships' structure)
Materials containing either inorganic or organic constituents	
Materials from the production, formulation and use of biocides and phytopharmaceuticals, including pesticides and herbicides which are off-specification, outdated or unfit for their originally intended use, oils/water, hydrocarbons/water mixtures, emulsions. Materials from the production, formulation and use of inks, Dyes, pigments paints lacquers, varnish	Paints and rust stabilizers, stabilizers, tin-based anti fouling coatings on ships' bottoms sludge, chemicals in water, tank residuals, bilge water paints and coatings on the ships' structure
Materials of explosive nature as per HW (M & H) Rules, 1989, Schedule-3	compressed gases (acetylene, propane, butane), Cargo residues (cargo tanks)
Packages and containers contain substances in concentrations sufficient to exhibit characteristics as per HW (M & H) Rules, Schedule-2	Cargo residues

Notes:

- *For specification of wastes, refer Hazardous Waste (Management & Handling) Rule, 1989 and further amendments mode in the year 2000 & 200. notified by MoEF. Gol.*
- *If the component is present it is most likely bound in an alloy or present at a very low concentration.*

Table 2 Hazardous Materials **and Substances** that may **be on Beard the Ship**

Materials	Product where waste may be found
Unsorted batteries constituents to an extent to render them hazardous	portable radios, torches
Materials non-halogenated organic solvents	Solvents and thinners
materials halogenated organic solvents	solvents and thinners
Materials from the production, preparation and use of pharmaceuticals products	miscellaneous medicines
Materials from the production, formulation and use of biocides and phytopharmaceuticals, including waste pesticides and herbicides Which are off-specification, outdated or unfit for their originally intended use.	insecticide sprays
Materials from the production, formulation and use of inks, dyes, pigments, paints, Lacquers. varnish	paint and coatings
Materials consisting of or containing off specification or outdated chemicals corresponding to categories and exhibiting hazard characteristic as pcr HW (M&H) Rules, 1982	consumables

Table 3 Other Hazardous Materials that are relevant to ship recycling

Potentially hazardous materials not covered by List A in the Basel Convention:	Ship component
CFC (R12 - dichlorodilluoromethane, or R22 chlorodifluoromethane)	Refrigerants, Styrofoam .
Halons	Fire fighting equipments
Radioactive material	Liquid-level indicators, smoke detectors, Emergency signs
Microorganisms/ sediments	ballast water systems (inch tanks)
Fuel oil, diesel oil, gas oil	

POTENTIALLY HAZARDOUS MATERIALS WHICH MAY BE ON BOARD SHIPS DELIVERED TO RECYCLING FACILITIES

(based on Annex I to the -Industry Code of Practice on Ship Recycling, August 2001")

This list is intended to be used for the identification of potentially hazardous materials on board ships (see .sections 4. 6 and 7) and is not part of the Green Passport.

A. Operational Substances and Consumables

1. Cargo Residues including Slops
2. Dry tank Residues
3. Fuel Oil, Diesel oil, Gas oil, Lubricating oil, Greases & Anti-seize Compounds
4. Hydraulic oil
5. Waste oils (contents of sludge tank)
6. Antifreeze fluids
7. Kerosene and White Spirit
S. Boiler and Feed Water Treatment Chemicals
9. Boiler and Feed Water Test Re-agents
10. De-ioniser Regenerating Chemicals
11. Evaporator Dosing and Descaling Acid
12. Domestic Water treatment Chemicals
13. Paints and Rust Stabilisers
14. Solvents and Thinners
15. Refrigerants (R 12 or R22)
16. HALON
17. CO2 (in cylinders - engine room fire protection)
18. Acetylene, Propane and Butane
19. Hotel Services Cleaners
20. Lead-acid Batteries
21. Battery Electrolyte
22. PCB and/or PCT and/or PBB at levels of 50 mg/kg or more
23. Mercury
24. Radio-active Material i.e. liquid level indicators 25. Miscellaneous Medicines
26. Insecticide Spray
27. Miscellaneous Chemicals such as Alcohol, Methylated Spirits, Epoxy Resins, etc.
28. Plastics as covered by MARPOL.
29. Raw and Treated Sewage
30. Perfluorocarbons (PFCs)

A. Toxic Materials (as part of the ship’s structure)

1. Asbestos
2. Lead-based Paint Coatings en Ship's Structure
3. Tin-based Anti-fouling Coatings on Ship's Bottoms.
4. Others

References

Existing International! Guidelines and References:

1. IMO Guidelines on Ship Recycling, Resolution A962 (23), as amended.

2. Basel convention on the control of trans-boundary movements of hazardous wastes. Internet address

3. Technical Guidelines. for the Environmentally Sound Management of the Full and Partial Dismantling of Ships (UNEP).

4. Guidelines on Safety and 1-Icalth in Ship breaking (ILO). Internet address: www.ilo.org/public//english/protection/safework/sectors/shipbrk/index.pdf

5. Industry "Code of Practice on Ship Recycling (ICS). internet address: http://www.marise.org/resources/shiprecycling

6. Stockholm Convention on Persistent organic pollution. Entered into force on 17 May 2004.

7. Environmental Protection Agency homepage. Federal Register, Vol. 46 No. 211, 2 November 1951.

8. Internet page of Light panel Technologies, LIC New Hampshire, USA. Internet address: http:// www.Iighipanel.com/comparison/tritium.htm

9. Agency for Toxic Substances and Disease Registry, United States. Internet address: http://www.atsdr.cdc.gov/

10. Guidelines for Asian countries and Turkey Interregional Tripartite Meeting of Experts on Safety and Health in Ship breaking for Selected Asian Countries and Turkey Bangkok, 7-!4 October 2003 International Labour Office Geneva)

11. Hon'ble Supreme Court Directions in the matter of W.P (C) No. 657 of 1995 dated October 14, 2003 on management of Hazardous Waste.

12. Guidelines to Mitigate Environmental Impact Due to Ship Breaking Activities prepared by the CPCB.

13. GMB's notification dated 05.07.2003 in respect of Ship Breaking Activities

ANNEXURE-B

using the blows with the knowledge that they were likely to cause death he had taken undue advantage."*

15. Considering the background facts in the light of the principle set out above, the inevitable conclusion is that Exception 4 to Section 300 IPC is applicable and the offence is relatable to Section 304 Part I and not Section 302 IPC. That being so the conviction is altered. Custodial sentence of 10 years would meet the ends of justice.

16. The appeal is allowed to the aforesaid extent.

(2007) 8 Supreme Court Cases 583

(BEFORE DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.)

RESEARCH FOUNDATION FOR SCIENCE .. Petitioner;

Versus

UNION OF INDIA AND ANOTHER .. Respondents.

Writ Petition (C) No. 657 of 1995† with SLP (C) No. 16175 of 1997, CA No. 7660 of 1997 and Suo Motu Contempt Petition No. 155 of 2005, decided on September 6, 2007

Constitution of India — Art. 21 — Ship-breaking of ships containing hazardous materials/waste — Regulation of — Recommendations of committee set up in terms of order dated 17-2-2006 adopted, and directed to remain in force until comprehensive code to be formulated by MoEF was brought into force, pending the requisite statutory amendments — Various other directions issued — Environment Protection and Pollution Control — Hazardous waste — Ports Act, 1908, Ch. IV (Paras 8 and 10)

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

D-M/36650/C

Advocates who appeared in this case :

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* *Babulal Bhagwan Khandare* v. *State of Maharashtra*, (2005) 10 SCC 404 at pp. 410-11, paras 17-19 : 2005 SCC (Cri) 1553.

† Under Article 32 of the Constitution of India

Ashok Mathur, Ms Bina Gupta, B. Krishna Prasad, Ms Binu Tamta, D.N. Mishra, Ejaz Maqbool, K.B. Rohatgi, Ms Manik Karanjawala, J.B. Dadachanji & Co., Pramod Swarup, Pradeep Misra, Riku Sarma (for Corporate Law Group), Ms Sushma Suri, Ms Urmila Sirur, Shakil Ahmed Syed, Ms S. Janani, Ravindra Kumar, Rakesh K. Sharma, Radha Shyam Jena, Ms Anitha Shenoy, B.V. Balaram, Jay Savla, Atishi Dipankar, V.N. Raghupathy, Ms Jayshree Wad (for J.S. Wad & Co.), Nikhil Nayyar, Ms Vibha Datta Makhija, Kamlendra Mishra, Yashraj Dingra, Ashwani Bhardwaj, Ms Asha G. Nair, K.K. Gupta, Anil Kr. Jha, Vijay Pratap Singh, Aruneshwar Gupta, Manish Kumar, K.B. Rohatgi, A. Subhashini, Ms Neha, Rakesh K. Sharma, Anil Shrivastav, Vikrant Singh Vais, Kamlendra Mishra, Mohanprasad Meharia, Ajay Sharma and Yashpal Dhingra, Advocates] for the appearing parties.

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

1. (2005) 10 SCC 510, *Research Foundation for Science Technology National Resource Policy* v. *Union of India* 590*e*

The Order of the Court was delivered by

DR. ARIJIT PASAYAT, J.— By order dated 17-2-2006 in the present WP (C) No. 657 of 1995 this Court passed the following order:

> "It is brought to our notice that the ship *Clemenceau* has been directed to be taken back to France. Therefore, immediate controversy relating to *Clemenceau* ship seems to be over. But the problem is a recurring one. First and foremost requirement as of today is to find out the infrastructural stability and adequacy of the ship-breaking yard at Alang. It has to be found out whether the same are operational/operating in a way that environmental hazards and pollution are avoided and/or equipped to meet the requirements in that regard. For that purpose, it is necessary to constitute a committee of technical experts who can, after obtaining views and inviting suggestions from those who would like to give them to find out whether the infrastructure as existing at Alang presently is adequate. If according to the committee, it is not adequate it shall indicate the deficiencies, and shall also suggest remedial measures to upgrade the infrastructural facilities. For this purpose, Union of India shall, as early as practicable, constitute a committee of technical experts, some of them having navy background, preferably retired officers. The committee shall submit its report to this Court within eight weeks. The expenses of the committee shall be met by the Ministry of Environment and Forests. Since at various points of time various guidelines have been indicated, it would be appropriate if they are properly codified to be followed scrupulously by all concerned including the government authorities. The matter is adjourned by ten weeks."

2. Subsequently, time for submission of report was extended from time to time. It appears that in compliance with the aforesaid order the Ministry of Environment and Forests after getting views of the Ministries concerned and organisations constituted a committee for recommending on issues relating to ship-breaking. In terms of order of the Ministry dated 24-3-2006 the committee was headed by the then Secretary, Ministry of Environment and Forests and comprised experts from reputed organisations like National Institute of Occupational Health (NIOH), Ahmedabad, Indian Toxicological

Research Centre (ITRC), Lucknow, retired naval officers, academicians from Indian Institutes of Technology (IITs) of Kharagpur and Chennai and Central Pollution Control Board (CPCB).

3. The committee after examining various materials and details has submitted its report. During its various sittings, agencies and individuals were called for discussions. They included the Gujarat Maritime Board (in short "GMB"), Department of Ports, Govt. of Gujarat, representatives of Alang-Sosiya Ship-Breakers' Association (in short "ASSBA"), Gujarat Pollution Control Board (in short "GPCB"), Department of Customs, Alang, Directorate of Industrial Safety and Health (in short "DISH" of Govt. of Gujarat), representatives of Workers at Alang-Sosiya Yard, Assistant Labour Commissioner, Gujarat Enviro Protection and Infrastructure Ltd. (in short "GEPIL"), Operators of Treatment, Storage and Disposal Facility (in short "TSDF") at Alang.

4. The Committee as it appears from the reports has undertaken a very elaborate and detailed study of the problems and has also suggested valuable norms and solutions. It has focused on the "Hazards Associated with Ship-Breaking" under this broad head. Reference has been made to hazards in ship-breaking industry, occupational and health issues, primary preparation and breaking, occupational health hazards associated with different stages of ships, secondary breaking and sorting and handling of hazardous materials. It has also focused on ships of special concern and the assessment of hazardous wastes and potentially hazardous materials. It has also referred to occupational health and safety issues at Alang-Sosiya Yard and the asbestos related issues. Reference has been made to studies conducted by National Institute of Occupational Health and Workers, evaluation of State and the demonstration facility for asbestos removal. It has categorised the "ships of special concern" as follows:

Table 2.1. Categories of Ships of "Special Concern"

Sl. No.	*Category*	*Nature of concern*	*Essential infrastructure and precautions necessary*
1.	Warships	Large quantities of PCBs, ACMs	Adequate infrastructure at the yard to handle the identified quantities, adequate approved infrastructure of disposal facilities nearby, adequately trained staff, strict monitoring by SPCB/SMB
2.	Large passenger liners	Large quantities of PCBs, ACMs	Adequate infrastructure at the yard to handle the identified quantities, adequate approved infrastructure of disposal facilities nearby, adequately trained staff, strict monitoring by SPCB/SMB
3.	Nuclear-powered ships	Residual radiation level	Monitoring by AERB/Health Physics Department of BARC of residual radiation level and if found higher than the permissible limits, to

			recommend measures for decontamination. Reactors, cores and all radioactive wastes to be removed by owner before last voyage for breaking
4.	Deep draught ships requiring to be beached at 1.5 km or more from the shore base line	Distance from the beach during beaching	Extra precautions in transferring hazardous materials or materials containing hazardous substances to avoid spillage into the sea.
5.	IMDG	Hazardous residues in cargo tanks	Adequate infrastructure at the yard to handle the identified quantities, adequate approved infrastructure of disposal facilities nearby, adequately trained staff, strict monitoring by SPCB/SMB
6.	FPSO/Offshore platforms	Beaching difficulties	Extra precautions in transferring hazardous materials or materials containing hazardous substances to avoid spillage into the sea.

5. The recommended process for anchoring, beaching and breaking needs to be quoted:

"3. Upon entry into the port area, a ship is allowed to be anchored by dropping one or more anchors to the seabed. This prevents drifting of the ship, tethers it to one spot, and enables boarding from boats. A ship at anchor may lift its anchors, and sail away. Anchoring of ships is thus fully reversible.

Beaching refers to running aground on the beach a ship meant for breaking by the beaching method. This ship is sailed into the beach under its own power or is towed by barges. A beached ship is rendered immobile, and cannot usually be refloated. Beaching is thus irreversible.

'Ship-breaking' is the process of dismantling a vessel's structure for scrapping or disposal whether conducted at a beach, pier, dry dock or dismantling slip. It includes a wide range of activities, from removing all gear and equipment to cutting down and recycling the ship's infrastructure.

It may be mentioned that a ship at anchor, or while otherwise afloat, requires to be fully manned, with at least generators running. These involve significant costs. There is little possibility of hazardous materials embedded in the ship's equipment or structure being released to the environment, till the stage of ship-breaking. Accordingly, the Committee considered that it is not necessary to require ships to remain outside port limits, or outside the territorial waters, or the Exclusive Economic Zone (EEZ), pending decision on its being permitted to anchor, or beach.

3.1. Recommended process for anchoring

The shipowner or recycler should submit the following documents well in advance of the arrival of the ship for recycling for a desk review by SMB in consultation with SPCB and the Customs Department:

(*a*) Name of the ship

(*b*) IMO Identification No.

(*c*) Flag

(*d*) Call sign

(*e*) Name of the master of the ship and his nationality

(*f*) List of the crew

(*g*) GRT/NRT/LDT of the ship with supporting documents

(*h*) Assessment of hazardous wastes/hazardous substances: In the structure of the ship, and on board as far as practicable by reference to the ship's drawings, technical specifications, ship's stores, manifest, in consultation with the shipbuilder, equipment manufacturers and others as appropriate. In the case of ships of special concern, in addition to identification and marking of all areas containing hazardous wastes/hazardous substances, quantification of such wastes/substances would also be necessary.

After desk review by SMB/SPCB/Customs, a decision will be taken regarding permission for anchorage of the ships. In case, permission is refused by any one of these three agencies, the shipowner would be entitled to both a review and appeal. SMB and Customs Department would separately notify the procedure therefor along with the time-frames and consequences of not adhering to the time-frames. In the case of SPCB, while review would be done by an appropriate authority of SPCB itself, the appeal would lie with CPCB since there are no specific legal provisions governing this. Once a decision is taken to accord permission for anchorage, instructions for safe anchorage would be issued by SMB.

3.2. Recommended process for beaching

For obtaining beaching permission, the recycler has to submit documents as per Annexure I of the GMB Notification dated 5th July, 2003. At anchorage, the ship would be boarded by representatives of the Customs Department/SPCB/Explosives Department/AERB to verify the submissions/data provided for desk review. If considered necessary, an adequate and representative sample may be used for the verification. For oil tankers, gas free and fit for hot working certificate should also be submitted in respect of oil cargo tanks and slop tanks.

After verification, beaching permission will be given by SMB based on clearance granted by all the departments/agencies above/concerned. Again in the event of refusal to grant permission for beaching the shipowner shall be entitled to a review and appeal on the lines of provisions governing anchorage. Thereafter, the recycler pays customs duty and takes charge of the ship.

3.3. Recommended process for breaking

The ship-recycling plan is an important document. It has two components i.e. Ship Specific Dismantling Plan, and Recycling Facility's Management Plan. To obtain permission for recycling, the recycler is currently required to submit application in Form 2 of GMB's Notification dated 5th July, 2003 along with the documents specified therein. In addition, the ship recycler should also submit a Dismantling Plan and a copy of the Recycling Facility's Management Plan, along with approval of SPCB therefor.

3.3.1. Recycling Facility Management Plan

Before granting authorisation to the recycling facilities, SPCB should ensure that the Plan has been adopted by the Board, or the appropriate governing body of the company, and should include:

(*a*) A policy with focus on adequate workers' safety and the protection of human health and environment, the establishment of goals leading to the minimisation, and ultimately elimination of the adverse effects on human health and the environment caused by ship-recycling.

(*b*) A system for ensuring the implementation of the requirements set out in national regulations, the achievement of goals set out in the policy of the company, and a commitment to continual improvement of the procedures used in ship-recycling operations.

(*c*) Identification of roles and responsibilities of supervisors, contractors, and workers.

(*d*) A programme for appropriate training of workers and availability of adequate PPEs and material handling equipment.

(*e*) An emergency preparedness and response plan for the plot.

(*f*) A system for monitoring the performance of the ship-recycling operations.

(*g*) A system for reporting how the ship-recycling operations would be performed, including system for reporting discharges, emissions, and accidents causing damage or potential to cause damage to workers' safety, human health and the environment, due to handling of hazardous wastes, and materials containing hazardous substances.

3.3.2. Ship Specific Dismantling Plan

Before starting the recycling process, the recycler should submit a Dismantling Plan to the authorities, which should include:

(*a*) Details about the ship, and in particular, a fair assessment of hazardous wastes/hazardous materials.

(*b*) Ship-breaking schedules with sequence of work.

(*c*) Operational work procedures.

(*d*) Availability of material handling equipment and PPEs.

(*e*) Plan for removal of oil and cleaning of tanks.

(*f*) Hazardous waste handling and disposal plan.

(*g*) "Gas free and fit for hot work" certificate issued by the Department of Explosives, or any competent agency authorised by the Department of Explosives.

(*h*) Identification and marking of all non-breathable spaces by the recycler.

(*i*) Identification and marking of all places containing/likely to contain hazardous substances/hazardous wastes.

(*j*) Confirmation to the effect that ballast water has been exchanged in the high seas. The tasks should address all the three phases of recycling i.e.

(*i*) Preparation phase

(*ii*) Dismantling phase

(*iii*) Waste stream management.

(*k*) Asbestos being a major area of concern, the scheme for removing asbestos, and asbestos containing materials (ACMs) on board, and on shore, should be specifically provided. The plan should include arrangements for handling treatment and disposal locations having asbestos/ACMs should be marked before commencing dismantling operations.

(*l*) Systems and procedures to be followed to document and keep track of all hazardous waste generated during recycling, as well as hazardous substances found on board the ship, and their transport to the disposal facility or registered recycling facility should be provided."

6. It has also suggested sequence of steps/process for grant of clearance by SMB/SPCB/Customs Department for ships destined for dismantling at ship-breaking yards. The same reads as follows:

(*i*) The removal of asbestos dust and fibres and its handling should be done in a wet condition.

(*ii*) Onshore removal of asbestos should be done in enclosures maintained under negative pressure, with filters for outgoing air and waste water. The applicable BIS specifications should be adhered to in respect of such enclosures.

(*iii*) For ships of "special concern", where asbestos/ACMs quantities are the special concern, asbestos/ACMs removal on board should be done in enclosures maintained under negative pressure with arrangements for filtration of outgoing air and waste water. For other ships, the practice of wet removal of asbestos on board may be adequate with the use of appropriate PPEs.

(*iv*) The asbestos and broken pieces of ACM's sheets/panels thus removed should be packed in leak proof synthetic packets and disposed of at secured landfills where the packets should be solidified by mixing

with cement. Recovered and usable ACM's sheets/panels may be sold for reuse as permitted by law.

(*v*) PPEs like masks under positive pressure (or masks or respirators meeting BIS specifications for asbestos handling) should be provided to all the workers engaged in asbestos removal.

(*vi*) Asbestos fiber concentration should be monitored regularly.

7. The report contains recommendations on management of occupational safety and health issues and handling of hazardous materials and hazardous wastes. The report also identifies the stakeholders. It is pointed out that the agencies responsible for ensuring compliance with the regulations in Gujarat are GMB, DISH, Govt. of Gujarat, GPCB, Customs and the Petroleum Safety Organisation. Reference has also been made to workers' welfare issues. Summary of the recommendations has been categorised into four categories i.e. immediate, short term, medium term and long term.

8. We have heard learned counsel for the parties at length. There is unanimity that the report is a comprehensive one. Certain suggestions have been given by Mr Parekh to the effect that there should be additional precaution for decontamination. It is suggested that before leaving port in a foreign country a certificate that it is totally decontaminated should be obtained. We find many practical difficulties in accepting this suggestion. In fact the decontamination aspect has been taken care of in the report. The authorities in India can without the certificate at the stage of anchorage verify and come to a conclusion that if the ship is contaminated same is to be sent back.

9. In *Research Foundation for Science Technology National Resource Policy* v. *Union of India*[1] while dealing with the aspect of ship-breaking, it was noted as follows: (SCC pp. 536-38, para 55)

"(*2*) *Ship-breaking*

We accept the following recommendations of HPC:

'(*1*) Before a ship arrives at port, it should have proper consent from the authority concerned or the State Maritime Board, stating that it does not contain any hazardous waste or radioactive substances. AERB should be consulted in the matter in appropriate cases.

(*2*) The ship should be properly decontaminated by the shipowner prior to the breaking. This should be ensured by SPCBs.

(*3*) Waste generated by the ship-breaking process should be classified into hazardous and non-hazardous categories, and their quantity should be made known to the authority concerned or the State Maritime Board.

(*4*) Disposal of waste material viz. oil, cotton, dead cargo of inorganic material like hydrated/solidified elements, thermocol pieces, glass wool, rubber, broken tiles, etc. should be done in a

1 (2005) 10 SCC 510

proper manner, utilising technologies that meet the criteria of an effective destruction efficiently of 99.9 per cent, with no generation of persistent organic pollutants, and complete containment of all gaseous, liquid and solid residues for analysis and, if needed, reprocessing. Such disposed-of material should be kept at a specified place earmarked for this purpose. Special care must be taken in the handling of asbestos wastes, and total quantities of such waste should be made known to the authorities concerned. The Gujarat Pollution Control Board should authorise appropriate final disposal of asbestos waste.

(*5*) The ship-breaking industries should be given authorisation under Rule 5 of the HW Rules, 2003, only if they have provisions for disposal of the waste in environmentally sound manner. All authorisations should be renewed only if an industry has facilities for disposal of waste in environmentally sound manner.

(*6*) The State Maritime Board should insist that all quantities of waste oil, sludge and other similar mineral oils and paint chips are carefully removed from the ship and taken immediately to areas outside the beach, for safe disposal.

(*7*) There should be immediate ban of burning of any material whether hazardous or non-hazardous on the beach.

(*8*) The State Pollution Control Board (of Gujarat and other coastal States where this ship-breaking activity is done) be directed to close all units which are not authorised under the HW Rules.

(*9*) That the plots where no activities are being currently conducted should not be allowed to commence any fresh ship-breaking activity unless they have necessary authorisation.

(*10*) The Gujarat PCBs should ensure continuous monitoring of ambient air and noise level as per the standards fixed. The Gujarat PCBs be further directed to install proper equipment and infrastructure for analysis to enable them to conduct first-level inspection of hazardous material, radioactive substances (wherever applicable). AER shall be consulted in such cases.

(*11*) The Gujarat SPCB will ensure compliance with the new Gujarat Maritime Board (Prevention of Fire and Accidents for Safety and Welfare of Workers and Protection of Environment during Ship-breaking Activities) Regulations, 2000, by the Gujarat Maritime Board and should submit a compliance report to the Court within one year of the coming into force of the said Regulations.

(*12*) The notification issued by GMB in 2001 on gas free for hot work, should be made mandatory and no ship should be given a beaching permission unless this certificate is shown. Any explosion irrespective of the possession of certification should be dealt with sternly and the licence of the plot-holder should be cancelled and the Explosives Inspector should be prosecuted accordingly for giving false certificate.

(*13*) A complete inventory of hazardous waste on board of ship should be made mandatory for the shipowner. And no breaking permission should be granted without such an inventory. This inventory should also be submitted by GMB to SPCBs concerned to ensure safe disposal of hazardous and toxic waste.

(*14*) The Gujarat Maritime Board and Gujarat SPCB officers should visit sites at regular intervals so that the plot-owners know that these institutions are serious about improvement in operational standards. An inter-Ministerial Committee comprising Ministry of Surface Transport, Ministry of Steel, Ministry of Labour and Ministry of Environment should be constituted with the involvement of labour and environment organisations and representatives of the ship-breaking industry.

(*15*) SPCBs along with the State Maritime Boards should prepare landfill sites and incinerators as per CPCB guidelines and only after prior approval of CPCB. This action should be taken in a time-bound manner. The maximum time allowed should be one year.

(*16*) At the international level, India should participate in international meetings on ship-breaking at the level of the International Maritime Organisation and the Basel Convention's Technical Working Group with a clear mandate for the decontamination of ships of their hazardous substances such as asbestos, waste oil, gas and PCBs, prior to export to India for breaking. Participation should include from Central and State level.

(*17*) The continuation or expansion of the Alang ship-breaking operations should be permitted subject to compliance with the above recommendations by the plot-holders.

(*18*) That the above conditions also apply to other ship-breaking activities in other coastal States.' "

10. It is desirable that the Government of India shall formulate a comprehensive code incorporating the recommendations and the same has to be operative until the statutes concerned are amended to be in line with the recommendations. Until the code comes into play, the recommendations shall be operative by virtue of this order. Until further orders, the officials of Gujarat Maritime Board, the State Pollution Control Board concerned, officials of the Customs Department, National Institute of Occupational Health (in short "NIOH") and Atomic Energy Regulatory Board (in short "AERB") shall oversee the arrangement. The Collector of the district shall be associated when the actual dismantling takes place. Within three weeks the Central Government shall notify the particular authorities. The vetting of the documents to be submitted for the purpose of grant of permission for ship-breaking shall be done by the authorities indicated above.

11. It is ordered accordingly.

How to Improve Ship Recycling-sharing best practices

BEST PRACTICE APPROACH

Date: 6th January 2016

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Alang – An Overview

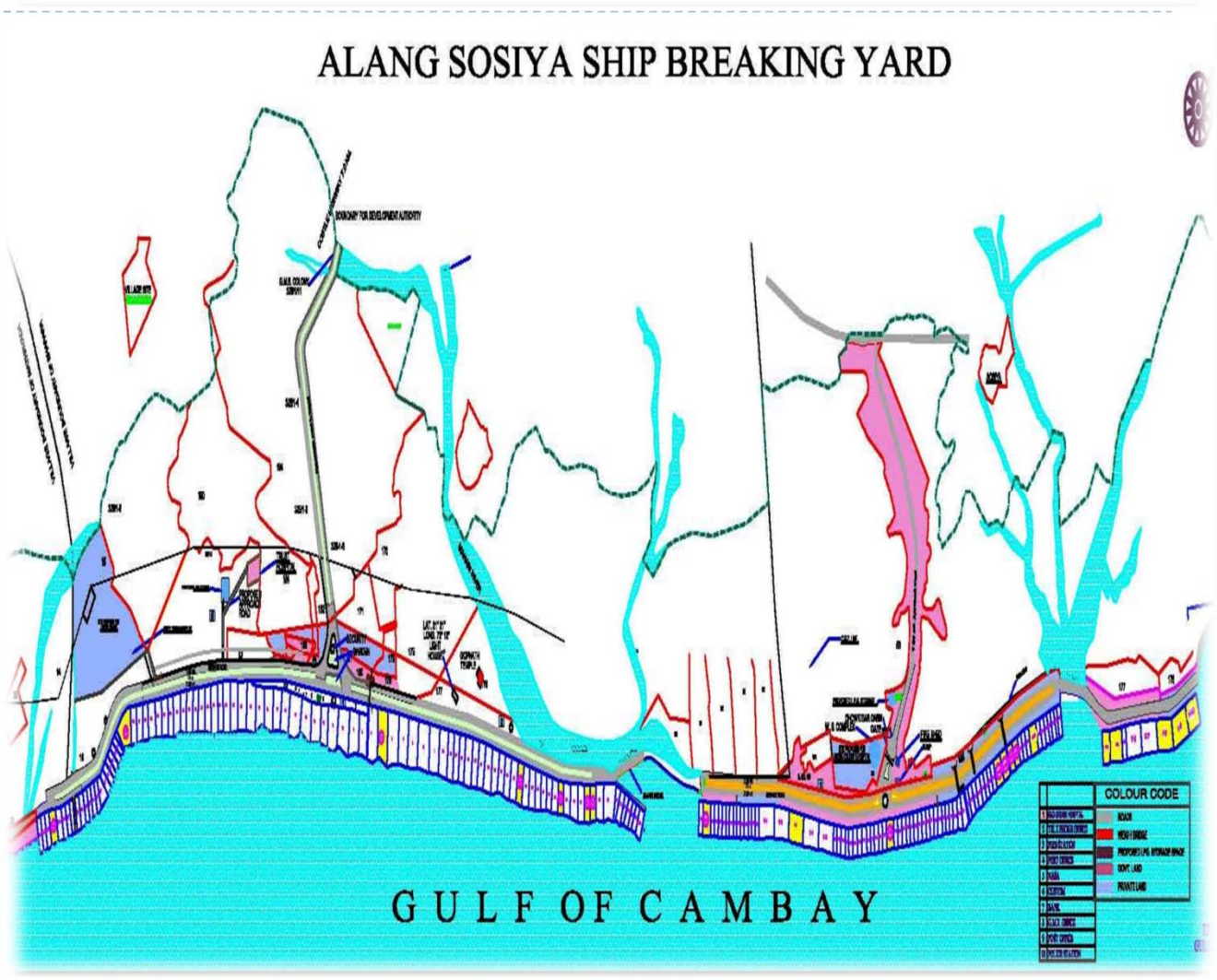
Location of Alang Sosiya Ship Breaking Yard

INDIA

GUJARAT

ALANG- BHAVNAGAR DISTRICT

Alang beach – 10 km stretch along Gulf of Cambay



ALANG – AN OVERVIEW

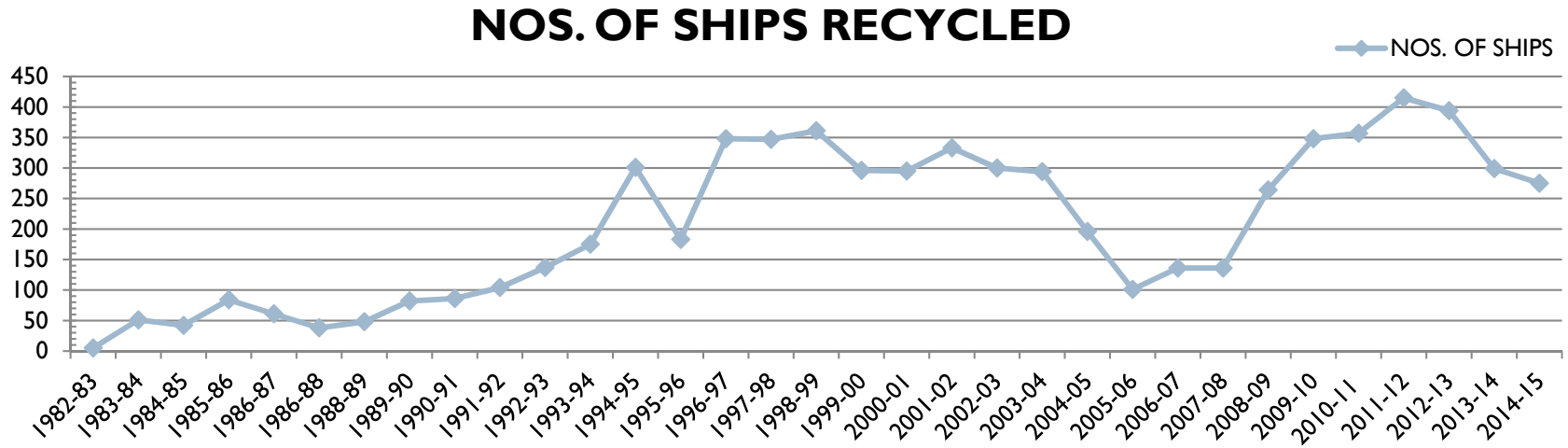
Alang Sosiya Ship Recycling Yard was **developed by Gujarat Maritime Board in 1982**.

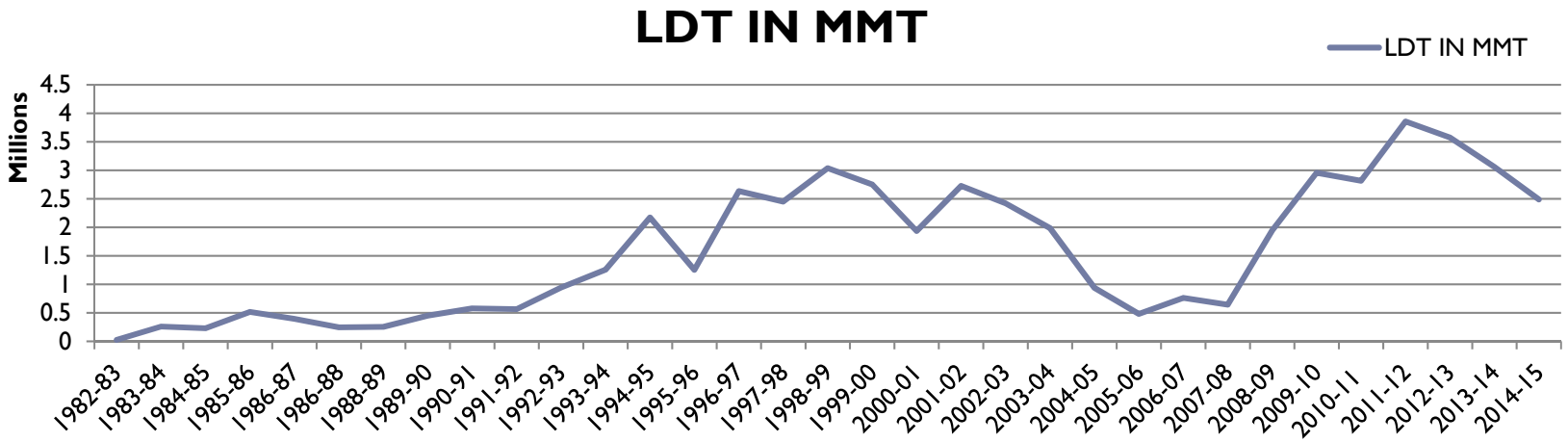
Geographical requirement of best practice:

The yard is naturally blessed with **high tidal range** and **gentle slope of sea floor.** Availability of **firm ground** allows the ships to beach just at the threshold of the plots

SI	*Particulars*	*Details*
1	Total Ship Breaking Plots at Alang Sosiya	169
2	Total operational Ship Breaking Plots at Alang Sosiya as of today	131
3	Annual Ship Recycling Capacity in terms of nos. of Ships	400-450
4	Annual Ship Recycling Capacity in terms of LDT, in million MT	4-4.5
5	Total Nos. of Ships Recycled as of October-2015	6989

TREND OF NOS. OF SHIPS AND VOLUME OF LDT RECYCLED AT ALANG SOSIYA SINCE 1982





Current Practices at Alang

SHIP RECYCLING PROCESS

BEACHING PROCESS

SHIP READY FOR RECYCLING

SHIP RECYCLING PLOT

SHIP RECYCLING ALMOST COMPLETED

SHIP RECYCLING IS UNDER PROGRESS

TRANSPORTATION OF HAZARDOUS WASTE TO LANDFILL SITE

Temporary storage of waste on-site including: Plastic, Rubber, Glasswool, Insulating material, Waste oil, Paint chips, etc.


ASBESTOS
HANDLING UNIT
CAUTION
DANGER
ASBESTOS
STOP
NOT SAFE
FOR WORKERS
ASBESTOS


CONTE NO.9377908006.
G.M.B.TS DF.SITE.ALANG
GUJARAT ENVIRO PROTECTIO N
HAZARDOUS WASTE
INFRASTRUCTURE L.T.D


Go Green
नसीब बचाये एक बार।
सुरक्षा बचाये बार-बार॥


Go Green

Gist of Best practices for ship recycling

- Before Anchoring: Documents are checked to ensure whether ships can be allowed for ship recycling? IHM, Ownership etc and given Anchoring permission
- After Anchoring: Physical Inspections are done to check the details of physical documents submitted for desk review.
- Beaching Permissions: After satisfying the requirement of physical inspections, Ships are permitted for beaching
- Ship Recycling permissions: After decontamination of the vessels in the plots, hot work permit to cut, recycling permissions are given.

- **Procedure for Anchoring** – Desk Review of Documents including Inventory of Hazardous Materials (IHM)
- **Procedure for Beaching** – Physical Verification of the Hazardous Substances i.e. IHM, ensuring Gas Free and Fit for Hot Work conditions for oil tankers, quantification of radio active substance etc. by the concerned Government Department
- **Procedure for Dismantling** – Authorization and Approval of Recycling Facility Management Plan by SMB/ SPCB followed by approval of Dismantling Plan by SMB

REGULATORY REQUIRMENTS ON SHIP RECYCLING PROCEDURES (1/2)

Preparation for receiving ship

- **Gas Free Certificate:** Safe for entry and hot work certified by Department of Explosive (PESO), Gujarat Pollution Control Board (GPCB) to issue inventory of Hazardous Waste on board the same and addresses other safety certificate
- **Ship Recycling Facility Management Plan (RFMP)**
- Ship recycling yard also prepares the **Ship Recycling Plan (SRP)** and should have approval by the GMB
- **Lightening:** reduce weight by removing oil, equipment, furniture etc., prior to beaching using tidal amplitude for beaching

Landing (Beaching) and preparatory works

- Before commencement of work, all tanks are decontaminated & checked by GPCB
- Sludge is cleaned with sand and packed, transferred to TSDF with the control of manifest system
- Asbestos is extracted by trained workers with PPEs. It is placed in double sealed bag and transferred to TSDF

REGULATORY REQUIRMENTS ON SHIP RECYCLING PROCEDURES (2/2)

Dismantling

- Gas free certificate for hot work is obtained under Factory Act
- Destruction of insulation materials on board is not allowed
- Electric cables are cut and sold as it is. Insulations of the cable if removed, should be transferred to TSDF. Burning of insulation is prohibited
- Phase-wise dismantling as per local Standard Operating Procedure

Infrastructure at Alang

Safety Health and Environmental Infrastructure available at Alang to support best practice of safe & environmentally sound ship recycling

1) **Safety Infrastructure for training**

Static & Dynamic Infrastructure

- **Static**: Safety Training Institute : So far more than1.1 lac workers are trained.
- **Dynamic**: Personal Protective Equipment(PPEs) are used by workers, Fully tested by regulatory authorities Material Handling Systems are used including winches etc.

2) **Safety Infrastructure for fire fighting**

Safety Training and Labour Welfare Institute, Alang

DETAILS OF VARIOUS TRAININGS

Sr. No.	Details of Trainings	Targaet Group	Duration in Days
	Regular Training		
1	Basic safety Training For All	All Workers	3
2	Gas Cutters Training	Gas Cutters	2
3	Basic Fire Fighting Training	Fire Man	2
4	Safe Removal of Hazardous Waste Training	All Workers	2
	Special Training		
5	Training For Mukadams and Cutterman	G.C./Mukadam	3
6	Safety Training Part 1	S.O./S.S./Manager	1
7	Safety Training Part 2	S.O./S.S./Manager	1
8	Crane Drivers'Training	Crane Driver	2
9	Disaster Management Training	S.O./S.S./Manager	1
10	Personal Protective Equipments Training	S.O./S.S./Manager	1

11	One Day Safety Training	All Labour	1
12	Flotilla staff Training	G.M.B. STAFF	2
13	Hazardous Waste Management Training	S.O./S.S./Manager	1
14	One Day training on Safety Regulations	S.O./S.S./Manager	1
15	Watch and Word Training	Watchman	1
16	Training For Mukadams	Mukadam	2
17	Refresher Batch on Basic Safety	All Labours	1
18	Seminar on LPG	S.O./S.S./Manager	1
19	Seminar on Respiration PPEs	S.O./S.S./Manager	1
20	Seminar on First Aid Training	S.O./S.S./Manager	1
21	Seminar on Wire Rope	S.O./S.S./Crane Driver	1

Health Infrastructure

- One Red Cross Hospital as funded by GMB for primary treatment
- Another private hospital at Alang is permitted by GMB
- One Mobile Hospital Van is operated by Ship recycling Association
- One Emergency Service Ambulance is available at Alang called as 108 Emergency Services
- One Hospital having 21 beds are being soon operationalized by Government of India organization Employee State Insurance Corporation(ESIC).

Red Cross Hospital, Alang, India

Mobile medical van

MEDICAL, FIRE FIGHTING AND OTHER WELFARE FACILITY

- Efforts have been made to improve health care facilities provided to villagers
- Development of hospitals and clinics; and health facilities provided by different organizations such as the Blood Bank, the AIDS centre, and the Red Cross has taken place
  - Local Hospital run by Indian Red Cross Society - financially assisted by GMB
  - One Mobile Hospital with doctor by ship breaker association
  - Full fledge hospital with 15 bed operational at Alang which is proposed to be enhanced up to 35 beds(Operated Red Cross).
  - Dedicated 108 ambulance at Alang is made operational by GMB in the year 2013
  - AIDS Control Project is under implementation by Indian Red Cross Society
  - During 2005-2006, GMB through National Institute of Occupation Health–An ICMR Institution commissioned Health Risk Assessment Studies for 400 + labors from all disciplines. Results are not alarming
  - Community Sanitation facility
- GMB has procured adequate numbers of fire tenders, foam tenders, water tankers, and tailor pumps with adequate water storing capacity

Environmental Infrastructure

EXISTING ENVIRONMENTAL FACILITIES AT TSDF SITE, ALANG

SI	*Item*		Capacity
1	Municipal solid waste cell (Cell No: 3)		30,000 m^3
2	Landfill cell for Hazardous waste(Cell No: 4.1)		70,000 m^3
3	Landfill cell for Municipal solid waste		30,000 m^3
4	Common hazardous waste incinerator		5 Mt/day
5	Fire hydrant system	Under ground reservoir	200 m^3
		Over ground reservoir	5 m^3 × 2
6	Effluent treatment plant		30 KLPD

SI	*Clearances obtained by GMB and validity thereof*
1	Consolidated Consent and Authorization from GPCB, Consolidated Consent & Authorization (CCA) to GMB vide Order NO. AWH-47082 and subsequently CCA amended vide order no AWH-50809 which is valid up to 09th Mar 2016
2	MOEF&CC issued Environmental Clearance to the existing Incinerator and Bilge Water Treatment Plant vide their letter No. 10-45/2009-IA.III dated 28th Feb 2013

WASTE GENERATION AND DISPOSAL AT TSDF, ALANG SITE AS OF 31/07/2015

Year	No of ship Bea-ched	LDT	Hazardous Waste			MSW		
			HW Generation in MT	Kg of waste/LDT of ship)	% of Waste to the weight of the ship	MSW generation in MT	Kg of waste/LDT of ship)	% of Waste to the weight of the ship (Actually this waste is being collected from the approach road of the Alang ship yard not within or from the inside of plot area)
2006-07	136	760800	1032.86	1.357	0.13%	46.205	0.061	0.006
2007-08	136	643437	2017.025	3.134	0.31%	828.425	1.287	0.129
2008-09	264	1944162	5027.84	2.586	0.25 %	855.265	0.44	0.044
2009-10	348	2937802	5418.04	1.844	0.18 %	726.175	0.25	0.025
2010-11	357	2816236	8215.31	2.917	0.29 %	729.100	0.26	0.026
2011-12	415	3847000	8318.980	2.162	0.22 %	552.430	0.14	0.014
2012-13	394	3847566	10555.55	2.743	0.27 %	770.550	0.20	0.020
2013-14	298	3059891	7505.890	2.451	0.24%	889.025	0.29	0.029
2014-15	275	2490152	7279.395	2.920	0.29%	305.865	0.12	0.012%
2015-2016 (upto 31/10/2015)	97	887349.50	2557.865	2.800	0.28%	338.460	0.038	0.038%

TSDF ALANG, APRIL 2015 - INCINERATION UNIT (CAPACITY 5MT/DAY)

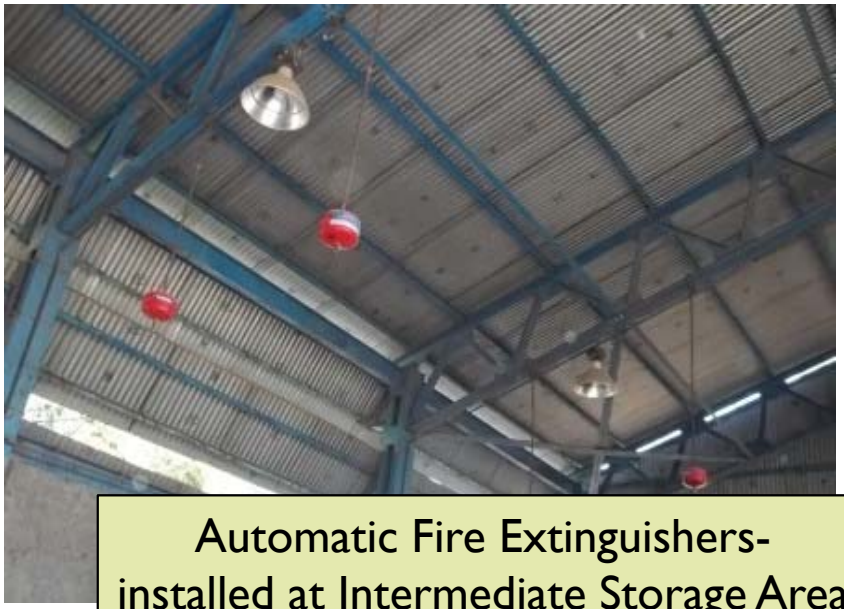
TSDF ALANG, APRIL 2015 - LANDFILL SITE

Asbestos Solidification work at Landfill Site

Covering of Landfill Site During Monsoon

TSDF ALANG, APRIL 2015 - SAFETY AND FIRE FIGHTING SYSTEM

Fire Hydrant System Water Tank
2,00,000 Ltr Capacity



Automatic Fire Extinguishers-
installed at Intermediate Storage Area

Portable Fire
Extinguishers

Fire Buckets

Operational work with required PPEs

National Environmental Legislations

REGULATORY FRAMEWORK FOR SHIP RECYCLING AT ALANG TO SUPPORT BEST PRACTICE OF SHIP RECYCLING

- **Custom Act,1962:** For import of empty ship for recycling
- **Gujarat Factories Rules, 1963** for Safety and Health related aspects in Industries
- **Water (Prevention & Control of Pollution) Act, 1974**
- **Air (Prevention & Control of Pollution) Act, 1981**
- **Workers Compensation Act, 1987**
- **Petroleum Rules, 2002** for Gas free and fit for hot work enacted
- **GMB Ship Recycling Regulations, 2003** under
- **Atomic Energy Regulatory Board Act, 2004** for management & disposal of radio active waste found in ships
- Hon'ble Supreme Court's directions dated 6th September 2007 issued in WP 657/95 – Procedures for **Anchoring, Beaching and Breaking**
- **Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008**
- **National Ship Breaking Code, 2013**: Codified Guidelines comprising of various statues for Safety Health and Environment management
- Now Govt of India in MOShipping accessed Hong Kong Convention for safe & environmentally sound ship recycling in November, 2019. Ship Recycling Act 2019 is

STEP WISE PERMISSION AND/OR CERTIFICATIONS GRANTED AT ALANG-SOSIYA SHIP RECYCLING YARD AND AUTHORITIES INVOLVED (1/2)

Sr. No.	Step-wise permissions and/ or Certifications	Authority
1	Ship recycling yard inspection for granting permission for ship beaching	State Maritime Board
2	Anchoring permission of ship at Bhavnagar Port	State Maritime Board, State Pollution Control Board & Custom Officer
3	On-board visit to the ship before beaching in the yard for hazardous waste inventory	State Pollution Control Board officer
4	Deck review for identification and marking of Naval equipments	Customs Officer, State Pollution Control Board and Atomic Energy Regulatory Board (AERB) officers
5	No Objection Certificate for Beaching	State Maritime Board, State Pollution Control Board and Customs Department

STEP WISE PERMISSION AND/OR CERTIFICATIONS GRANTED AT ALANG-SOSIYA SHIP RECYCLING YARD AND AUTHORITIES INVOLVED (2/2)

Sr. No	Step-wise permissions and/or Certifications	Authority involved
6	Removal and destroying of marked radio room for Custom-out of Charge certificate	Custom officer
7	Oil removal and bilge water removal permission	State Maritime Board
8	Free from Contamination certificate	State Pollution Control Board
9	Submission of ship dismantling plan	Ship recycler, State maritime Board and State Pollution Control Board
10	For getting Ship Cutting Permission	State Maritime Board

Benefits from the proposed up-gradation project at Alang

EXPECTED BENEFITS FROM THE UPGRADATION OF ALANG SOSIA SHIP RECYCLING YARD

- Alang contributes **32.6% to the global recycling volume** as per the ship recycling data for the last decade published by IMO.
- After upgradation of yards, there is **likelihood of attracting more ships to Alang Sosiya ship breaking yard, including the ships from OECD/ EU countries due to high environmental and safety standards**
- After upgradation of environment infrastructure at Alang, the **% share of Alang in the global ship recycling volume would increase to about 60%** i.e. average 600 ships per year
- Present recycling capacity of Alang of 450 ships **will increase upto** 600 ships, which may accommodate the global volume of about 60% .
- If Alang is the only facility complying with Hong Kong Convention, we **may have to consider expansion of existing recycling yard** as per availability of land and other resources. At Alang about 10% of total global fleet i.e. 100 more vessels can be recycled from OECD countries directly

Thank you


SAFETY IS OUR MOTTO.
SAFETY FIRST.
1) FIRE EQUIPMENTS.
2) ELECTRICAL ITEMS.
3) WELDING MACHINES.
4) SHIPS STORE ITEMS.

Annexures

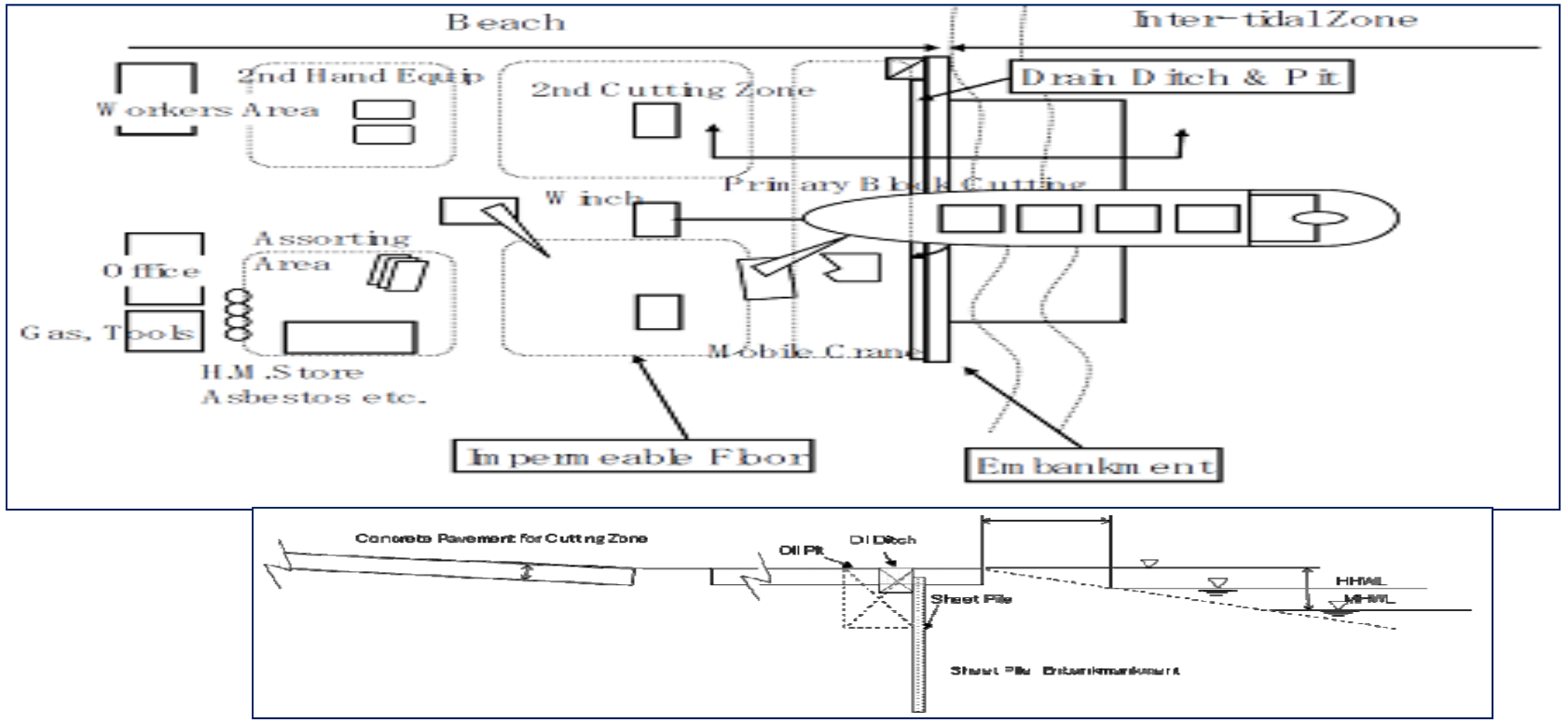
COMPONENT 1:

EXISTING RECYCLING YARD IMPROVEMENT

DESIGN OF PROJECT

Component no.1. IMPROVEMENT OF EXISTING SHIP RECYCLING YARD

- **Impermeable concrete pavement of 150 m (L) x 60 m (W) or 150 m (L) x 90m (W)**
- **Embankment of Sheet piles on the sea side of the concrete pavement**
- **Drain ditch alongside the sheet piles to capture oil or oily water and a Pit of 1m x 1m x 2m deep to store oil and oil-water**
- **Oil- skimmer of 1.1m (w) x 2.7m(L) x 1.15m (D)to avoid oil escape during a heavy rain like that of monsoon.**



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DETAIL DESIGN OF THE YARD IMPROVEMENT

	Nos of Plot	Width (m)	Length (m)	Area (m^2)
	47	60	150	9000
	23	90	150	13500
Total	70			22500

Number of plots to be covered under the project

- **70 plots will be upgraded during 1st Phase along with other ancillary infrastructure i.e road, drainage, water supply, sanitation etc.**
- **Remaining plots will be upgraded during 2nd Phase**

Effective tank size

2 m^3 tank

Oil separator Recycle yard area

3,600 – 5,400m^2

COMPONENT 2:

HAZARDOUS MATERIAL REMOVAL PRE-TREATMENT FACILITY (DRYDOCK)

DETAIL DESIGN OF THE DRY DOCK

Design Ship Size (Operation & Planning) : 177500 DWT

DWT	GT	LOA	Lpp	Beam	Draft Ballast Loaded	Empty Ship Draft	Max. Draft
Ton	Ton	m	m	m	m	m	m
177,500	88,541	289	279	45	10.0	5.7	17.95

Dock Basin

Length of Dock - 300 m
Width of dock - 50 m
Height of dock - 11.5m
Dock Deck Elevation +10.0 m above CD.

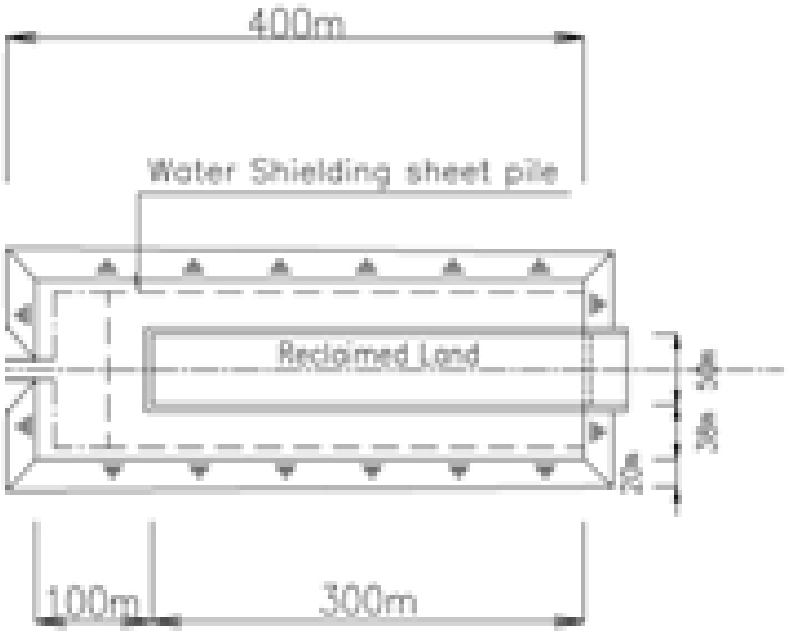
North quay

Length - 400m
Width - 35m

South quay

Length - 400m
Width - 35m

The above dock will also be utilized for Repairs of Small Vessels i.e Tugs, barges etc



Design of the Dry Dock
Image of Offshore Dry Dock

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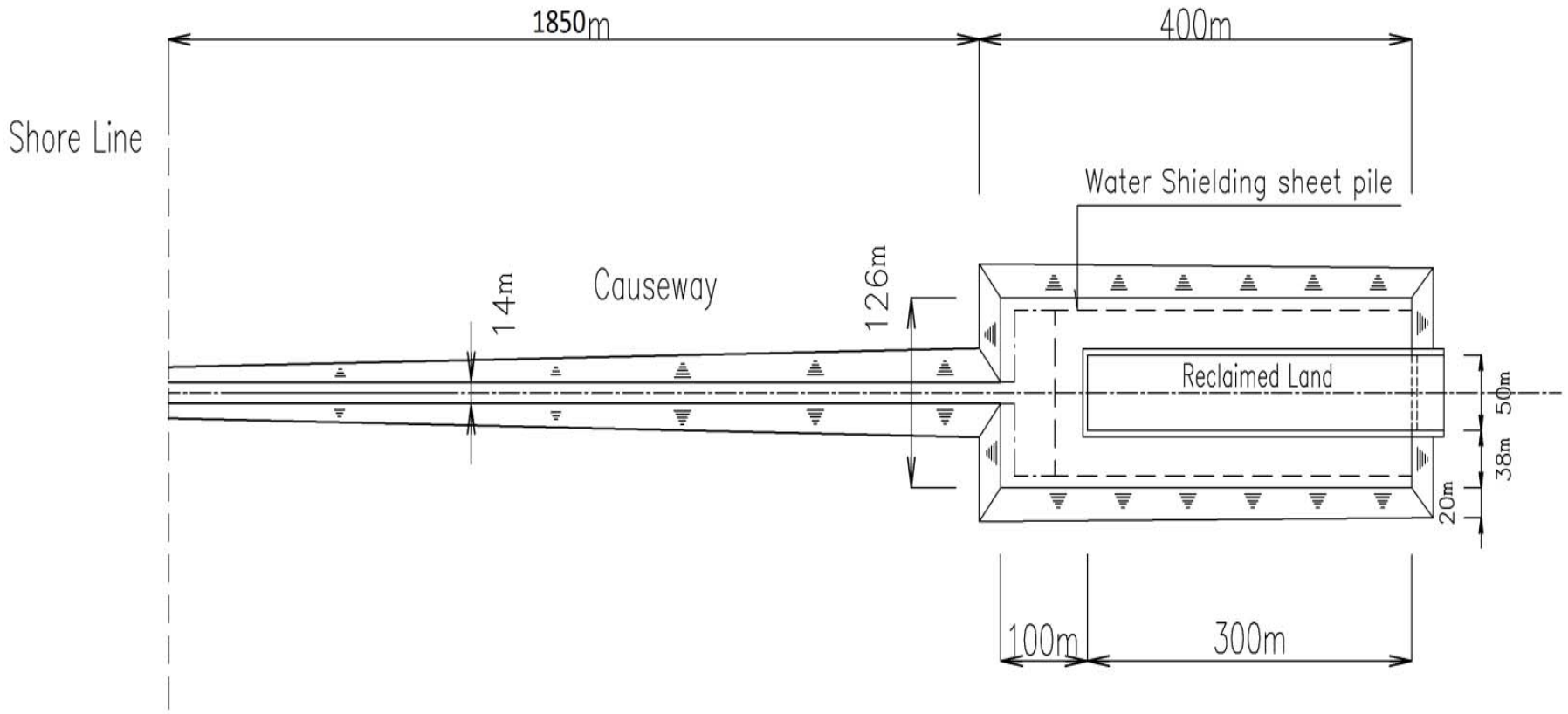
Lay out plan for Dry Dock & Causeway



COMPONENT 3:

ENVIRONMENTAL FACILITIES

DETAIL DESIGN OF THE ENVIRONMENTAL FACILITIES

There are four types of environmental facilities

1. Oil recovery system

This system refines the oil from the high oil contained waste water and reproduce the usable oil from the waste water.

2. Oil treatment system

This system treats the oil or hazardous contained waste water and turns into environmentally friendly waste water so that the waste water can be discharged to the sea or plantation .

3. Incinerator system

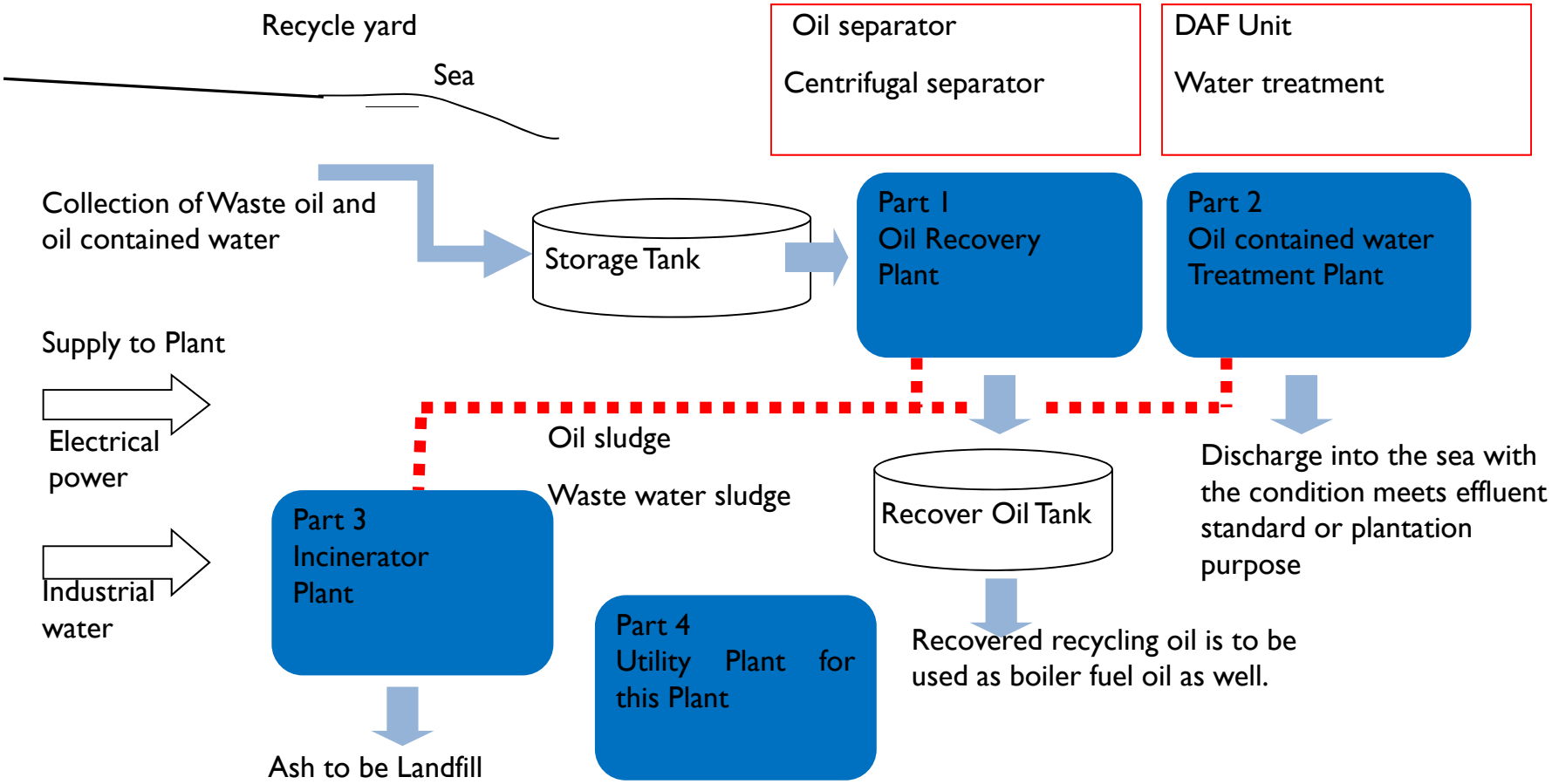
During the process of the ship recycling and the waste water treatment system, the sludge and by using incinerator the amount of the sludge can be reduced and amount capacity or the life time of the land fill place can be extended.

4. Utility facility if any

This provide the water or electricity and other utility for the ship recycling process.

DETAIL DESIGN OF THE ENVIRONMENTAL FACILITY

The process of the environmental facilities



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DETAIL DESIGN OF THE ENVIRONMENTAL FACILITY

Plant Capacity

Waste Oil Recovery System - 2t/h ×2 systems

Oil Contained water Treatment System - 15t/h×2

Incinerator System - 0.5t/h×2 systems

Generated Waste Water from tank cleaning

Amount of Waste water - 60,000KL/y max.

Oil Contained water - 48,800KL/y max.

Emulsion water - 7,200KL/y max.

Oil - 4,000KL/y max.

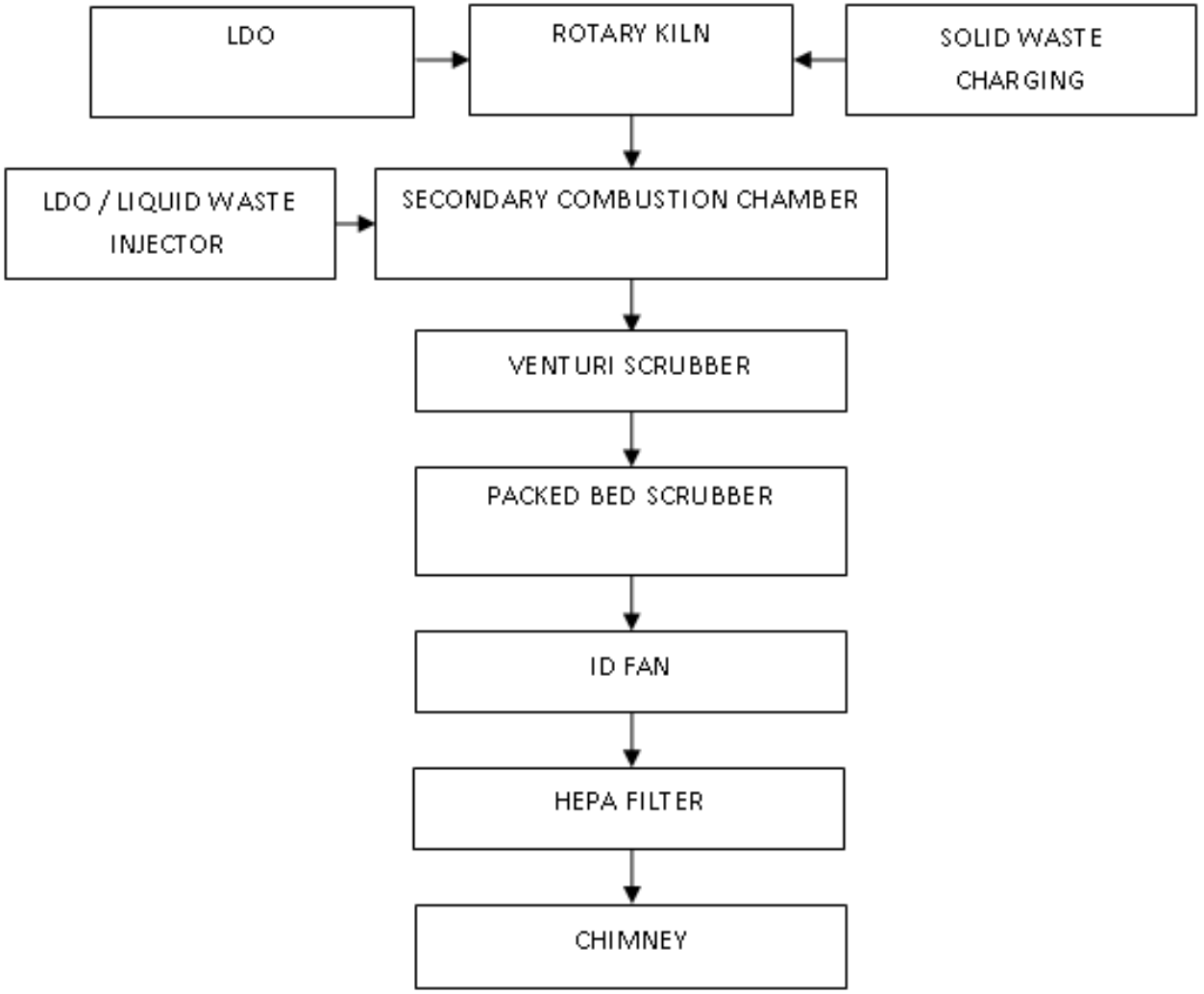
Plant Site in existing approved TSDF

Area - 75m × 100m

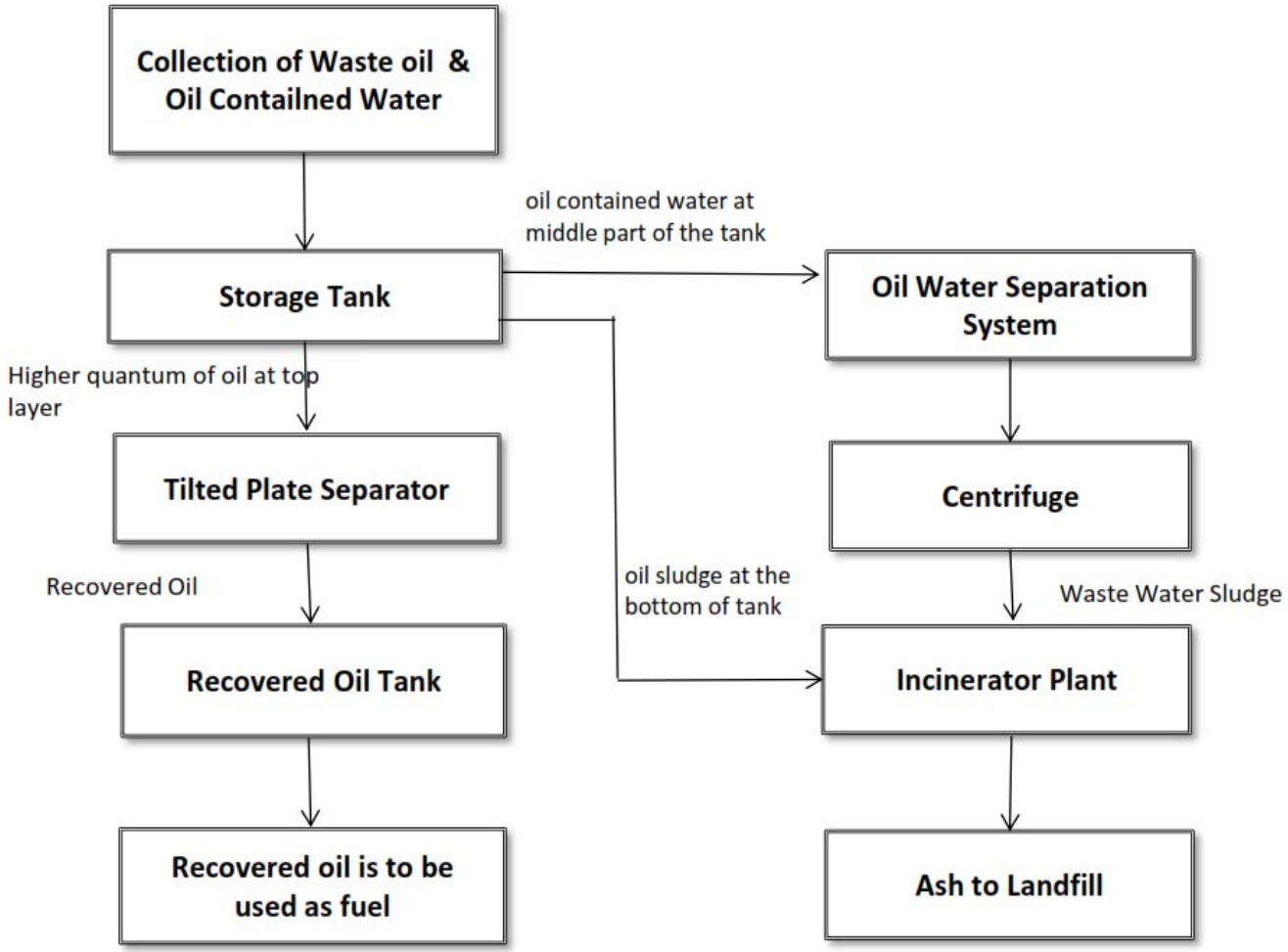
Location - Existing

Lay out Plan for proposed Environment Management Facility

Process Flow Diagram of Proposed Incinerator (1 MT/Hr)



Process Flow Diagram of Oil Recovery System (4 KL/Hr)



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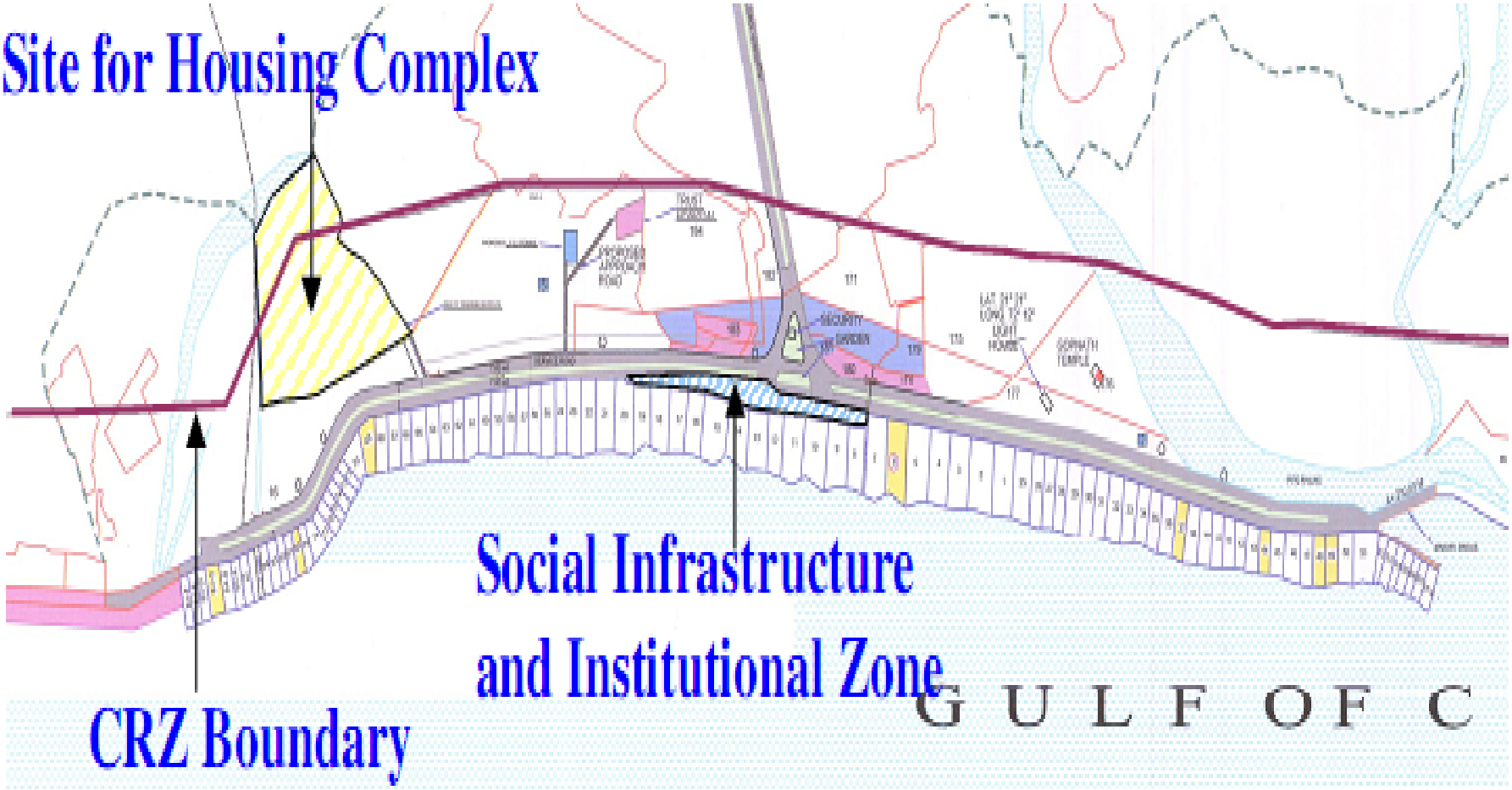
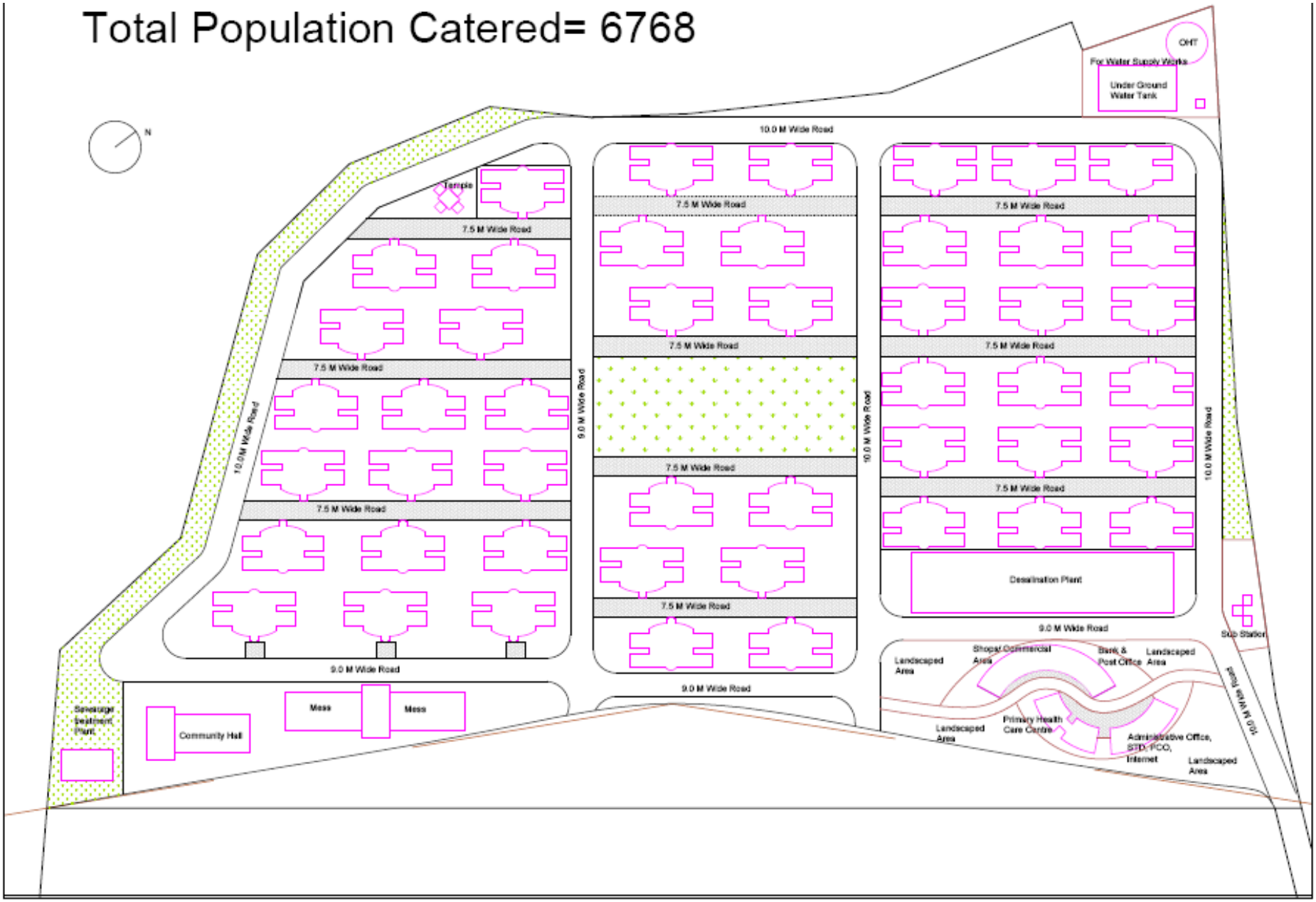
COMPONENT: 4

LABOUR WELFARE INFRASTRUCTURE

Lay out plan for Housing, Hospital & other associated facilities




Total Population Catered= 6768
OHT
For Water Supply Works
Under Ground Water Tank
10.0 M Wide Road
Temple
7.5 M Wide Road
10.0 M Wide Road
9.0 M Wide Road
10.0 M Wide Road
10.0 M WIDE ROAD
Desalination Plant
9.0 M Wide Road
Sub Station
9.0 M Wide Road
9.0 M Wide Road
Sewerage treatment Plant
Community Hall
Mess
Mess
Landscaped Area
Shops/ Commercial Area
Bank & Post Office
Landscaped Area
Landscaped Area
Primary Health Care Centre
Administrative Office, STD, PCO, Internet
Landscaped Area
10.0 M WIDE ROAD

LABOUR WELFARE INFRASTRUCTURE

	Alang labour Welfare Infrastructure including Hospital Facilities, sqm	Community centre, sqm	Community School, sqm	Total, Sqm
Built up Area, Sqm	**80000**	**1500**	**3200**	**84700**
Recreation Area, Sqm	**-**	**7500**	**10000**	**17500**
Total Area (Built up + recreational area)				**102200**

ANNEXURE-D

(2014) 8 Supreme Court Cases 804

(BEFORE GYAN SUDHA MISRA AND P.C. GHOSE, JJ.)

JAL MAHAL RESORTS PRIVATE LIMITED .. Appellant;

Versus

K.P. SHARMA AND OTHERS .. Respondents.

Civil Appeals No. 4912 of 2014† with Nos. 4913 of 2014‡ and 4914 of 2014††, decided on April 25, 2014

A. **Constitution of India — Arts. 226, 136 and 32 — Public-Private Partnerships (PPP) — Tourism project involving restoration of lake, nearby historical monument and development of tourism and recreational amenities in lake precincts on PPP model involving grant of lease to private party developer in lake precincts — Project approved after detailed assessment by experts — Granted in open and transparent manner after detailed and due compliance with legal requirements including the obtaining of environmental clearance — Scope of judicial review — Need for cogent material establishing that there was arbitrariness/non-compliance with applicable norms**

— PIL alleging that entire lease land was land diverted from lake/wetland — Tenability

— Held, unless the detailed project report, Master Plans of Jaipur, and revenue records indicating the nature of the lease land can be doubted on cogent grounds, and unless it can be established that the project was fraught with risk of environmental degradation based on facts and figures, and that the decision is not in public interest, interference by Court adopting an overall view smelling foul play at every level of administration is bound to make governance an impossibility — Therefore, Courts although would be justified in questioning a particular decision if illegality or arbitrariness is writ large on a particular venture, excessive probe or restraint on the activity of the State is bound to derail execution of an administrative decision even though the same might be in pursuance of a policy decision supported by other cogent materials like survey and search by a reliable expert agency of a State after which the State project or private and public partnership project (PPP) is sought to be given effect to

— State of Rajasthan Project for ecological restoration of Mansagar Lake and architectural conservation and restoration/preservation of 18th Century Jal Mahal monument and for development of tourism/recreational components at the Lake precincts on public-private partnership basis — Mansagar Lake Precincts Lease Agreement awarding 100 ac of land on lease

† Arising out of SLP (C) No. 17701 of 2012. From the Judgment and Order dated 17-5-2012 in DBCWP No. 6039 of 2011 of the High Court of Rajasthan at Jaipur

‡ Arising out of SLP (C) No. 19239 of 2012

†† Arising out of SLP (C) No. 19240 of 2012

for a period of 99 yrs to appellant via global tender floated after all requisite approvals under the environmental law and appellant having completed Phase I of the project — Challenged on basis that lease executed and granted to appellant for development of 100 ac land was illegal, arbitrary disturbing the natural resources of the Lake and 100 ac land was carved out from the Lake reducing its area — Cancellation of project and lease by High Court — Validity

— Held, when a particular policy decision was taken to develop a particular project supported by extensive research and study by experts in the field who prepared the project report relying upon three successive Master Plans of the city of Jaipur and global tender was floated for development of land for tourism adjoining Lake area, entertaining PIL on the ground that the area in question is a wetland without the same being established in any manner i.e. neither from the revenue records nor any other material, cannot be allowed to prevail over the decision of experts which was finally accepted by State Government — Based on the historical background and factual matrix, it is evident that sufficient economic diligence was used before issuing RFP and subsequently accepting appellant's highest financial bid — No mala fides in the decision-making process

— High Court's order thus set aside by which lease deed was cancelled, except disputed area claimed to be lake bed equivalent to 8.65 ac and 14.15 ac, which shall be notionally treated as part of lease deed but the same shall remain a construction free zone and it shall remain exclusively for the use of public promenade/walkway free of charge — Directed, lease deed although was executed for a period of 99 yrs it shall run for a period of 30 yrs (as the Rules only permitted a maximum term of 30 yrs) which shall commence from the date of this order — Project developer/lessee/appellant shall be entitled to restart the project forthwith subject to terms of this order — Other directions also issued — Jaipur Development Authority Act, 1982 (25 of 1982) — Ss. 21, 26 and 54 — Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 — R. 18 — Environment Protection and Pollution Control — National Lake Conservation Plan (NLCP) — Evidence Act, 1872, S. 45

B. **Administrative Law — Judicial Review — Exclusion of Judicial Review — Policy/Policy decision/Policy matter — Limitations on courts to enter into the technical and administrative aspects of decisions of the State authorities, especially if based on the opinion of the experts — Held, there has to be a boundary line while examining the correctness of an administrative decision taken by the State or a central authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution — If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed, especially in an age of economic liberalisation wherein global players are also involved as per policy decision — Evidence Act, 1872, S. 45**

C. **Constitution of India — Art. 14 — Distribution of State Largesse/ Government Contracts/Projects — Permissible modes — Revenue maximisation cannot and need not be the sole or even the predominant object of a State initiative — Held, as matter of business reality and commercial efficacy, it is universally recognised that even direct invitation to potential investors/bidders without any bid or auction at all is a fully valid manner of creating infrastructure where it is non-existent, especially in nascent areas and projects in new areas — In present case, global tender by which PPP project was awarded to appellant found to be transparent, open and valid, even though only four persons had finally participated in the same, after 30 yrs of the State's attempts to find a developer**

D. **Government Grants, Largesse, Public Property and Premises — Lease — Permissible term of — Mandatory compliance with Rules — Lease granted for 99 yrs — Maximum period for lease permitted by the Rules was not more than 30 yrs, tender floated for a period of 60 yrs, later lease extended to 99 yrs — Held, lease shall stand reduced to a period of 30 yrs only which is the maximum term of lease as per the Rules — Jaipur Development Authority Act, 1982 (25 of 1982) — Ss. 21, 26 and 54 — Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974, R. 18**

E. **Environment Protection and Pollution Control — Wetlands (Conservation and Management) Rules, 2010 — Applicability — Mansagar Lake Precincts Lease Agreement Project — Environment clearance already issued in 2006 to the Project by State-Level Environment Impact Assessment Authority (SEIAA) dt. 29-4-2010 under Para 4(iii) and Items 8(a)/8(b) of Environmental Impact Notification dt. 14-9-2006 (as later also clarified vide Noti. dt. 1-12-2009 and OMs dt. 28-4-2011 and 24-5-2011) prior to commencement of the Project — In any case other than 8.65 ac and 14.15 ac the lease land undisputedly was not "wetland", hence Wetland Rules of 2010 are not applicable — EIA Notification dt. 14-9-2006 — Para 4(iii) and Items 8(a) and (b)**

Writ petitions were filed in public interest to quash Jal Mahal Tourism Project and cancel the Mansagar Lake Precincts Lease Agreement dated 22-11-2005 giving 100 ac of land on lease for a period of 99 years to the appellant herein M/s Jal Mahal Resorts (P) Ltd. The Division Bench of the High Court cancelled the Project and lease by declaring it illegal. The appellant had thus filed the present appeals.

Setting aside the judgment of the High Court and partly allowing the appeals, the Supreme Court

Held :

Although the Courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State authorities, especially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration,

acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. This might lead to a friction, if not collision, among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers. (Para 137)

However, it should be added in order not to be misunderstood so as to infer that howsoever gross or abusive may be an administrative action or a decision which is writ large on a particular activity at the instance of the State or any other authority connected with it, the Court should remain a passive, inactive and a silent spectator. What is sought to be emphasised is that there has to be a boundary line or the proverbial "laxman rekha" while examining the correctness of an administrative decision taken by the State or a central authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed specially in an age of economic liberalisation wherein global players are also involved as per policy decision. (Para 138)

Unless the detailed project report, Master Plans of Jaipur, and revenue records indicating the nature of the lease land can be doubled on cogent grounds and unless it can be established that the Project was fraught with risk of environmental degradation based on facts and figures, that the decision is not in the public interest, interference by the Court adopting an overall view smelling foul play at every level of administration is bound to make governance an impossibility. Therefore, the Courts although would be justified in questioning a particular decision if illegality or arbitrariness is writ large on a particular venture, excessive probe or restraint on the activity of the State is bound to derail execution of an administrative decision even though the same might be in pursuance of a policy decision supported by other cogent materials like survey and search by a reliable expert agency of a State after which the State project or private and public partnership project is sought to be given effect to. (Para 139)

Thus, two overriding considerations narrow the scope of judicial review. The first is that of deference to the views of administrative experts and the other the Court is to desist itself from interference on technical matters, where all the advantages of expertise lie with the agencies concerned. Bearing the aforesaid aspects in mind, the disputed area of the lease deed borne out from the revenue record is clearly confined to 14.15 ac plus 8.65 ac and the balance area of the lease deed could not have been interfered with so as to set aside the entire Project. (Paras 140 and 141)

Tata Cellular v. *Union of India*, (1994) 6 SCC 651; *M.P. Oil Extraction* v. *State of M.P.*, (1997) 7 SCC 592, *followed*

Furthermore, it is an axiomatic legal principle that revenue maximisation cannot and need not be the sole or even the predominant object of a State initiative. Indeed, revenue maximisation as the sole object is frequently antithetical to public interest projects involving long gestation periods, a history of disuse and failure, reluctant bidders, certain and unavoidable front ended investments and highly uncertain back ended gains. As a matter of law, as also matter of business reality and commercial efficacy, it is universally recognised that even direct invitation to potential investors/bidders without any bid or auction at all is a fully valid manner of creating infrastructure where non-existed, especially in nascent areas and new areas projects. (Para 121)

Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1; *Sachidanand Pandey* v. *State of W.B.*, (1987) 2 SCC 295; *M.P. Oil Extraction* v. *State of M.P.*, (1997) 7 SCC 592; *Kasturi Lal Lakshmi Reddy* v. *State of J&K*, (1980) 4 SCC 1, *followed*

Over a period of 30 years commencing in 1984, attempts were made by government agencies and departments to restore the ecological and environmental condition of the Lake and its adjoining area but none of the attempts yielded any positive result because of paucity of resources to take up and sustain their restoration. The Government of Rajasthan, therefore, had taken a decision to adopt an incentivised approach to restore the Lake and Jal Mahal monument and declare the precinct area on a public-private partnership format. In order to improve the condition of the Lake, the State of Rajasthan in consultation with the experts and after detailed surveys and analysis adopted an approach of development covering three components, which are:

(*i*) Restoration of Mansagar Lake;

(*ii*) Restoration of Jal Mahal; and

(*iii*) Development of tourism/recreational components at the Lake precincts.

The entire dispute is essentially confined to the lease deed which has been granted in favour of the appellant for development of 100 ac land adjoining the Lake area for a period of 99 years. The PIL petitioners although have urged that the entire 100 ac land for which lease deed had been executed was wetland, it could not establish from any material on record that except an area of 14.15 ac and another area comprising 8.65 ac the remaining lease land was ever "wetland". In fact, even on perusal of the impugned judgment of the High Court it could not be established even remotely that the entire 100 ac land which comprises the area of lease deed is a part of the Lake or lake bed in any manner. In this respect it cannot be overlooked that the Project which was visualised and given effect to, was compliant with a sustainable conservation and preservation approach, stipulated in consultation with the experts in pursuance of which a global tender was floated and implemented under extra supervision with all approvals, including environmental approvals, in place from all the authorities concerned. (Paras 52, 53 and 76 to 78)

The figures and conclusions in the impugned judgment itself indicate the enormous difficulty and repetitive failures of the State Government to either implement the restoration itself or to get any private entity to do so over a period of approximately 20 years from 1984 to year 2003. Indeed, the attempts immediately preceding the present tender, from the year 2000 to 2002 had also

admittedly failed. Had the figures found in the impugned judgment or the conclusion of the impugned order that the Project proposal constituted a squandering of State largesse been correct, bidders would have been falling over themselves to bid for the Project not only in the present tender but also in the preceding unsuccessful attempts. Even in the present case, despite the attendance of as many as 20 major participants (including well-known corporate names like Oberoi, Taj, Ansal, Neemrana to mention a few) who admittedly attended the pre-bid meeting, no one except the appellant and three others ultimately came forward. Obviously, the proposal was ex facie not an attractive one for potential investors, and the inescapable conclusion is that all attempts to restore Mansagar Lake and develop the area as a tourism hub had failed when the appellant was nowhere in the picture. (Paras 117 and 118)

The impugned order ignores the following features of the Project:

(*i*) It sought huge investment by the successful bidder to restore the entire area which, at conservative estimates, would cost approximately Rs 100 crores (in the year 2003), and now with the gross delay occasioned by the PIL petitioner, involves an investment (approximately) of Rs 500 crores.

(*ii*) No commercial exploitation either of the Jal Mahal monument or of the Lake was involved and indeed was not permitted.

(*iii*) Approximately 10.5 ac out of 14 ac would be utilised for a walkway around the Lake involving no commercial return.

(*iv*) The successful bidder would pay the State Government/RTDC Rs 2.52 crores per year which would be escalated by 10% every 3 years, which, if calculated in the 99th year of the lease would amount to Rs 27 crores approximately, and if calculated in the 50th year of the lease would amount to Rs 12 crores approximately.

(*v*) The accommodation/resort could only be constructed within an FAR of 0.1362. Relevantly, the normal FAR permitted is 2 while the FAR permitted for the appellant's project is only 0.1362.

(*vi*) No structure in the entire project could exceed the height of 9 m and also could not exceed more than a total of two floors viz. ground and first.

(*vii*) Almost 12 ac of land would be devoted to a handicrafts village showcasing the cultural heritage of Rajasthan where the commercial return to the bidder would be only in the form of lease rent, and the sales occurring due to footfalls would accrue to the sub-lessee who sells the craft and not to the appellant.

(*viii*) The project has a long gestation period not only in terms of restoration and development costs but also construction of infrastructure, and the footfalls would increase only over time after the project has fully established its credentials.

(*ix*) In a nutshell, therefore, huge investments, sure, certain and unavoidable, were front ended; possible returns, unsure and uncertain, were back ended.

(*x*) Equally ignored has been the very raison d´être of the project actuated by the fundamental object by the State Government to restore heritage site and to create a sustainable and pleasing environmental ambience. The lease rent model, increasing as time goes on had always been the consistent approach of the State since 1999 when restoration was first

envisaged. It is inconceivable that this model could be created to assist or benefit the bidder like the appellant who came into the picture for the first time only in year 2003. (Para 120)

In fact, there was not one but repeated attempts at tendering which had failed. While the earlier attempts failed, the present tender open to the whole world, shrank from 20 parties to 9 parties and then to only 4 parties, who ultimately participated at the time of submission of bids (whereby the appellant succeeded on merits). If the Project value correctly involved Rs 4/5 crores as mentioned in the impugned judgment, it is inconceivable and inexplicable as to how and why neither the 20 nor the 9 nor the 3 ultimate bidders apart from the appellant offered a maximum figure of Rs 2.52 crores only. The bidding process was open and transparent. (Para 122)

The factual submission has been noted that the reserve figure of lease rental expected by the State had been fixed at Rs 1 crore in the RFP. This was not merely an ad hoc magical figure plucked out from the air but arrived at after repeated transparent evaluation by Expert Committees and proclaimed openly to the whole world. There is not even an allegation of surreptitious or ex parte dealing at the stage of conceiving and designing the tender or stipulating its multiple parameters. This minimum rent had been determined with the objective of providing a rate of return of 20-22% per annum from the project to the private sector developer. Such a rate of return was considered a reasonable return for a long-term capital asset which at the end of the lease would have no terminal value for the developer, as it would require to be transferred back to RTDC. Thus, it is evident that sufficient economic diligence was used before issuing RFP and subsequently accepting the appellant's highest financial bid. In conclusion, therefore, it had to be held that there were no mala fides in the decision-making process and the findings given by the High Court, cannot be sustained and hence deserve to be set aside. (Para 123)

While environmental approval for restoration of Mansagar Lake was within the jurisdiction of MoEF as per the National Lake Conservation Plan (NLCP), restoration of Jal Mahal which lies within the precincts of the Lake, development of the Lake and the adjoining area to the Lake fell within the domain of the State of Rajasthan. The lease land in any view was available for development at least from 21-12-1999 and no question was ever raised that this was wetland and hence not available for infrastructural development. In fact, in three Master Plans of Jaipur, 200 ac of land were shown for infrastructural development for tourism purpose and out of that 100 ac was made a part of the impugned lease deed after extensive research conducted by Project Development Corporation of Rajasthan (PDCOR) which got a detailed project report prepared in 2001 when the appellant was not even in the picture so as to develop the land. The lease land was clearly within the domain of the State Government due to which it had full administrative discretion to take a decision in regard to development of the lease land and it is not that it was done in a huff or hurry without deliberation or study. In fact PDCOR got the detailed project report prepared way back in 2001 and thereafter in 2003, steps for inviting a tender were taken. If at all the bona fides of the respondent-PIL petitioners were clear, they ought to have assailed the invitation for tender which finally got executed only in the year 2005. Thus, the submission of the appellant that the PIL lacks bona fides and good faith cannot

be brushed aside totally although the same has neither been a reason with the High Court nor the Supreme Court to reject the petition as the delay and also lack of bona fides on the part of the PIL petitioner-respondents herein has been ignored and the matter has been examined on merits taking note of every meticulous argument and counter-argument advanced by the contesting parties. (Paras 51, 135 and 136)

In a matter of the instant nature, where the policy decision for rejuvenation of the Lake and its surroundings was taken in 1976 followed by Master Plans to develop a particular chunk of land by adopting the mode of private-public partnership method and a global tender was floated, obviously the private players were bound to participate, especially in an age when private partnership is not an anathema. In that view of the matter when a particular policy decision was taken to develop a particular project supported by extensive research and study by the experts in the field who prepared the project report relying upon the three successive Master Plans of the city of Jaipur and the global tender was floated for development of land for tourism adjoining the Lake area, entertaining a PIL petition on the ground that the area in question is a wetland without substantiating the same in any manner i.e. neither from the revenue record nor any other material, the contention of the PIL petitioners without factual basis cannot be allowed to prevail over the decision of the entire group of experts which was finally accepted by the State Government through the project development report of a State agency which got the detailed project report (DPR) prepared and nothing could be brought to the notice of the Court that DPR was not fit to be relied upon or that it was prepared in a clandestine manner. (Para 139)

When the tender was floated for granting the lease deed, the maximum period for the lease deed as per the Rules could not have been more than 30 years. Therefore, the period of lease which has been granted in favour of the appellant for a period of 99 years is set aside and the same shall stand reduced to a period of 30 years only, which should start ordinarily from the date of its execution so as to expire on or before the period of 30 years. But as time has lapsed after execution of the lease deed in 2005 due to which only Phase I of the Project could start after which it got stuck and the Project is in a state of limbo due to delay on account of the litigation started at the behest of the respondent-PIL petitioners, hence, it is legally just and appropriate to direct that the period of 30 years of the lease shall now be counted from the date of this judgment and order. (Paras 143 to 145)

The judgment and order of the High Court are thus set aside to the extent by which the lease deed has been cancelled except an area of 8.65 ac and the balance disputed area claimed to be lake bed comprising 14.15 ac shall be notionally treated as part of the lease deed but the same shall remain a construction free zone where neither the State Government of Rajasthan nor the appellant lessee Jal Mahal Resorts (P) Ltd. shall have the right to raise any construction on this area as the same shall remain exclusively for the use of public promenade/walkway free of charge. The Project and lease are fully restored except to the above extent. (Paras 146 and 149)

Since the land which is a part of the leasehold area barring 2 chunks viz. 8.65 ac of land and 14.15 ac of land, in all 22.80 ac, is undisputedly not "wetland", the Wetland Rules of 2010 shall not apply to the Project.

Furthermore, environment clearance had been issued by State-Level Environment Impact Assessment Authority (SEIAA) dated 29-4-2010 under Para 4(*iii*) and Items 8(*a*)/8(*b*) of Environmental Impact Notification dated 14-9-2006 (as later also clarified vide OMs dated 28-4-2011 and 24-5-2011 and Notification dated 1-12-2009) prior to commencement of the Project. (Paras 146 to 149)

K.P. Sharma v. *State of Rajasthan*, Civil Writ (PIL) Petition No. 6039 of 2011, decided on 17-5-2012 (Raj), *reversed*

Jal Mahal Resorts (P) Ltd. v. *K.P. Sharma*, (2014) 8 SCC 866; *Ram Prasad Sharma* v. *State of Rajasthan*, Writ Petition No. 1008 of 2011, order dated 15-2-2011 (Raj); *Ramana Dayaram Shetty* v. *International Airport Authority of India*, (1979) 3 SCC 489; *State of M.P.* v. *Nandlal Jaiswal*, (1986) 4 SCC 566; *Century Spg. and Mfg. Co. Ltd.* v. *Ulhasnagar Municipal Council*, (1970) 1 SCC 582, *referred to*

F. **Government Contracts/Tenders — Notice Inviting Tenders (NIT)/ Tender Conditions/Eligibility/RFP conditions — Permissible deviations from — Absence of any mala fides — Open and transparent global tender — Consideration of tender submitted by Consortium through the lead bidder, a partnership firm instead of a company as mandated under tender rules — When there is substantial compliance with the terms of tender, the Government is entitled to waive any non-essential term in the tender for bona fide reasons and in public interest — Held, since the Project in terms of RFP had to be executed through a Special Purpose Vehicle and the appellant being such an SPV of the lead bidder, then it is not a violation of a substantial condition of the tender — Furthermore, there were no mala fides in the decision-making process which was open and transparent — Thus, the finding given by the High Court is perverse and cannot be sustained and deserves to be set aside (Paras 108 to 116)**

B.S.N. Joshi & Sons Ltd. v. *Nair Coal Services Ltd.*, (2006) 11 SCC 548; *Poddar Steel Corpn.* v. *Ganesh Engg. Works*, (1991) 3 SCC 273, *followed*

G. **Environment Protection and Pollution Control — "Wetland" — Determination of — Mansagar Lake precincts lease agreement — Land leased, if wetland — Determination of — Correct reading of revenue records**

— Held, PIL petitioner's argument that 100 ac land leased to the petitioner was part of the lake bed is not supported by the revenue entries — Furthermore, three Master Plans of city of Jaipur showed land concerned as part of land marked for infrastructural development for tourism — Only 8.65 ac is classified as "gair mumkin talab" (lake bed) and 14.15 ac of land is in fact recorded as "banjar" in the revenue records and not lake bed — However, in order to avoid this controversy in regard to these two chunks of lands whether it forms part of the lake bed or not, it would be just and appropriate to exclude this part of the land from the leasehold area — Directions issued that the two areas shall not form part of the leasehold area to be given out on lease to appellant-petitioner — Balance area of land pertaining to the lease deed undisputedly not being wetland or lake bed, available for development (Paras 131 to 139)

Noida Memorial Complex Near Okhla Bird Sanctuary, In re, (2011) 1 SCC 744, *relied on*

A.K. Roy v. *Union of India*, (1982) 1 SCC 271 : 1982 SCC (Cri) 152; *Union of India* v. *Shree Gajanan Maharaj Sansthan*, (2002) 5 SCC 44 : 2002 SCC (L&S) 627, *referred to*

B-D/53230/C

Advocates who appeared in this case :

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S.P. Singh, Jaideep Gupta and P.S. Narasimha, Senior Advocates (Mohan Prasad Gupta, S. Nagarajan, S.N. Terdal, B. Krishna Prasad, Aruneshwar Gupta, Irshad Ahmad, K.B. Rohatgi, Mahesh Kasana, Ms Aparna Rohatgi Jain, Avinash Kumar, Mukul Kumar, Ajay Choudhary, Ankit R. Kothari, Ajay Singh, Ishan, Rakesh Dahiya, Aditya Jain and Brig. M.L. Khatter, Advocates) for the Respondents.

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

1. (2014) 8 SCC 866, *Jal Mahal Resorts (P) Ltd.* v. *K.P. Sharma* 814*d-e*
2. (2012) 10 SCC 1, *Natural Resources Allocation, In re, Special Reference No. 1 of 2012* 856*h*
3. Civil Writ (PIL) Petition No. 6039 of 2011, decided on 17-5-2012 (Raj), *K.P. Sharma* v. *State of Rajasthan* **(reversed)** 813*g-h*, 814*c-d*, 814*f*, 814*g*, 815*h*, 832*d-e*, 833*g*, 836*f*, 842*f-g*, 850*b-c*, 865*g-h*
4. (2011) 1 SCC 744, *Noida Memorial Complex Near Okhla Bird Sanctuary, In re* 838*a*, 843*d*, 844*a-b*, 860*a*
5. Writ Petition No. 1008 of 2011, order dated 15-2-2011 (Raj), *Ram Prasad Sharma* v. *State of Rajasthan* 829*e*
6. (2006) 11 SCC 548, *B.S.N. Joshi & Sons Ltd.* v. *Nair Coal Services Ltd.* 854*a*
7. (2002) 5 SCC 44 : 2002 SCC (L&S) 627, *Union of India* v. *Shree Gajanan Maharaj Sansthan* 846*c*
8. (1997) 7 SCC 592, *M.P. Oil Extraction* v. *State of M.P.* 857*a*, 862*a*
9. (1994) 6 SCC 651, *Tata Cellular* v. *Union of India* 840*b-c*
10. (1991) 3 SCC 273, *Poddar Steel Corpn.* v. *Ganesh Engg. Works* 854*c*
11. (1987) 2 SCC 295, *Sachidanand Pandey* v. *State of W.B.* 857*a*
12. (1986) 4 SCC 566, *State of M.P.* v. *Nandlal Jaiswal* 835*f-g*
13. (1982) 1 SCC 271 : 1982 SCC (Cri) 152, *A.K. Roy* v. *Union of India* 845*g-h*
14. (1980) 4 SCC 1, *Kasturi Lal Lakshmi Reddy* v. *State of J&K* 857*a-b*
15. (1979) 3 SCC 489, *Ramana Dayaram Shetty* v. *International Airport Authority of India* 835*e*
16. (1970) 1 SCC 582, *Century Spg. and Mfg. Co. Ltd.* v. *Ulhasnagar Municipal Council* 837*e-f*

The Judgment of the Court was delivered by

GYAN SUDHA MISRA, J.— Leave granted. These appeals by way of special leave have been preferred against the common judgment and final order dated 17-5-2012[1] passed by the High Court of Judicature of Rajasthan at Jaipur Bench, Jaipur in three public interest litigation petitions filed by the petitioners, K.P. Sharma, Dharohar Bachao Samiti, Rajasthan and Heritage Preservation Society, respectively against the State of Rajasthan and the

1 *K.P. Sharma* v. *State of Rajasthan*, Civil Writ (PIL) Petition No. 6039 of 2011, decided on 17-5-2012 (Raj)

beneficiary of the project who was Respondent 7 in the High Court and is now the appellant-petitioner in the civil appeal [arising out of SLP (C) No. 17701 of 2012]. The three petitions were DB Civil Writ (PIL) Petition No. 6039 of 2011, DB Civil Writ (PIL) Petition No. 5039 of 2010 and DB Civil Writ (PIL) Petition No. 4860 of 2010 whereby the Division Bench of the High Court was pleased to cancel an Environment and Monument Improvement/Preservation and Tourism Development Project at Jaipur by declaring it as illegal which was awarded to the appellant-petitioner, Jal Mahal Resorts (P) Ltd. via global tender floated in 2003 and finally granted in 2005 after all requisite approvals as per the appellant-petitioner under the environmental law including environment impact assessment under the Environment Protection Act and the notifications issued thereunder of the Rajasthan Pollution Control Board. However, in view of the cancellation of the Project, the High Court has directed immediate dismantling and removal of the entire project and diversion of the two drains which was done to purify waters of a manmade artificial water body and detritus.

2. Other three special leave petitions bearing SLPs (Civil) Nos. 22467, 22820 and 24341 of 2012 had also been preferred by the State of Rajasthan challenging the impugned judgment and order[1] of the High Court referred to hereinbefore. But after the arguments were finally advanced by the learned Attorney General and the same also stood concluded, permission of this Court was sought by the Senior Counsel Shri Jaydeep Gupta to withdraw these special leave petitions filed by the State of Rajasthan which were permitted by this Court vide order dated 5-2-2014[2]. The petitions preferred by the State of Rajasthan assailing the impugned judgment and order thus stand dismissed as withdrawn. However, Shri Gupta submitted that he can still address the Court on merit in the connected special leave petitions bearing SLPs (Civil) Nos. 17701, 19239 and 19240 of 2012 preferred by the appellant-petitioner Jal Mahal Resorts (P) Ltd. and others against the PIL petitioners before the High Court since the State of Rajasthan is still a party respondent in these matters and hence it can support or oppose the impugned judgment[1] of the High Court in spite of withdrawal of the special leave petition filed by the State assailing the judgment and order of the High Court. However, at this juncture we refrain from expressing further on its implication and would deal with the same, if necessary, at the appropriate stage.

3. Insofar as the appeal preferred by the appellant M/s Jal Mahal Resorts (P) Ltd. is concerned, we have noticed that the appeal has been preferred against the common judgment and order[1] of the High Court under challenge herein whereby the writ petitions which were filed by the respondents as public interest litigation bearing DB CWP (PIL) No. 6039 of 2011 entitled *K.P. Sharma* v. *State of Rajasthan* as also DB CWP (PIL) No. 5039 of 2010 entitled *Dharohar Bachao Samiti Rajasthan* v. *State of Rajasthan* as also the

1 *K.P. Sharma* v. *State of Rajasthan*, Civil Writ (PIL) Petition No. 6039 of 2011, decided on 17-5-2012 (Raj)

2 *Jal Mahal Resorts (P) Ltd.* v. *K.P. Sharma*, (2014) 8 SCC 866

third writ petition bearing DB CWP (PIL) No. 4860 of 2010 entitled *Heritage Preservation Society Rajasthan* v. *State of Rajasthan* have been allowed by the Division Bench of the High Court and resultantly the Mansagar Lake Precincts Lease Agreement dated 22-11-2005 awarding 100 ac of land on lease for a period of 99 years to Respondent 7, the appellant herein M/s Jal Mahal Resorts (P) Ltd. was declared illegal and void.

4. As a consequence of the same, the appellant Jal Mahal Resorts (P) Ltd. has been directed to bear costs to be incurred in restoration of the original position of 100 ac of land in removing the soil filled in by it and to restore back the possession of land to Rajasthan Tourism Development Corporation ("RTDC", for short) which in turn will hand over the land to Jaipur Development Authority ("JDA", for short), Jaipur Municipal Corporation ("JMC", for short) and the State of Rajasthan. The appellant has further been directed to immediately remove all sedimentation and settling tanks from Mansagar Lake Basin and to realise costs from M/s Jal Mahal Resorts (P) Ltd. and to examine restoring position of Nagtalai and Brahampuri Nallah (drains) to their original position as redesigned by RUIDP under Mansagar Lake Restoration Plan in consultation with the Ministry of Environment and Forests ("MoEF", for short) of the Central Government.

5. The respondent authorities of the State of Rajasthan have been further directed to monitor, maintain and refix boundaries of Mansagar Lake in its full original length, breadth and depth in consultation with MoEF of the Central Government and not to reduce normal water level. All encroachments made in the attachment area of Mansagar Lake have been ordered to be removed immediately and the control erected by appellant M/s Jal Mahal Resorts (P) Ltd. into the Lake is ordered to be dismantled and costs have been ordered to be realised from the appellant M/s Jal Mahal Resorts (P) Ltd. All the three writ petitions were thus disposed of by the High Court.

6. Before we deal with the respective case and counter-case of the contesting parties, it may be relevant and appropriate to state the background of the matter giving rise to these appeals. The writ petitions which have been dealt with by the High Court had been filed in public interest to quash Jal Mahal Tourism Project and cancel the Mansagar Lake precincts lease agreement dated 22-11-2005 giving 100 ac of land on lease for a period of 99 years to Respondent 7 [the appellant herein M/s Jal Mahal Resorts (P) Ltd.] and the Jal Mahal Lease and Licence Agreement dated 22-11-2005. In Writ Petition No. 6039 of 2011 which was filed by Prof K.P. Sharma prayer had been made to quash approvals and clearances contained in the orders dated 16-9-2009 and 22-9-2009 and to direct Respondent 7, appellant herein M/s Jal Mahal Resorts (P) Ltd. to restore the original position of 100 ac of land by removing the soil filled in by it at its own costs.

7. The appellant M/s Jal Mahal Resorts (P) Ltd. has assailed the judgment and order[1] of the High Court on several grounds to be related

1 *K.P. Sharma* v. *State of Rajasthan*, Civil Writ (PIL) Petition No. 6039 of 2011, decided on 17-5-2012 (Raj)

hereinafter. But before doing so it has related the factual and historical background of the matter giving rise to these appeals. In this context, it has been stated that Mansagar Lake was a manmade lake on the northern fringe of Jaipur City. Within the Lake a pleasure pavilion called Jal Mahal was constructed by the erstwhile rulers of Jaipur in the 18th century and this structure is still existing in the midst of the Lake. Tracing out the historical background, it has been stated that in 1962, the two main sewerage drains of the walled city of Jaipur, Nagtalai and Brahmapuri were diverted to empty into the water body which led to its degeneration, siltation and settled deposits and contaminations to such an extent that it could not support aquatic life nor support flora and fauna in the surrounding areas. The water body was covered with floating hyacinth and its aquatic life and there were large-scale death of fish that had earlier survived and led to a drastic reduction in the fauna including the migratory birds that used to flock in the vicinity of the Lake was on the verge of extinction. About 40% of the catchment area which covered approximately 23.5 sq km was dense urban population. Towards the south side of the Lake, large amounts of unintended developments and encroachments had taken place thereby drastically increasing the quantity of effluents discharged into the Lake and also put other pressures by unconditional grazing of cattle and urban development. Jal Mahal had also very substantially deteriorated over a period of time not only because of natural process of degeneration but also because of lack of maintenance. The monument was in a dilapidated state and required massive restoration works.

8. The deteriorating condition of the Lake and the monument compelled the Government to find ways and means to restore the two components to their original glory. Over a period of 30 years attempts were made by various government agencies and departments to restore the ecological and environmental condition of the Lake and its adjoining area. However, none of these attempts yielded very positive results because of paucity of resources to take up and sustain the restoration.

9. The Government of Rajasthan, therefore, decided to adopt an incentivised approach to restore the Lake and the monument and develop the precinct area on a public-private partnership format. To improve the condition of the Lake, the State of Rajasthan, in consultation with experts and after detailed surveys and analysis, developed a holistic approach involving three components, namely:

(*i*) restoration of Mansagar Lake,

(*ii*) restoration of Jal Mahal, and

(*iii*) development of tourism/recreational components at the Lake precincts.

Thus, the third component visualised development of the precincts area of the Lake which comprised of about 100 ac of land towards the south on a sustainable development model. It was, therefore, required that the Lake and Jal Mahal be restored and the Lake precinct be developed for limited

eco-friendly tourism facilities which would also provide funds for operation and maintenance of the Lake on a continuous basis. The benefits of this project was that it would result in the restoration of Mansagar Lake and the Jal Mahal monument and there would be consequent development of eco-friendly tourism destinations with large open green spaces in the vicinity of the Lake which would improve the environment and resultantly, the aesthetics and visual quality of the area.

10. The Government, therefore, adopted the approach of public-private partnership to the restoration and development of the precincts in an environmentally conscious way. For this purpose, project conceptualisation was chalked out and the project structure was conceptualised after detailed studies over a number of years. In the year 1999 a detailed feasibility report (DFR) was prepared. DFR covered architectural conservation and reuse of Jal Mahal; ecological restoration of the Lake along with development of surrounding areas for integrated tourism development and recreational facilities. Approval to DFR was accorded by Jaipur Municipal Corporation in November 2000.

11. As a consequence of the aforesaid conceptualisation, process for bidding started which has been described as "First Bid Process" by the appellant which started after publication of the advertisement. Request for qualification (RFQ) was released in December 2000. Six firms responded and made submissions for qualification. In the meantime, request for proposal (RFP) document was prepared by Project Development Project Development Ltd. (PDCOR) which is a joint venture company of the Government of Rajasthan and IL & FS and approvals were given by the Government of Rajasthan. Request for proposal was released and Board of Infrastructure Development and Investment (BIDI), a High-Powered Committee of the Government headed by the Chief Minister with an objective to accelerate private investment in industry and related infrastructure, formed a sub-committee to decide on fiscal concessions necessary for the project. Jaipur Municipal Corporation was made the nodal agency for project purposes. However, the First Bid Process failed as despite applying for qualification no bidder ultimately participated in the bid.

12. The aforesaid failure led to the appraisal and approval of the project report by the Ministry of Environment and Forests. The Government of Rajasthan, through the Department of Urban Development, sent proposals to the Ministry of Environment and Forest (MoEF), Government of India, on 17-8-2001 seeking funds for Lake restoration of the said project under National Lake Conservation Programme (NLCP). MoEF responded by requesting that details regarding fund requirement, operation and maintenance agency, source of funding for operation and maintenance along with detailed project report (DPR) comprising of bankable proposal be submitted. Hence, on 8-12-2001 and 9-12-2001 and thereafter on 26-1-2002 and 27-1-2002, the project site was studied by the representatives of MoEF.

13. On 22-1-2002, a letter was written by MoEF wanting break-up of estimated costs as also commitment of the State Government to bear 30% of the cost sharing as well as identifying agency for carrying out operation and maintenance. The State Government was also to ensure that no untreated sewage should be discharged into Mansagar Lake which could be achieved inter alia by diverting the two nallahs that discharged waste in the Lake.

14. Based on experts' recommendation after complete technical surveys and environmental studies of the Lake, the area for the project was identified and recommended by renowned consultants LASA (Lea Associates South Asia (P) Ltd.) as being ecologically viable. DPR itself mentioned that the ecological restoration of the Lake would be carried out on the basis of which it can be sustainable and bankable as required by MoEF through a public-private partnership model.

15. On the basis of commitment of the State Government to meet 30% expenditure on restoration of Mansagar Lake, MoEF, Government of India, approved DPR in October 2001 under NLCP with 70% amount as grant-in-aid. MoEF also conveyed its appreciation on DPR and observed as follows:

> "The project document and structure as developed by PDCOR Ltd. has served as a benchmark for developing sustainable Lake restoration projects on a public-private partnership (PPP) model. You will be pleased to know that we are recommending a similar approach to other States for Lake conservation projects."

16. This gave rise to the new bidding process which may be termed as "Second Bid Process" for which decision was taken in its ninth meeting held on 10-1-2002, approved further fiscal concessions necessary for the project and approved a fresh round of bidding. The nodal agency for the project was changed to Jaipur Development Authority (JDA) from earlier agency, Jaipur Municipal Corporation. The bid documents were duly approved and an advertisement inviting expression of interest (EoI) was issued for selection of private sector developer (PSD) in April 2003 after the key commercial terms of the project and even the draft of the advertisement was approved by JDA. The Empowered Committee of Infrastructure Development (ECID), a High-Powered Committee headed by Chief Secretary, formerly known as SCID, directed Secretary, UDH to finalise key commercial terms for selection of PSD. During the first round of bidding the proposed lease was 60 years in the aggregate. As that period was considered unviable, in the second round of bidding the period of lease was proposed as 99 years. Moreover, restoration of Jal Mahal by PSD was made optional and not mandatory.

17. In pursuance to the aforesaid steps, detailed RFP was issued to interested private parties which was approved by JDA and released in July 2003. The advertisement inviting RFP for selection of private sector developers (PSD) was published in leading newspapers (*Rajasthan Patrika* and *The Economic Times*). In addition, PDCOR developed strategy for marketing and wide publicity of the project by apprising potential entrepreneurs across the globe about the features of the project with a view to

encourage them to come forward to participate in the bid process. As the tourism project was to generate funds for sustained operation and maintenance measures, the Department of Tourism (DoT) and later Rajasthan Tourism Development Corporation (RTDC) was made the nodal agency for the project. Four competitive bids including from the petitioner were received which were evaluated and PDCOR submitted its report to the Government of Rajasthan for its approval. The Technical Evaluation Committee constituted for evaluation of bids comprised of eminent experts like Padmashree Dr B.V. Doshi, Architect, Mr Mohd. Shaheer, Landscape Architect and Mr Hemant Murdia, Chief Town Planner, Government of Rajasthan.

18. The appellant-petitioner got the highest marks in technical evaluation of its bid and when financial bids were opened the petitioner's bid was found to be the highest. Consequently, ECID in its meeting held on 9-2-2004 headed under the Chairmanship of Chief Secretary decided to grant the project to the petitioner. The letter of intent was issued to the petitioner on 30-9-2004. On 22-11-2005 after approval from the Government of Rajasthan the lease in respect of the project land and the licence for restoration and reuse of Jal Mahal were executed.

19. In terms of the project an area of 100 ac of land towards the south of Mansagar Lake was to be leased out for a period of 99 years for development of eco-friendly tourism components as set out in RFP. The entire development, at the end of 99 years, was to be transferred back to the State Government without any compensation payable to the private sector developer. In terms of RFP, it was optional for the private sector developer to undertake the restoration and reuse of the Jal Mahal monument. The petitioner while making the bid also exercised the option for restoration and reuse of the Jal Mahal monument. The petitioner in terms of the licence agreement set out to restore the monument. RFP estimated the cost of restoration of Jal Mahal at approximately Rs 1.50 crores. In reality the cost of restoration of Jal Mahal worked out to Rs 10 crores. The State Government had also constituted an Empowered Committee to oversee the time-bound restoration of Mansagar Lake and Jal Mahal monument.

20. The appellant-petitioners in pursuance to the lease appointed consultants who did extensive research plan which was got approved from the Empowered Committee. Ultimately the monument was fully restored under the supervision of the Empowered Committee upon advice of renowned conservation architect Dr Kulbhusan Jain and other consultants.

21. The appellant-petitioner, who had been given the lease of 100 ac of land on the southern shore of Mansagar Lake, after obtaining all necessary approvals, had completed Phase 1 of the project. But the project suffered a grave setback and knee-jerk obstruction as by this time i.e. in the year 2010 public interest petitions were filed in the High Court although the petitioner had already started executing the project and had already spent an amount of Rs 38 crores besides paying more than Rs 14 crores as project development fees and lease rent to RTDC as per the appellant-petitioner's case in terms of

the lease deed. In pursuance to the same, the restoration of Mansagar Lake under DPR prepared by PDCOR was to be undertaken by the State Government. The operation and maintenance work was to be carried out from lease rentals received from private sector developer i.e. the petitioner. The total amount sanctioned for restoration of the Lake by the Central Government and the State Government was Rs 24.72 crores. This amount proved to be inadequate and the Government due to further resource crunch was not in a position to spend any further amount. Resultantly, the restoration of the Lake, which was the cornerstone of the project, was in danger. The petitioner spent over Rs 15 crores on restoration of the Lake with the approval of the Empowered Committee.

22. As a measure of restoration and development of the project, the entire project implementation had to be done so as to achieve sustainable eco preservation and development. The petitioner, therefore, acted under the advice and on the recommendation of experts. These activities were further monitored by the Government of Rajasthan and its agencies. The appellant-petitioner stated that for the purpose of restoration, the petitioner engaged a number of nationally and internationally renowned consultants including Mr Soli J. Arceivala, Ex-Director of NEERI, Dr Shyam R. Asolekar from IIT Mumbai, Dr G.C. Mishra from IIT Roorkee, Mr Jal R. Kapadia, Environment Consultant, Mumbai and Mr Herald Craft, renowned lake conservation expert from Germany. Some of these experts had also worked for restoration of Hussain Sagar Lake in Hyderabad. The State Government had also constituted an Empowered Committee to oversee the time-bound restoration of the Lake. The work involved realignment of Nagtalai and Brahmapuri drains so that domestic sewage and waste including run-off and detritus during the monsoons no longer emptied into the cleansed waters as also desilting of the water body which were essential components of DPR as approved by MoEF under NLCP. In order to ensure that the on-going discharge of drainage did not once again pollute the water, Mr Herald Craft, the German lake conservation expert prepared a report which suggested preparing temporary sedimentation/settling tanks near the mouth/discharge point of the realigned drains. The purpose of constructing sedimentation tank was to trap the silt and organic content of the storm water so that the quality of water in the whole of water body is not adversely affected. The sedimentation process were also reviewed by a team of experts from MoEF which found the system as a viable and proper solution.

23. It has been further brought to the notice of this Court that the project fell within Item 8(*a*) of the Environmental Notification dated 14-9-2006 and was also confirmed by MoEF in its affidavit-in-reply filed to the writ petition and a detailed environmental impact assessment (EIA) was carried out by State-Level Environment Impact Assessment Authority (SEIAA) constituted by MoEF. It is, therefore, stated that all requisite environmental approvals were obtained.

24. The project thereafter was started and the land leased to the petitioner, according to the appellant, was not a part of the water body in the first Master Plan 1971-1991 for Jaipur and an area of 200 ac around the south side of Jal Mahal was demarcated and reserved for tourist facilities. The land leased to the petitioner was a part of this land area reserved for tourist facilities. The said land continued to be retained for tourism and recreational activities in the subsequent city master plans including the Master Plans of 2011 and 2025.

25. The appellant has further stated that Mansagar Lake on its western side is bound by Jaipur-Amer Road. The level of the road is at a contour level of 100 MRL. The ground floor of the Jal Mahal monument within the Lake is at the contour level of 98.2 MRL. PDCOR, based on intensive studies, found this level as the most appropriate level taking into account the fact that the Lake was not freshened by natural aquifers but was dependent on surface run-off during the monsoons, and to ensure that ground floor of Jal Mahal was not submerged.

26. However, the contesting respondents herein who were the PIL petitioners before the High Court, averred that the PIL petitioner Prof K.P. Sharma is involved in the research with regard to Mansagar Lake and has published a paper which was read out in the 12th World Lake Forests TAAL 2007. It was submitted by learned counsel Mr Aruneshwar Gupta on behalf of the PIL petitioner, one of the three contesting respondents herein that Mansagar Lake and the management thereunder were declared protected monuments but were deleted from the list of protected monuments in the year 1971. The contesting respondents have also related the history of the Lake's glory and have recorded that Mansagar Lake is a large lake on the northern fringe of Jaipur City and the glory of the Lake as a pristine water body lasted until the former rulers had their control over the city and unpleasant history of the Lake began when the new administration of Jaipur diverted walled city sewage in 1962 through two main waste water drains, namely, Brahmapuri and Nagtalai. The most notorious aquatic weed water hyacinth (eichhornia crassipes) entered into the Lake in 1975. The petitioner, the contesting respondent herein stated that during the studies made by the contesting respondent and his colleagues, 10 zooplankton species, arthropods, fishes and 92 species of birds were observed at Mansagar Lake and out of 92, 41 are aquatic and 51 were forest dwellers. The water fowl population included 16 resident and 25 migratory species. It is in this context that it was submitted that Mansagar Lake and the monument therein were declared protected monuments but they were deleted from the list of protected monuments in the year 1971.

27. It was further averred by the PIL petitioner, the contesting respondent herein in the High Court that the Ministry of Environment and Forests (for short "MoEF"), Government of India prepared the National Lake Conservation Plan (for short "NLCP") for restoration, conservation and maintenance of urban lakes. The Government of Rajasthan submitted the project for restoration of Mansagar Lake to the Central Government. The

total cost of the project was estimated to be Rs 24.72 crores, out of which 70% was to be provided by the Government of India while rest was to be borne by the State Government. The administrative approval and expenditure was granted by MoEF vide order dated 5-9-2002 and the order was revised by MoEF vide order dated 23-12-2002. JDA implemented the Lake restoration plan under which sewage treatment plant (STP) near Brahmapuri has been revamped from which treated water is being diverted to the Lake for compensating evaporation losses during dry weather. A two-step tertiary treatment plant has also been developed and the Lake has been cleared from hyacinth plants completely by JDA. JDA has also invested in development of Lake front promenade on Jaipur-Amer Road and constructed a road along the Lake on the northern side which has formed a new water body of about 5 ha in size for storing hill run-off during rainy season for wild life which includes Hanuman langur (semnopithecus entellus), black aped hare (lepus nigricollos), Indian porcupines (hystrix indica), blue bull (boselalphus tragocamelus), sambhara (cervus unicolor), common mongoose (herpestes edwardsii), jackals (canis aureus), striped hyaena (hyaena hyciena) and panther (panthera leo). JDA has also funded Rs 10 million to the State Forest Department for improving Lake catchment area falling in Nahargarh Hill area (Aravalli Range) which is the only natural watershed. The Lake is surrounded almost from three sides by Aravalli Hill Range. The hills are either part of Nahargarh Wildlife Sanctuary or Reserved Forest Ranges known as Amer Block 54 and Amargarh Block 92. The petitioner, the respondent herein and his team was working in executing a JDA-sponsored project on bank stabilisation of the Lake since May 2005. 35 species of trees and 28 varieties of shrubs were planted. Besides improving landscape, the plant species provide shelter and food to the local fauna and migratory birds may also be benefited. Similar plantation was also done on three islands.

28. The PIL petitioner, the respondent herein had further averred that Jal Mahal Tourism Infrastructure Project was conceived and approval was given by the Standing Committee on Infrastructure Development (for short "SCID") in its third meeting held on 21-12-1999. Resolution has also been filed in which it was stated that Jaipur Municipal Corporation must own the project. The bids were invited in the year 2000-2001 without identification of the land to be used and without studies with regard to environment impact assessment. The bid process was scrapped and JDA was made sponsoring department for the Lake side development component in the meeting of Board of Infrastructure Development and Investment Promotion (for short "BIDI") held on 23-8-2002 and 3-9-2002.

29. It was contended on behalf of the petitioner that MoEF granted administrative approval and expenditure sanctioned only for the Lake restoration components and there was absolutely no consideration by MoEF to the Lake side development component of the so-called Jal Mahal Tourism Project. It was submitted that as a matter of fact the National Lake Conservation Plan did not contemplate any such commercial venture upon the lakes to be restored under the plan which according to PDCOR

contemplated the following three components as already referred to hereinbefore but for facility of reference it may be reiterated that the three components were as follows:

(*i*) Restoration of Mansagar Lake;

(*ii*) Restoration and reuse of Jal Mahal monument;

(*iii*) Development of tourism/recreational components at the Lake precincts.

30. It was further submitted by the petitioner, the contesting respondent herein that in the meeting of BIDI held on 5-8-2003, it was decided that nodal agency for the Jal Mahal Tourism Project will be the Tourism Department of the Government of Rajasthan instead of JDA. Thereafter, the Tourism Department assigned the responsibility to Rajasthan Tourism Development Corporation (for short "RTDC") vide order dated 6-9-2003. It has been submitted that although bidding was started, no survey of the actual site and demarcation of 100 ac area on the Lake was made and even environment impact assessment was not carried out before planning the project. It was further submitted that in the advertisement last date for submission of the bid was 5-9-2003 and it was necessary under the terms of the bid that only private limited company or public limited company could have submitted tender. It was necessary that lead manager should be private or public limited company. The offer was submitted by KGK Enterprises, partnership firm and its HUF Manager. Thus, it was not fulfilling eligibility qualification provided under the terms notifying tender.

31. However, the petitioner, the contesting respondent himself has added and clarified that later on decision was taken to include KGK Enterprises which according to the petitioner, the contesting respondent lack eligibility condition and Jal Mahal Resorts (P) Ltd. Co. has been incorporated on 10-11-2004. The decision was also taken to give exemption of stamp duty, etc.

32. The contesting Respondent 7 who was the PIL petitioner has further stated that during the bidding it was made clear that no commercial activity would be permitted within the precincts of Jal Mahal complex, but even before agreements were executed, the successful bidder not only sought exemption from commercial activity within the precincts of Jal Mahal complex but also sought revision of the project proposal and for maintenance of the Lake water level at the cost of the Government vide Letter dated 13-7-2004. The contesting respondent, the PIL petitioner had also submitted that out of 100 ac of land, 14.15 ac of land was submerged in water which has also been leased out.

33. Mr Aruneshwar Gupta on behalf of the PIL petitioner, contesting Respondent 7 further averred that Master Plan of Jaipur, 2011 did not permit such activities at the site. It was also stated that 100 ac of land was part of the lake bed itself, out of which 14.15 ac of land was submerged in the water. The area was sensitive for ecosystem and thus environment impact assessment was required to be carried out before any such project was prepared but the same was not done. It was still further stated that 100 ac of

land beyond the spread of lake bed was not available on the site and it was further submitted that wall of sufficient height has been constructed for setting apart the proposed 100 ac of land from the lake bed and the soil from the lake bed itself was actually used for this purpose. It was alleged by the PIL petitioner that the appellant herein Jal Mahal Resorts (P) Ltd. started constructing high walls of mud and soil in the eastern part of the lake bed near sluice gates and a large area around it for the purpose of preparing sedimentation tanks in the lake bed itself. The project people visit land most frequently disturbing birds on the island and the connection of island with mainland has also led to entry of dogs on the island which feed on the eggs of birds and thus, basic objective of island to provide habitat/breeding ground for resident and migratory birds is forfeited.

34. It was further contended by the petitioner before the High Court that one third of the Lake was converted into a series of sedimentation tanks made in the downstream of the Lake by Respondent 7 and now all dirt with floating objects enter into sedimentation tanks made in the lake bed. Thus, the entire Lake has been converted into a series of small tanks followed by a large tank i.e. lake. This has adversely affected aesthetic value of Mansagar Lake. Prior to the construction of storm water management plan, lake water also used to be released for irrigation. Now water will be released through sluice gates into downstream directly without flowing through the lake basin and there will be no flushing out of salts from the Lake. The build of salts will convert fresh water lake into a saline lake which will alter its flora and fauna. It was further submitted before the High Court that the appellant herein was not at all concerned with the construction of storm water management plant, that too in the lake bed itself and it has been carried out without any requisite sanction and study by any of the authority concerned, otherwise such a large area of the Lake could not have been allowed to be sacrificed for such purpose. As per the monitoring done by the PIL petitioner, the contesting respondent, the chloride content in Mansagar Lake has been increased and salt in water has gone high. The sudden increase in the chloride content of the Lake is attributed to direct human interference by way of altering lake basin character. This increase in salinity will definitely affect the Lake's biodiversity and both the native and migratory birds and species diversity will significantly be dropped. The PIL petitioner further submitted that the unique feature of the area is an endemic species, namely, Plum Headed Parakeet found in the protected forest in Aravalli and the project would be dangerous to the species. Due to settling/sedimentation tanks in the lake bed itself, silt/filth which was to be avoided after restoration of the Lake, is wilfully invited and drained into the Lake itself which has increased salinity of the water also.

35. The PIL petitioner had further submitted before the High Court that the revision had destroyed the very substratum of the project which was earlier conceived. The whole project after completion was to be put in use by 2010, but the appellant has not done anything except filling and compacting the 100 ac of land in the lake bed itself by excavating the soil from the lake

basin. Though only 13% of the land was to be used for construction activities of the private sector developer and would be of restricted entry and rest 87% was to remain in the form of open space, parks, gardens and unrestricted public entry spaces, but in the name of commercial viability and loosely drafted clauses of the bid documents and contracts, complete revision of the plan has been sought by the appellant after declaration as successful bidder. It was further submitted that the Committee under the Chairmanship of the Chief Secretary of the Government of Rajasthan considered the revised Master Plan and rejected the changes on 10-10-2007. However, another representation was submitted by the appellant herein, Respondent 7 in the High Court and on 10-9-2009 sanction was granted by the Committee.

36. The PIL petitioner also raised a grievance that environment impact assessment was not carried out by the finalisation of the project or execution of the lease agreement and even environment clearance from MoEF, Central Government was not obtained as required under the EIA Notification dated 27-1-1994. The Central Government had issued a fresh Notification on 14-9-2006 in exercise of power conferred under Section 3 of the Environment (Protection) Act, 1986 (shortly referred to as "the 1986 Act") and the Rules framed thereunder for environment clearance before implementation of the projects mentioned therein. It was further contended that the project cannot be implemented without obtaining environment clearance from the Central Government under the aforesaid notification and no environment impact assessment was carried out nor any environmental clearance has been obtained before finalising the Project and all actions taken by the respondent are absolutely illegal and void. The PIL petitioner further contended that the environment clearance as required under the Notification dated 14-9-2006 had not been obtained nor any compliance with the Wetlands (Conservation and Management) Rules, 2010 had been made so far.

37. The PIL petitioner had raised a grievance that it is a case of siphoning off of valuable public property as the value of 100 ac of land is not less than Rs 3500 crores. The DLC rates for commercial land in question is Rs 79,063 per sq m and lease for 99 years amounts to sale, although as per the Rules it was necessary for the respondent authorities to realise the sale price and additionally the lessee was required to pay annual lease money also. The market price used to be much higher than DLC rates, especially due to location being picturesque and ecologically rich. If such land is sold for commercial purposes for constructing five star hotels, resorts, luxury villas, etc. such land carries invaluable importance. According to the PIL petitioner, the contesting respondent herein the value of such land cannot be said to be less than Rs 3500 crores. It was, therefore, submitted that the State Government had handed over valuable natural resources of water surrounded by natural beauty of hills and forests, full of wildlife and other natural resources maintaining environmental and ecological balance of the city to a private entrepreneur society for economic exploitation at the cost of the public. The revision of the Master Plan completely converts the tourism

project into privately owned township upon 100 ac of land which has been let out for a petty sum by the Government.

38. Insofar as Writ Petition No. 5039 of 2010 *Dharohar Bachao Samiti* v. *State of Rajasthan* and Writ Petition No. 4860 of 2010 *Heritage Preservation Society Rajasthan* v. *State of Rajasthan* are concerned, they have also substantially urged the sacrifice of public interest on account of the lease granted in favour of the appellant and as such to establish sacrifice of public interest as per their perspective which have been related in the impugned judgment and order.

39. Contesting the PIL petition before the High Court, the respondent State of Rajasthan and its functionaries/authorities had submitted that the Master Development Plan 1976 to 1991 of Jaipur City contained provisions of various facilities on south and west side of Jal Mahal Lake on 200 ac. It was submitted that the erstwhile Urban Improvement Trust, Jaipur had proposed a scheme in respect of 520 ac land which was published in the gazette on 31-7-1975. The Jaipur Development Authority Act, 1982 (for short "the JDA Act, 1982") came into force and the Urban Improvement Trust was replaced by JDA. A notification under Section 39 of the JDA Act was issued by JDA on 30-6-1987. However, development of Jal Mahal area could not materialise. JDA then decided to undertake the exercise for development of integrated tourism infrastructure development for Jal Mahal and required Project Development Company of Rajasthan (PDCOR) to prepare project on commercial format for private-public participation. The preliminary approval was given by the Standing Committee on Infrastructure Development (for short "SCID") in December 1999. It was stated that the bids were notified in the year 2000 but no entrepreneur came forward in the bidding process and thus the tender process was scrapped. Thereafter, JDA was appointed as nodal agency to undertake the bidding process. Global tenders were invited on 25-4-2003 and in pursuance thereof nine entrepreneurs showed interest. It was mentioned in the advertisement that 100 ac of land would be leased out for 99 years. A pre-bid meeting was held on 24-8-2003 for removal of doubts. The Department of Tourism on 6-9-2003 transferred the development of Jal Mahal to RTDC vide Letter No. R-1/12. On 15-9-2003, pre-qualification bids were opened in response to which four entrepreneurs submitted bids. Rejection of one bid was recommended on account of inadequate information on evaluation. It was pointed out that the respondent M/s KGK Enterprises was a partnership concern whereas the criteria for bidder was that it has to be private/public limited company and thus final view of the Government was sought in respect of qualification/ disqualification of M/s KGK Enterprises in the next phase of evaluation bid. Later, on 14-11-2004, KGK Enterprises formed private limited company in the name and style of "Jal Mahal Resorts (P) Ltd." PDCOR suggested retention of KGK Enterprises as its presence will increase competitiveness. The State Government permitted the consideration of bid of KGK Enterprises on 17-10-2003 to enlarge the scope of competitiveness. Thereafter, the technical bid was opened on 21-10-2003 and financial bid was opened on 3-12-2003. RTDC

recommended the award of project to the highest bidder, namely, KGK Enterprises and accordingly the Commissioner, Tourism vide noting dated 19-2-2004 put the matter before the State Government for issuing a letter of intent and signing the lease agreement in favour of the successful bidder. This was forwarded by Secretary, Tourism to Minister In-charge, Tourism (Chief Minister), who approved the minutes of the Empowered Committee on Infrastructure Development (ECID) and directed to put up the draft lease agreement early. On 9-5-2005 the Collector intimated that 100 ac of land has been mutated in favour of RTDC. The approval of lease agreement and licence agreement and authorising of Managing Director of RTDC to sign the agreement was granted finally by the Chief Minister on 27-10-2005. On 29-10-2005, RTDC authorised the Managing Director to sign Jal Mahal Lease Agreement on behalf of the Government of Rajasthan with Jal Mahal Resorts (P) Ltd. and accordingly lease agreement was executed on 22-11-2005. The Central Government, MoEF recorded its appreciation for the project vide letters dated 13-9-2002 and 1-12-2009.

40. It was further contended on behalf of respondent State that it is incorrect to say that the size of the Lake has been reduced on account of leasing out 100 ac of land. It was averred that the action is as per the Master Development Plan. The State Government has submitted the Project to the Central Government MoEF for restoration of Mansagar Lake at the estimated cost of Rs 24.72 crores and the Central Government agreed to provide 70% of the cost. PDCOR in the project report prepared in October 2001 included the following facilities:

1. Restaurant;
2. Traditional technological park;
3. Club resort;
4. Amusement park;
5. Heritage village;
6. Light and sound show land;
7. Recreational centre.

41. It was further stated by the respondent State of Rajasthan before the High Court that there will be no damage to the wildlife or reserve forest or birds and it is for Respondent 7 Jal Mahal Resorts (P) Ltd., the appellant herein to obtain clearance as per requirement of law. The sedimentation tank covers 5% of the area of the Lake. It was also stated that the Wetland Rules are not applicable and they are made applicable to Sambhar Lake and Keola Deo Lake in Rajasthan. It was still further added that the land leased out does not fall within the definition of Section 2(1)(*g*) and Section 3. The consent had been given under the Water Act by the Rajasthan Pollution Control Board on 20-5-2010. It was further added that for the last three decades, the State Government had been making efforts for restoration of Jal Mahal, Mansagar Lake and the area around the Lake and desilting has not caused any ecological damage.

42. Insofar as the stand of Jaipur Development Authority is concerned, it on its turn submitted that for development of Jal Mahal Tourism Project land of private unit was acquired, certain land was sawai chak (government land) and land of the Public Works Department, land of three villages, namely, Vijay Mahal, Bansbadanpura and Kasba Amer was included, 178 bighas 9 biswas was in private tenancy, 475 bighas 9 biswas was sawai chak (government land), 25 bighas 4 biswas was of PWD, 133 bighas 15 biswas was of Municipal Council, 19 bighas 10 biswas was of the Forest Department. Thus, in total, 832 bighas 1 biswa was mentioned in the Letter dated 7-6-1982 written by UIT to the Deputy Secretary, UDH. When JDA was formed, the area of Jal Mahal Project stood transferred to JDA by virtue of the JDA Act and JDA vide Letter dated 5-10-1983 requested the Government to acquire land admeasuring 832 bighas 4 biswas which was in the tenancy of private persons. JDA sent a proposal on 25-2-1988 to UDH for publication under Section 4 of the Land Acquisition Act, the report under Section 5-A was submitted by the Land Acquisition Officer to the Government for acquisition of land for Jal Mahal Reclamation Project and the same was accepted and land award was passed on 17-4-1996. It was further explained that a part of land however falling in the area known as Karbala measuring 46 bighas was decided not to be acquired. On 31-3-1999 BIDI was formed to take decisions to accelerate growth of investment and industrial development in the State of Rajasthan. Thereafter, the decisions were taken, details of which have been given in the return. On 10-9-2009, approval of revised layout plan was granted by the Committee chaired by the Chief Secretary. Lease amount had to be enhanced by 10% every time after a period of 3 years. It was, therefore, submitted that JDA having considering the nature of investment, lease of 99 years was justified. It was also admitted that out of 100 ac of leased area 13 bighas 17 biswas of land is recorded as "gair mumkin talab" in Khasra No. 67/317.

43. Insofar as the reply of the lessee, Respondents 7 and 8, the appellants herein Jal Mahal Resorts (P) Ltd. and KGK Consortium is concerned, it had submitted in their reply to the writ petition before the High Court that the State Government promoted the concept of private-public partnership to save the burden on the exchequer and the decision had been taken by the expert body at the highest level which is not amenable to interference by this Court. MoEF granted approval on 5-9-2002. On 23-12-2002 administrative approval and expenditure sanction was issued by the Government of India for conservation and management of Mansagar Lake. The bid submitted by M/s KGK Enterprises in 2003 was found to be the highest and hence the then Chief Minister had approved the decision of giving project to the highest bidder KGK Enterprises on 27-2-2004 and thereafter letter of intent was issued on 30-9-2004 after which lease agreement was executed on 22-11-2005 on which the appellant has already spent an amount of Rs 70 crores while executing Part I of the project.

44. The appellant herein had also submitted that the public interest petition was not bona fide, it rather amounted to abuse of the process of the court and they have been filed with gross delay and laches.

45. Responding to Writ Petition No. 4860 of 2010, which PIL was filed by Dr Ved Prakash Sharma in the High Court also, was contested by the appellant herein and it was submitted that Dr V.P. Sharma appears to have obtained registration on 19-3-2010 mainly for the purpose of approaching this Court in PIL. It was also urged that Prof K.P. Sharma in WP No. 6039 of 2011 is not a recognised authority or lake functionaries or expert in lake management, irrigation, environment protection and there has been orchestrated campaign through vernacular newspaper for reasons best known to the correspondent and the newspaper itself. The said newspaper runs Janmangal Trust on behalf of the Irrigation Department and the said Trust also carries out commercial activities to generate revenue for upkeep of the dam. It was further added that in 1992 the newspaper group wanted to utilise the Jal Mahal complex and the land which is part of the Jal Mahal Tourism Project for its own benefit and commercial use free of cost/at a paltry sum and having failed to grab the land, hostile campaign had been started against the project and more than 200 misleading articles had been published in the newspaper attempting to hold a media trial in the matter. The appellant herein further stated that the PIL petitioner Prof K.P. Sharma, Respondent 6 in the appeal has not come up with clean hands and concealed the material facts that on the complaint filed by him before PIL cell of the Supreme Court, no cognizance was taken and the file was closed. The writ petitions which were filed were barred by res judicata inasmuch as Writ Petition No. 1008 of 2011 *Ram Prasad Sharma* v. *State of Rajasthan*[3] was dismissed by the High Court as withdrawn by order dated 15-2-2011 without liberty to file a fresh writ petition.

46. It was also submitted by the appellant that the interference in contractual matter is not permissible specially when Jal Mahal Tourism Project is in larger public interest as it has to undertake restoration of Mansagar Lake. It was still further added that there was encroachment of about 50-60 ac of land, decision had been taken by the expert body, bids were invited by global tender and the appellant having been found the highest bidder was rightly considered, lease agreement and leave and licence agreement are valid, possession of the land was rightly handed over to them; nursery has been set up over this land which has numerous varieties of plants and they have also introduced several varieties of aquatic vegetation in Mansagar Lake to attract migratory birds. Beautification of Jaipur-Amer Road divider has also been taken up and work of Phase I has been completed and allegation of environment damage is baseless as the State Government after environment impact assessment granted permission and consent has also been granted by the Rajasthan Pollution Control Board in 2009-2010; capacity of water in the Lake has not been reduced; sedimentation basin has

3 Writ Petition No. 1008 of 2011, order dated 15-2-2011 (Raj)

been constructed as per expert advice. The appellant further had stated that they had spent about Rs 15 crores on Lake restoration which was not their responsibility under the lease agreement and they have also spent Rs 10 crores on restoration of Jal Mahal monument voluntarily though obligation was limited to Rs 1.5 crores only. Hence, there cannot be any interference by this Court with the opinion of the expert.

47. It was still further added that Jal Mahal monument is not a place of worship for both Hindu or Muslim or either of them and there is no document showing that it has been permitted to be used as a place of worship. It was stated that Jal Mahal monument was a pleasure pavilion used for hunting ducks and other similar pleasure activities by the kings, opinion of legal consultant of JDA was not correct. Issue of identity of director/owner of the company constituting the consortium is not relevant in any manner whatsoever to the project for restoration of Mansagar Lake. For Jal Mahal monument and development of precinct area, bid was submitted by KGK Consortium comprising of six private limited companies, one HUF and partnership firm, namely, M/s KGK Enterprises who was lead bidder of KGK Consortium. It was stated that it is mandatory under the tender document that in case of consortium bid, successful bidder has to form special purpose vehicle (limited company) and lease would be executed with such SPV; in the pre-qualification round the bidder should have satisfied any two of the three eligibility criteria for meeting the financial capability:

1. Tangible net worth of not less than Rs 100 million (US $2 million) as per the latest audited financial statement.

2. Annual turnover not less than Rs 300 million (US $6 million) as per the latest audited financial statement.

3. Net cash accruals not less than Rs 50 million (US $1 million) as per the latest audited financial statement.

Relying on these credentials, it was stated that M/s KGK Consortium satisfied the aforesaid technical financial criteria. However, its lead member M/s KGK Enterprises was a partnership firm and as KGK Enterprises met all the requirements in respect of technical, financial, shareholding and lock-in periods as given in RPF, deviation from RPF which mandated that the lead firm must be a public/private company was permitted and KGK Enterprises was allowed to compete so as to ensure adequate competition. Factual details are further added stating that KGK Enterprises acquired 83 marks while the next highest 82 marks were secured by M/s J.M. Projects (P) Ltd. and both were considered eligible for opening of their financial bids, bid of KGK Enterprises being the highest, was accepted. Under the lease agreement, Jal Mahal Resorts (P) Ltd. has a right of development of 100 ac of project land and no proprietary right over the management has been given. Licence for the restoration of the Jal Mahal monument does not confer any right on Jal Mahal Resorts (P) Ltd. except to ferry passengers for a minor charge *and it has not been authorised to use the Jal Mahal monument commercially and the monument remains within the possession and use of the State*

Government. Out of 100 ac of land, 87% area is to be maintained as green area and in PIL, terms and conditions of the contract cannot be questioned after several years.

48. The appellant further stated that on restoration of Mansagar Lake Rs 15 crores have already been invested, catchment area is not being disturbed in any manner, report of Prof K.P. Sharma is merely an opinion based on personal interpretation. There was temporary road constructed by the licensee for easy access for the purpose of restoration of Jal Mahal monument which is situated otherwise in Mansagar Lake surrounded by water and the said road has been dismantled and no material is left to compromise the filling capacity of the Lake. JDA has approved detailed building plans for the project on 13-7-2010. Jal Mahal Resorts (P) Ltd. diverted the sewage nallahs away from Mansagar Lake with the approval of the State Government, the Lake has been cleansed substantially, BOD of the water in Mansagar Lake has been reduced substantially after commencement of the work, creation of sedimentation basin has not decreased the water capacity of Mansagar Lake and use of the soil of the Lake itself has not damaged the ecology or environment or the Lake. Sedimentation basin is a part of the Lake and created only by moving the soil of the Lake from one place to another and it is wholly temporarily reversible in nature and the soil can be levelled when arrangements are in place to ensure that the storm water drains do not discharge silt and organic load into the Lake during monsoon. The land in question is not covered under the provisions of the Tenancy Act and the Lake is with the State Government, which will continue to remain so. It has, however, been added that the responsibility of lake maintenance is purely of JDA and Jal Mahal monument has been denotified in 1971 from the protected monuments under the provisions of the Act of 1961. Changes in the Jal Mahal monument has been brought with the consent of the Empowered Committee, these PIL petitions were clearly devoid of merit and the appellants herein had a right to start Phase II of the Project.

49. Insofar as MoEF, Government of India is concerned, it has clarified that it has only sanctioned the Project for Conservation and Management of Mansagar Lake in Jaipur in December 2002. Thus, the averment made in the petition that no sanction for Jal Mahal Tourism Project was obtained from MoEF is not disputed in the return filed by MoEF. It was stated that the Project for Conservation and Management of Mansagar Lake in Jaipur was sanctioned as per the mandate of the National Lake Conservation Plan. It was further contended that the Project for Conservation and Management of Mansagar Lake in Jaipur was sanctioned in December 2002 at the cost of Rs 24.72 crores under NLCP on 70:30 cost sharing basis between the Government of India and the State Government of Rajasthan and the sanctioned order was issued which contained break-up of cost estimated. The different components which were approved further included realignment of drains, desilting, in situ bioremediation, sewage treatment plant and wetland construction, check dams, afforestation, nesting islands, etc. It has been accepted by MoEF that JDA was the nodal implementing agency for the

project and MoEF, Central Government has released entire share of the Central Government amounting to Rs 17.30 crores. Other details had also been recorded on behalf of MoEF regarding the cost of upgradation and it was stated that the State Government was committed to bear the additional fund towards the development from its own resource. The State Government had informed that in addition to the sewerage work under NLCP Scheme, other projects are also being taken up thereby ensuring that all sewage generated in the Lake catchment area is being taken care of. The learned Judges of the Division Bench on a scrutiny of facts and on hearing the counsel for the contesting parties however were pleased to hold that the PIL was bona fide and in public interest. Resultantly, the High Court was pleased to declare that the Mansagar Lake precinct lease agreement dated 22-11-2005 giving 100 ac of land on lease for a period of 99 years to Respondent 7 Jal Mahal Resorts (P) Ltd. was illegal and void. The appellant Jal Mahal Resorts (P) Ltd. was, therefore, directed to restore the possession of the land to RTDC who in turn was directed to give back the land to Jaipur Development Authority, Jaipur Municipal Corporation and the State. As already stated in the introductory paragraph, certain other directions like removal of sedimentation and settling tanks from the Mansagar Lake basin was also issued by the High Court and cost also had to be realised from the appellant.

50. The appellant lessee Jal Mahal Resorts (P) Ltd. felt seriously aggrieved and affected by the impugned judgment and order[1] of the High Court and therefore preferred this appeal along with the other connected appeals which are being heard and decided analogously.

51. In order to test the merits and demerits/strength of the case of the contesting parties, we deem it appropriate to take note of the historical background giving rise to this matter whereby certain factual aspects and the background may be traced out from 1962 when admittedly the two sewerage drains of the walled city of Jaipur, Nagtalai and Brahmapuri, were diverted to empty into the water body which led to its degeneration, siltation and settled deposits and contamination to such an extent that it could not support the aquatic life nor support flora and fauna in the surrounding areas. It is also an admitted position that the condition of Mansagar Lake and Jal Mahal also started substantially deteriorating over a period of time not only because of natural process of degeneration but also because of ill maintenance and monument reduced to such a dilapidated state that it required massive restoration work.

52. It is also borne out from the historical background and the sequence of events related by the contesting parties that the deteriorating condition of the Lake and the monument compelled the State Government to find ways and means to restore the monuments to their original glory. We have noted from the averments of the contesting parties that over a period of 30 years attempts were made by government agencies and departments to restore

1 *K.P. Sharma* v. *State of Rajasthan*, Civil Writ (PIL) Petition No. 6039 of 2011, decided on 17-5-2012 (Raj)

ecological and environment condition of the Lake and its adjoining area but none of the attempts yielded any positive result because of paucity of resources to take up and sustain their restoration. The Government of Rajasthan, therefore, had taken a decision to adopt an incentivised approach to restore the Lake and monument and declare the precinct area on a public/private partnership format. In order to improve the condition of the Lake the State of Rajasthan in consultation with the experts and after detailed surveys and analysis adopted an approach of development covering three components which are:

(i) Restoration of Mansagar Lake;

(ii) Restoration of Jal Mahal; and

(iii) Development of tourism/recreational components at the Lake precincts.

While restoration of Mansagar Lake was approved as per the averment of MoEF confined to the development of the Lake area, restoration of Jal Mahal which lies within the precinct of the Lake, development of the Lake and the adjoining area to the Lake fell within the domain of the Government of Rajasthan which related to development of tourism/recreational components at the Lake precincts.

53. On a scrutiny of the extensive factual details and the submissions advanced by the contesting parties, we have noted that the entire dispute is essentially confined to the lease deed which has been granted in favour of the appellant for development of 100 ac land adjoining the Lake area for a period of 99 years. The PIL petitioners although have urged that the land for which lease deed had been executed was wetland, it could not establish from any material on record that except an area of 14.15 ac equivalent to 22 bighas and 10 biswas and another area comprising 8.65 ac equivalent to 13 bighas and 17 biswas are in fact the contentious area on the basis of which the PIL petition has been filed engulfing the entire area of the lease deed. In this respect it cannot be overlooked that the Project which was visualised and given effect to, was with a view to sustainable conservation and preservation approach stipulated in consultation with the experts in pursuance to which a global tender was floated and implemented under extra supervision with all approvals in place from the authorities concerned.

54. The learned counsel for the appellant-petitioner Dr Abhishek Singhvi assailed the impugned judgment and order[1] of the High Court and urged that the High Court has proceeded on a patently erroneous, illegal and factually incorrect basis when it, inter alia, held as follows:

(*a*) That the public trust doctrine has been breached because land measuring 13 bighas 7 biswas, submerged area of the Lake, has been leased to the petitioner and resultantly the lease deed dated 22-11-2005 is void in law.

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(*b*) That 14.15 ac equivalent to 22 bighas and 10 biswas of land submerged forming part of the lake bed and could not have been leased out.

(*c*) The State Government has leased 25% of the Lake basin itself to the appellant-petitioner for preparing 100 ac of land and the lake level has been reduced to carve out 100 ac of land for the lease.

(*d*) The environment clearance given by State-Level Environment Impact Assessment Authority (SEIAA) to the petitioner on 29-4-2010 is void in law.

(*e*) That the project is in violation of Rule 4 of the Wetland Rules of 2010 and the Ramsar Convention. Thus, the lease deed is in contravention of the Wetland Rules and cannot be given effect to.

(*f*) That the sedimentation tanks are illegal as they could not be built without clearance from the Ministry of Environment and Forests.

(*g*) That the no-objection given by the Rajasthan Pollution Control Board to the petitioner's Project is of no avail in the absence of clearance by MoEF under the Environment (Protection) Act, 1986.

(*h*) That the lease has been executed in violation of the Rajasthan Tourism Disposal of Land Rules, 1997 (the RTDC Rules), the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974, the Rajasthan Municipality Act, 1959 and the Jaipur Development Act, 1982 is liable to be cancelled.

(*i*) That the State was bound to give effect to the essential conditions of eligibility stated in the tender document and was not entitled to waive such a condition. Thus, action of Respondent 2 was not for bona fide reasons.

55. The learned Senior Counsel for the appellant Dr Abhishek M. Singhvi at the outset submitted that the writ petitions before the High Court by way of public interest litigation ought to have been held barred by delay, laches as also on the ground that they were not bona fide and filed with ulterior motive. It was explained that three purported PILs came to be filed by the writ petitioner-respondents herein in 2010 and 2011 after expiry of 5 years from the date of execution of the lease deed and the licence agreement dated 22-11-2005. In this respect, it was submitted giving out the sequence of events that the detailed project report ("DPR", for short) in regard to the project was prepared way back in 2001 which was the underlying basis for the project. The tender process commenced in 2003 and the fish-shaped leasehold area comprising 100 ac was part of the expression of interest dated 25-4-2003 published in various public media. Notice inviting tenders for the project was published in various public media on 30-7-2003. The pre-qualification bids were opened on 15-7-2003, the technical bids were opened on 21-10-2003 and the financial bids were opened on 3-12-2003. Thereafter, decision-making process was undertaken at several stages up to the level of the Chief Minister in order to determine the award of the project to the respondent lessee KGK Consortium which are indicated in the orders

dated 9-2-2004, 27-2-2004, 30-9-2004 and 27-10-2005. Thereafter, finally on 22-11-2005, the lease and licence agreements were executed between the State Government and the appellant-petitioner. It was submitted that all the above steps were taken in public domain and in fact one of the PILs petitioner-respondent herein K.P. Sharma was aware of the developments as far back as in February 2005 that the project was to come up, yet he chose to sit by and do nothing until 2011 and during these intervening 8 years, the State Government and the appellant-petitioner substantially altered their positions by spending huge sums of money in implementing the project. It was, therefore, submitted that the motive of Respondent 1 PIL petitioner is questionable because he has sought to disrupt a project much after the public money came to be spent even though he could have approached the High Court earlier.

56. The learned counsel for the petitioner further submitted that one of the factors that the Court should look into before entertaining a PIL is to ensure whether the PIL has been filed promptly and in utmost good faith. It ought to further consider whether by allowing a grossly delayed PIL, the parties who have acted bona fide would be prejudiced and suffer. In the present case, the appellant-petitioner has spent gratuitously on the belief that it had the right to develop 100 ac of land leased and it spent Rs 10 crores on restoring the Jal Mahal monument which is now fully restored and ready to be opened for the public. It has paid more than Rs 22 crores on lease rent alone and has built a 1.75 km long public promenade over its leased land, substantively and the petitioner during this period completed the whole Phase I under the agreement. In support of this submission, the appellant-petitioner relied upon the ratio of the decision delivered in *Ramana Dayaram Shetty* v. *International Airport Authority of India*[4], where the Court despite holding that the State had violated Article 14 of the Constitution permitted the contract to continue. The Court in its conclusions overlooked the rights and liabilities of the successful party on the one hand and the conduct including delay and motive of the PIL petitioner on the other and finally upheld the right to continue contract under challenge as it was of the view that the Court may refuse relief to the party challenging the award of contract if the equities are in favour of the party holding the contract. In the instant case, it is not even the plea of the PIL petitioner that he himself has been deprived of his rights. Even in *State of M.P.* v. *Nandlal Jaiswal*[5], this Hon'ble Court took the view that the writ petition suffered from laches and thus considered it fit to dismiss it.

57. It was added that in fact the PIL petitioner in the High Court Mr K.P. Sharma is guilty of suppression of facts from the High Court as he had sent a complaint letter dated 12-6-2007 to the Supreme Court and the SC Registry was directed to submit a report dealing with all the allegation raised by the PIL petitioner. The SC Registry took the report on record and closed

4 (1979) 3 SCC 489
5 (1986) 4 SCC 566

the matter on 20-12-2007. The petitioner K.P. Sharma thereafter did not move forward and suddenly after 4 years in April 2011, filed a writ petition by way of PIL in the High Court without even disclosing that the complaint had been enquired by the Registry of the Supreme Court and the matter was closed. However, the PIL petitioner made a further application to the Supreme Court in the year 2011 but the Additional Registrar of the Supreme Court vide letter dated 11-10-2011 informed the PIL petitioner that pursuant to the GOR Report, the file had been closed and the file was weeded out on 14-4-2011. Thus, the PIL petitioner was clearly aware of the factual report of GOR to the effect that the SC Registry had closed the matter based upon that report, yet the PIL petitioner K.P. Sharma failed to disclose this vital fact to the High Court. Thus, the PIL petitioner deliberately tried to mislead the Court and has not come to the Court with clean hands. It was, therefore, contended that it cannot be overlooked that the complaint of the PIL petitioner to the SC Registry and its rejection thereafter based upon a factual report submitted by GOR is a vital and material fact that ought to have been disclosed to the High Court specially since the allegations in the complaint and the PIL substantially overlap.

58. It was next contended that the PIL by the petitioner K.P. Sharma lacks the bona fides to prefer the PIL petition because his conduct is malicious and vindictive. Elaborating on this, it was stated that PIL petitioner K.P. Sharma with Dr Brij Gopal had approached the appellant in the year 2007 purporting to offer their services for monetary reward. Since the appellant had already engaged a lead panel of conservationist and environmentalist, the services of the PIL petitioner were not required. Thereafter, the PIL was filed only as a way to vent his pique and frustration at the SLP appellant-petitioner herein. It was submitted that these vital background facts ought to have been disclosed to the Court at the time of preferring the PIL and since these facts were suppressed and not disclosed, it is apparent that the PIL petition had not been filed bona fide and had been preferred for own vexatious reasons.

59. It was further contended that the High Court vide the impugned order[1] has proceeded on a patently erroneous, illegal and factually incorrect basis when it held that the public trust has been breached because land admeasuring 13 bighas 7 biswas forming part of lake bed which has been leased to the appellant-petitioner vide lease deed dated 22-5-2005 is void in law. It was explained in this regard that 13 bighas 17 biswas of land equivalent to 8.65 ac of land from the very inception has been reflected and treated as part of the land that was proposed to be leased. This land was described in the original detailed project report which was prepared much earlier in the year 2001 when this land formed part of the fish-shaped land. It is highlighted that during the first attempt to initiate Project Jal Mahal and preparation of the detailed project report ("DPR", for short), the appellant-

1 *K.P. Sharma* v. *State of Rajasthan*, Civil Writ (PIL) Petition No. 6039 of 2011, decided on 17-5-2012 (Raj)

petitioner was nowhere in the picture. In this regard, it had been contended by the respondent-PIL petitioner that the area admeasuring 13 bighas 17 biswas bearing Khasra No. 67/316 (8.65 ac approx.) is part of the Lake area as per revenue record which is recorded as "gair mumkin talab" and therefore could not have been leased to the petitioner. Contesting this plea, it was submitted by the appellant-petitioner that Khasra No. 67/317 does not form part of the submerged area and is in fact a part of landmass which is outside water. The survey reports placed on record leave no doubt on this score.

60. It was submitted by the petitioner that the consistent and specific case of Respondent 6 Project Development Corporation of Rajasthan ("PDCOR", for short), was that this land does not constitute part of submerged land. However, revenue record reflects this land as gair mumkin talab and the State has entrusted the preparation of the Jal Mahal Tourism Project that includes ecological restoration of Mansagar Lake, restoration of the Jal Mahal monument and the lakeside development on the land leased to the petitioner. However, the appellant-petitioner has also added that it has no desire or intention to construct or in any manner commercially utilise this land and that it should be open to the public. As a matter of fact, Respondent 2 State of Rajasthan had specifically informed the High Court that no construction shall be allowed to be raised on the said area and hence this can hardly be a ground for quashing the award of the entire project.

61. It has been submitted that this Court can uphold the award of the project despite the alleged illegality by keeping the area open in green and the same cannot be a reason to entail a consequence of cancellation of the entire project resulting into huge loss of project to larger public interest. Cancellation of the lease and licence agreement in such circumstance would be patently erroneous and in conflict with settled law. The learned counsel for the petitioner has relied upon the ratio of *Century Spg. and Mfg. Co. Ltd.* v. *Ulhasnagar Municipal Council*[6]. Finally, on this point, it was urged that the High Court at the most could have severed reference to the said 13 bighas 7 biswas of land but should have upheld the lease pertaining to the rest of the land as the lease agreement expressly permits such severance vide Clause 18.4 of the lease deed.

62. The learned Attorney General on behalf of the State of Rajasthan had contended that spot inspection by Jaipur Development Authority ("JDA", for short) showed that no lake existed in 13 bighas 17 biswas of land and that this land was a landmass. The reason for including this area in the lease deed was to maintain the shape of the allotment. It was further argued that the Court may direct this area to be kept open as no construction zone and may be kept open excluding the area which has been consumed in public promenade.

63. The High Court, however, had held that 14.15 ac of the land submerged formed part of the lake bed and could not have been leased out. Assailing this view taken by the High Court, it was contended that this Court

6 (1970) 1 SCC 582

would have to adopt an objective test to determine which land is classified as lake bed and for this purpose reliance has been placed on the ratio of the decision delivered in *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*[7]. It was submitted that reference to the revenue record with respect to 100 ac lease shows that even though land admeasuring 14.15 ac is submerged in water, historically and contemporaneously this land has been classified as "barren" land and not as part of the lake bed and also for that reason is not a wetland. It was further elaborated that PDCOR, the body that prepared the detailed project report had carried out land surveys, prepared topographical surveys, output surveys, water quality tests and received secondary data from Survey of India, etc. which has been incorporated in the counter-affidavit before this Court and before the High Court explaining the reasons for submergence. PDCOR has stated in its affidavit that the said 14.15 ac of land was submerged due to huge silt deposits that had caused the depth of the Lake to reduce and as a result the water had spilt out into adjacent land being the 14.15 ac of land concerned. Thus, the said land was never part of the lake bed and for this reason, is not a wetland. Factually, out of the 14.15 ac permitted to be reclaimed by the petitioner under the lease deed dated 22-11-2005 the petitioner has only reclaimed approximately 11 ac out of which approximately 6-7 ac has been consumed for creating a public promenade open to the public.

64. In fact, the learned Attorney General on behalf of the State had also argued that this land of 14.15 ac was never part of the lake bed as per revenue records. The Attorney General also stated further that the approach of the High Court is completely contradictory. While on the one hand, in respect of the 13 bighas 17 biswas area, the revenue records are relied upon, in respect of the area of 14.15 ac, the revenue records which clearly show that this area is not a part of the Lake, is disregarded. Based on the revenue records referred and shown to this Court, the inevitable and indisputable conclusion that appears is that the entire 100 ac land leased to the petitioner is not a part of the lake bed except 13 bighas 17 biswas bearing Khasra No. 67/317 (8.65 ac). It would thus follow that this land cannot form part of the lake bed under any circumstance.

65. Besides the above, it was urged that over the years, huge amount of silt had been deposited on to the lake bed by Nagtalai and Brahmapuri Nallah as a result of which the depth of the land has reduced which resulted in spilling of the water from the Lake into adjacent areas including the land adjacent to it.

66. On the premise of the aforesaid facts, it was urged that there is no violation of the public trust doctrine as public trust doctrine cannot be applied to defeat public interest. The project as approved and when implemented would in fact create an unprecedented lake water front ambience and would be the only large water body in Jaipur that had been subjected to massive destruction over the years. In fact, the project would

7 (2011) 1 SCC 744

inter alia create approximately 1.5 km long walkway (promenade) along the Lake which has been constructed by the appellant-petitioner on the leased land that is open for use by the public. Importantly, another 3.5 km promenade has been built by JDA along the Lake. A perennially filled Lake admeasuring 310 ac (approx.) with a depth between 3 m to 5 m and a complete renovation and restoration of Jal Mahal monument with a pleasure pavilion built in the mid-18th century, the restoration includes artistic paintings depicting Rajasthani culture. The project includes access to the restored monument by the public on paying a nominal charge of Rs 25 per person essentially a cost towards being carried by boat to the monument, a crafts village to promote handicrafts and other world famous heritage products of Rajasthan, an amusement park for the public, a restaurant positioned with adequate setback from the Lake, for the public to enjoy clean surroundings, a heritage resort, a convention and exhibition centre to serve multipurpose functions. It was submitted that these highly pro-public elements cannot be negated and destroyed by erroneous contentions raised in the PIL. Indeed, the aforesaid enormous improvement to the environment involving air, water and land, is itself in high public interest and this Hon'ble Court should countenance no dilution in that.

67. It was next submitted that the conclusion in the impugned order that the Lake has been artificially reduced to get more land and Lake water level and its spread had been reduced is completely erroneous, unsustainable because it is the petitioner and the State who have together restored 310 ac (approx.) of the Lake that has resulted in ensuring that the Lake remains filled with water around the year having the depth of around 3 m to 5 m, whereas earlier it was nothing but a cesspool of filth, sewage and silt, etc.

68. The factual context of this issue has been summarised by the petitioner in order to demonstrate the grave and patent error of the impugned order and it has been stated as follows:

(*i*) The level of Jaipur-Amer Road is 100 m RL, and the full tank level of the Lake is 99 m RL.

(*ii*) The plinth level of the Jal Mahal monument is however only 98.12 m RL i.e. almost 2 m below the Jaipur-Amer Road level.

(*iii*) It is obvious that a water level equal to the Jaipur-Amer Road level would not only create problem for surrounding areas but would seriously damage and impair the Jal Mahal monument by entering it and eroding its structure.

(*iv*) Consequently, from the creation of DPR in 2001 which was not known to the petitioner, the Government has recognised that the water level of the Lake should not be kept above 98 m RL.

69. It is stated that DPR is not only a final document but in its final form has been approved without objection or protest by the Ministry of Environment and Forests ("MoEF", for short) under the National Lake Conservation Plan (NLCP) Guidelines and in particular the clause dealing with maintenance of water level at 98 m RL which has been considered and

approved by MoEF. In any event, without prejudice to the foregoing, it was submitted that the impugned order is patently erroneous in that it purports to act as an MoEF, Pollution Control Board, State Environment Regulatory Authority, independent and international experts and consultants, all rolled into one. It is impermissible under established judicial review parameter to admit the role of second guess expert body. It is equally impermissible for a court to substitute its review in respect of highly complex factual technological and scientific issue. The Court cannot sit either as an expert or arbitrate or as an appellate body nor can it allow a PIL petition to convert it into a super regulator. To reinforce the submission, reliance was placed on the ratio and observations made in *Tata Cellular* v. *Union of India*[8]. It was submitted that unfortunately the impugned order has committed precisely the aforesaid errors repeatedly, inter alia, in respect of size of lake and water level of the Lake.

70. It was pointed out that prior to the appellant-petitioner taking up the project, the Lake was virtually empty except with dirt, sewage and silt. The very use of the words "reducing of the water level" is highly misleading and inappropriate. It is the petitioner along with the State who has ensured the availability of clean water around the year rather than reducing the level of the Lake. It was still further added that since Mansagar Lake is a manmade lake, the principal source of water during and after the restoration work has been treated is sewage/effluence coupled with some replenishment during monsoon. Consequently, in view of the release of post-treated sewerage water into the Lake, the regulation of the water level at 98 m RL has always been an intrinsic part of the Government's regulation of the entire area.

71. It was submitted that it is axiomatic in law and in fact that the award of a tender must necessarily be judged by the terms of the tender, subject to permissible variations. It is most significant to note that RFP on the basis of which everyone was invited to tender prescribes, specifies and stipulates the clear water level at 98 m RL. It is common ground that neither the PIL petitioner nor any bidder or anyone else has challenged the per se stipulation of the water level at 98 m RL. Therefore, the allegation of the PIL petitioner is absolutely baseless. Consequently, it was contended that the respondents' contention that the appellant-petitioner is guilty of reducing Lake water level is highly misleading and distorted submission which has been accepted in the impugned order contrary to the factual position.

72. It was further urged that the PIL petitioner-respondents herein penchant for false, distorted and misleading submissions alleging reduction of the size of the Lake and the spread of the Lake alleging that this was done by keeping the water level at 98 m RL thereby giving enhanced area of land to the appellant-petitioner herein and correspondingly, diminishing the spread of the Lake is equally fraudulent and deliberately distorted for the following reasons:

It is vital to note that the detailed project report (DPR) made in 2001 at least two years before even the expression of interest was issued for

8 (1994) 6 SCC 651

the present project and the appellant-SLP petitioner herein was nowhere in the picture categorically gives the landmass area available at each of the three different levels of 100 m RL, 99 m RL and 98 m RL of the Lake and then goes on to specifically declare that the best and the only feasible solution to prevent damage to the Jal Mahal monument is to keep the water level at 98 m RL, neither higher nor lower vide DPR. Consequently, the appellant-SLP petitioner herein had nothing whatsoever to do with a decision to maintain the water level at 98 m RL. It is, therefore, deliberately misleading for the PIL petitioner-respondent herein to suggest that because the water level is kept at 98 m RL, the SLP petitioner has been given a greater land area. Thus, it is submitted that it is patently false for the simple reason that irrespective of the water level, the land actually given in the RFP is the necessary controlling tender document is no more than 100 ac and even if 99 m RL which is full tank level had been fixed as the Lake level, even then the land available for the successful bidder would be 100 ac. This underscores the point that 98 m RL level was not the guiding factor while granting 100 ac to the petitioner.

73. It was further contended that the High Court has erroneously relied on a PWD document that states that the area of the Lake has reduced to 0.79 sq km after Independence whereas prior to Independence, according to the High Court, it was 1.154 sq km. However, the High Court does not appreciate and consider that DPR was prepared in 2001 after carrying out extensive surveys and preparing topographical maps, after doing all such research and based upon all such material it was determined by DPR that the size of the Lake was 130 ha more than what it purportedly was prior to Independence. It was, therefore, submitted that the High Court's finding on this aspect suffers from lack of application of mind to the material on record and it was submitted that if anything, the size of the Lake from Independence has only increased. Consequently, it was submitted that the two vital and unchangeable parameters show the falsity of the PIL petitioner's contention viz.

(*a*) A decision fixed and taken more than two years before the tender in 2001 to get the Lake level at 98 m RL.

(*b*) A decision taken in RFP to lease out no more than 100 ac; once these two polar points are fixed, assuming everything against the appellant-petitioner herein or the State Government, there can be no prejudice or detriment of any kind to public interest.

74. It was next contended that the High Court's conclusion on desilting is patently erroneous and unsustainable because desilting was a sanctioned activity under NLCP and MoEF had sanctioned funds for the said purpose. DPR had provided for desilting as a measure to increase the depth of the Lake so as to enhance the water holding capacity, thus, desilting had a scientific basis to it. In fact, in the meeting dated 3-4-2006 which was held to review the Lake restoration under the Chairmanship of the Principal

Secretary, Urban Development and Housing, permission was granted to the appellant-petitioner to desilt the Lake to achieve 2 m depth at its own cost. Therefore, the petitioner had valid permission from the State Government to carry out desilting and there was nothing illegal in the manner rather than minutes of the meeting show that it was a well-considered decision of the Committee and was in line with DPR.

75. The appellant-petitioner submitted that the High Court's finding is patently erroneous and unsustainable as except for the revenue entries showing 13 bighas and 7 biswas of land as gair mumkin talab no other parcel of land that was leased to the petitioner was part of the lake bed as per the revenue entries. Only because silt was dumped on the land leased to the petitioner, cannot make land that was not part of the lake bed (*sic* a part thereof), as is evident from the revenue record, and is now suddenly being asserted as part of the lake bed. It is being stated that it is always advisable that lakeside development should be at higher level than the water level.

76. On a consideration of the rival submissions urged on behalf of the contesting parties, in the light of the factual matrix and the materials which were produced before the High Court, it clearly emerges that the PIL petitioner-Respondent 1 herein K.P. Sharma had contended that the lease executed and granted to the appellant for development of 100 ac land was illegal, arbitrary, disturbing the natural resource of the Lake, which was fit to be struck down as invalid as the 100 ac land was carved out from the Lake area and thus the breadth and height of the Lake was reduced.

77. However, on a scrutiny of materials on record which included the revenue record of the land in question, it is sufficiently clear that the manmade Mansagar Lake comprised of an area of only three hundred acres towards the Lake area. The counsel for the respondent-PIL petitioners, however, at the outset and as the first and foremost point sought to make good the submission that the Lake area was reduced by 100 ac which was leased out to the appellant lessee by reducing the Lake area. But the counsel in spite of his best efforts could not establish the same except the fact that 8.65 ac and 14.15 ac were submerged area of the Lake and lake bed respectively which was carved out as land area so as to make it a part of the 100 ac land area. In fact, even on perusal of the impugned judgment and order[1] of the High Court it could not be established even remotely that the entire 100 ac land which comprises the area of lease deed is a part of the Lake or lake bed in any manner. In fact, all the contentions which had been raised before the High Court as also before this Court in general terms urged that the Lake area has been reduced to 310 ac and 100 ac have been carved out of 400 ac of Lake area which was reduced to 310 ac. But in clear, specific or precise terms, it could not go beyond urging that 8.65 ac which was submerged and hence a portion of the Lake area, could not have been made a part of the leased area. In this context, it was further urged that this area

1 *K.P. Sharma* v. *State of Rajasthan*, Civil Writ (PIL) Petition No. 6039 of 2011, decided on 17-5-2012 (Raj)

being a wetland, could not have been included in the leased portion of the land for which the development was permitted by executing a lease deed.

78. When this plea was scrutinised in the light of the revenue record, it could be noted that this area has been recorded in the revenue record as "gair mumkin talab". Based on this entry, it was submitted by the PIL petitioner-respondent herein that "gair mumkin talab" area could not have been allowed to be developed by raising construction as that would be clearly contrary to the Wetland Rules which were enacted for the first time in the year 2010. In other words, the contention of the PIL petitioner-Respondent 1 herein is that since 8.65 ac of land which forms part of 100 ac leased area granted to the appellant is submerged under water which area according to the PIL petitioner-respondents would also form part of the Lake, the State Government could not have included this land in the leasehold area to be granted to the appellant-petitioner.

79. The appellant lessee on his part confronting this submission argued that this Court would have to adopt an objective test to determine which land claimed as lake bed and wetland is fit to be accepted and for this purpose placed reliance on the ratio of the decision delivered in *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*[7] paras 24 and 25 which held as follows: (SCC pp. 758-59)

> "*24.* ... In support of the applicants' case that there used to be a forest at the project site he relies upon the report of the CCF based on site inspection and the Google image and most heavily on the FSI Report based on satellite imagery and analysed by GSI application. A satellite image may not always reveal the complete story. Let us for a moment come down from the satellite to the earth *and see what picture emerges from the government records and how things appear on the ground. In the revenue records, none of the khasras (plots) falling in the project area was ever shown as jungle or forest. According to the settlement year 1359 Fasli (1952 AD) all the khasras are recorded as *agricultural land*, banjar (uncultivable) or parti (uncultivated).*
>
> *25.* NOIDA was set up in 1976 and the lands of the project area were acquired under the Land Acquisition Act mostly between the years 1980 to 1983 (two or three plots were notified under Sections 4/6 of the Act in 1979 and one or two plots as late as in the year 1991). But the possession of a very large part of the lands under acquisition (that now form the project site) was taken over in the year 1983. From the details of the acquisition proceedings furnished in a tabular form (Annexure 9 to the counter-affidavit on behalf of Respondents 2 and 3) it would appear that though on most of the plots there were properties of one kind or the other, **there was not a single tree on any of the plots under acquisition*. The records of the land acquisition proceedings, thus,*

7 (2011) 1 SCC 744

* **Ed.**: The matter between two asterisks has been emphasised in original as well.

*complement the revenue record of 1952 in which the lands were shown as *agricultural and not as jungle or forest*. There is no reason not to give due credence to these records since they pertain to a time when the impugned project was not even in anyone's imagination and its proponents were nowhere on the scene.*" (emphasis supplied)

80. Placing reliance on the aforesaid categorical view taken by this Court in *Noida Memorial Complex case*[7], it was submitted that a reference to the revenue records with respect to the 100 ac lease shows that even though the land admeasuring 8.65 ac might have been submerged under water, historically and contemporaneously, 14.15 ac has been classified as "barren land" and not as part of the lake bed. It, therefore, must follow as per the submission of the counsel for the appellant placing reliance on the revenue records that 14.15 ac, forming part of 100 ac leased to the appellant, is not a part of the lake bed and also for that reason is not a wetland.

81. It was further urged that Project Development Corporation (PDCOR) of the State of Rajasthan, the body that prepared the detailed project report in the year 2001, when the appellant-petitioner was not in the picture in any manner carried out land surveys, prepared topographical surveys, output surveys, water quality tests and received secondary data from the Survey of India, etc. as in the counter-affidavit before this Court and before the High Court explained the reasons for emergence of this area of 14.15 ac of land. It was further pointed out that PDCOR has stated in its affidavit that the said 14.15 ac land emerged due to huge silt deposits that had caused the depth of the Lake to reduce and as a result, the water had spilt out into the adjacent land being the 14.15 ac of land concerned. Based on this project report prepared at the instance of PDCOR, it was argued that the said land was never part of the lake bed and is not for this reason a wetland. It was further added that factually out of 14.15 ac permitted to be reclaimed by the appellant under the lease deed dated 22-11-2005, the appellant has only claimed approximately 11 ac out of which approximately 6-7 ac has been consumed by the appellant for creating a public promenade open to the public.

82. The appellant sought to add additional weight to this argument by placing reliance on the submission of the learned Attorney General on behalf of the State who had argued that this land of 14.15 ac was never part of the lake bed as per the revenue records. The counsel further pointed out that the Attorney General had further submitted that the approach of the High Court was completely contradictory in this regard. While on the one hand in respect of the 13 bighas 17 biswas area equivalent to 8.65 ac, the revenue records had been relied upon, the same was not taken care of and relied upon in respect of the area of 14.15 ac although, the revenue records clearly show that this area is not a part of the Lake and yet it was disregarded by the High Court.

83. On the aforesaid aspect, it was further urged that based on the revenue records referred and shown to this Hon'ble Court, the inevitable and indisputable conclusion that appears is that the entire 100 ac land leased to

* **Ed.**: The matter between two asterisks has been emphasised in original.

7 *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744

the appellant is not a part of the lake bed including 13 bighas 17 biswas bearing Khasra No. 67/317 corresponding to 8.65 ac. It was submitted that from this it ought to follow that this land could not have been held to be forming a part of the lake bed under any circumstance.

84. The PIL petitioner-Respondent 1 herein had further argued that the project is illegal because no sanction for this project had been received under the Wetland Rules, 2010 and, therefore, the respondents have sought for a declaration of the lease deed being void.

85. Challenging this part of the argument urged on behalf of the PIL petitioner-respondents herein, it was contended on behalf of the appellant that the language of the Wetland Rules, 2010 when referred to in detail makes it clear that these Rules can only apply in a situation where the Central Wetland Authority, a Government of India body established under the Wetland Rules, 2010 sends its recommendation to the Central Government for notifying a certain area as a wetland. It was urged that in the present case, it is undisputed that when the lease deed was executed and environmental clearance (EC) from State-Level Environment Impact Assessment Authority (SEIAA, for short) was granted on 29-4-2010, the Wetland Rules, 2010 were not even enacted. Therefore, the question of the Wetland Rules, 2010 applying to the project retrospectively would not arise. Even otherwise under the Wetland Rules, 2010, there is a detailed procedure specified which has to be complied with mandatorily before an area can be notified as a wetland. It was submitted that in the present case even after the Wetland Rules, 2010 came into force, no such procedure admittedly has been undertaken to identify Mansagar Lake as a wetland when these PILs were filed. It was further contended in this regard that such a project is contrary to the specific intent of the framers which is unequivocal viz. even assuming that an area is zoologically, scientifically, environmentally or technologically to be factually a wetland, it does not become so legally unless and until the persona designata under the delegated legislation so declares it to be. Admittedly, that persona designata is only the specialised authority appointed under the rules and has chosen not to exercise its power for Mansagar Lake.

86. It was still further contended on behalf of the appellant that the technique of applying a law by notification to a specific fact situation is an age old parliamentary technique and/or the technique applied by the framers of delegated legislation like the Central Government who framed the Wetland Rules. Even the Apex Court would not consider it legally appropriate to issue a mandamus to notify and bring into force legislation or a delegated legislation until and unless the persona designata under that regime chooses to do so. In support of this proposition of law, learned counsel for the appellant has placed reliance on the following case law: *A.K. Roy* v. *Union of India*[9] SCC at pp. 310 & 316, paras 51 and 59 wherein it is recorded as follows: (SCC pp. 310-11, para 51)

> "*51.* ... the question which was put in the forefront by Dr Ghatate, namely, that since the Central Government has failed to exercise its

9 (1982) 1 SCC 271 : 1982 SCC (Cri) 152

power within a reasonable time, we should issue a mandamus calling upon it to discharge its duty without any further delay. Our decision on this question should not be construed as putting a seal of approval on the delay caused by the Central Government in bringing the provisions of Section 3 of the 44th Amendment Act into force. ... But we find ourselves unable to intervene in a matter of this nature by issuing a mandamus to the Central Government obligating it to bring the provisions of Section 3 into force. Parliament having left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the 44th Amendment into force, it is not for the court to compel the Government to do that which, according to the mandate of Parliament, lies in its discretion to do when it considers it opportune to do it."

87. Similarly, reliance was placed on the judgment and order of this Court in SCC at pp. 49-50, para 7 delivered in *Union of India* v. *Shree Gajanan Maharaj Sansthan*[10] when it concurred with the view that no mandamus could be issued to the executive directing it to commence the operation of the enactment although non-issuance of such a direction should not be construed as any approval by the Court of the failure on the part of the Central Government for a long period to bring the provisions of the enactment into force; leaving it to the judgment of the Central Government to decide as to when the various provisions of the enactment should be brought into force.

88. Relying on these decisions it was urged that from the ratio of these decisions it follows that since Mansagar Lake itself is not a wetland, therefore, the contention of the respondents that the entire 100 ac land leased to the appellant is a part of the lake bed and, therefore, a wetland ought to be rejected outright and the finding of the High Court on this aspect ought to be reversed. However, Mr Jaydeep Gupta, learned Senior Counsel who was appointed to represent the State of Rajasthan after the change of the Government in 2014 in place of the Attorney General Shri G.E. Vahanvati who had already concluded his arguments on behalf of the State of Rajasthan, submitted that the incumbent Government of Rajasthan cannot accept the interpretation given to the Wetland Rules, 2010 by the previous Government. As per the subsequent stand taken by the counsel for the new Government, the previous Government ought to have identified wetland in the State within one year of the Wetland Rules, 2010 being enacted. According to the counsel for the new incumbent Government, since the previous Government did not undertake the activity of identifying Mansagar Lake as a wetland, the 2010 Rules have been violated. Thus, it had been urged by Mr Gupta that the stand taken by the previous Government before the High Court as well as this Hon'ble Court is untenable.

89. The appellant, in turn, has submitted that the change in stand by the incumbent Government should not be permitted by this Court. It was submitted that reference to the pleading put forward by the State Government

10 (2002) 5 SCC 44 : 2002 SCC (L&S) 627

on the issue of the wetland before the High Court and this Court has been categorical and specific. It has been expressly pleaded that the Wetland Rules, 2010 do not apply to the Project and that the said Rules are not retrospective so as to affect the project. This stand has been specifically taken in the counter-affidavit filed by the State Government in the three special leave petitions preferred by Jal Mahal Resorts (P) Ltd. It was, therefore, submitted that assuming without admitting that the incumbent State Government can withdraw its three special leave petitions, the appellant strongly disputes this and it does not follow and should not be allowed that the stand taken by the State Government in the counter-affidavit in the three SLPs filed by the appellant and the three SLPs filed by the State Government can in any manner be changed or altered. In addition, it was submitted on this aspect that the stand of the State Government in the High Court should not be allowed to be changed before the Supreme Court merely due to change of the Government after new elections were held and it has been strenuously submitted in the pleadings before this Court by the State Government earlier through the Attorney General that the High Court had gravely erred in law in holding that the Wetland Rules, 2010 were applicable to the Project. The attempt being made by the State Government shifting its stand which was taken before the High Court and also before this Court when the learned Attorney General had appeared and concluded the arguments, it is clearly a change in stand from the stand taken by it from the High Court right up to this Court.

90. It was submitted that the underlying basis for the incumbent State Government to change its stand has been justified by it based on its understanding of the Wetland Rules, 2010. According to the incumbent Government and its political philosophy Mansagar Lake ought to be identified as a wetland. According to the incumbent Government the fact that Mansagar Lake was not identified as a wetland by the previous Government itself was an illegality and was contrary to the Wetland Rules.

91. Contesting the aforesaid stand taken by the respondent State, the appellant strongly urged that such an interpretation of the Wetland Rules had been taken by the previous Government of Rajasthan as a matter of policy which had decided not to notify Mansagar Lake as a wetland keeping in mind the Master Plan of Jaipur since 1976. As per the Master Plan, the Vijay Mahal area, approximately 200 ac (including the entire 100 ac leased to the appellant) was to be urbanised and developed for tourism purposes. Therefore, as per the contention of the appellant, this area naturally could not have been identified as wetland. In the alternative, it was submitted that even otherwise the 100 ac lease was not part of the lake bed and, therefore, the question of identifying the leased 100 ac land as a wetland is out of the ambit and scope of the question involved.

92. In regard to the plea pertaining to the Master Plan of Jaipur, it was submitted that the Master Plan has statutory force and since the Master Plan itself has identified this area to be urbanised, the question of it being declared as a wetland does not arise. In fact, the Master Plan consistently from 1976

onwards has provided that approximately more than 200 ac of land is available for the development of tourism facilities on the southern and western sides of Mansagar Lake. In view of these aspects, learned counsel for the appellant urged that Mansagar Lake is not a wetland under the Wetland Rules, 2010 and 100 ac leased land was not a part of the lake bed and, therefore, the leased land of 100 ac is not a wetland under the Wetland Rules, 2010. As already stated hereinbefore, it was urged that the Wetland Rules, 2010 are not retrospective in nature since the lease deed was executed in the year 2005 and the Wetland Rules framed thereunder and enacted only five years later in 2010 when implementation of the project had already started.

93. Insofar as the plea taken by the PIL petitioner-respondent herein regarding reduction of the Mansagar Lake area in order to carve out 100 ac of land is concerned, it was explained by relying upon the historical background of the matter that Maharaja Man Singh of Amer who ruled from the year 1589 to 1614, constructed Mansagar Dam much earlier than Jaipur was founded. Mansagar Lake was created by damming Darbhawati River on the north side of the Khilangarh fortress. The purpose of the Lake was to create a water body that would cater to the irrigation needs and groundwater recharge of the area.

94. It was urged by the petitioner that Mansagar Lake is a manmade water body and its beauty, therefore, is not a natural one but the creation of man. Elaborating on this part, it was submitted that certain undisputed facts established that 100 m RL is the Amer Road level. At 99 m RL is the full tank level and this has been admitted by the PIL petitioner K.P. Sharma in his writ petition before the High Court and 98.12 m RL is the plinth level of Jal Mahal monument as enumerated in the detailed project report ("DPR", for short). It was submitted that admittedly one of the primary objects of the project was to restore Jal Mahal monument. Thus, water level had to be maintained at a level that ensured plinth/ground floor of the monument is not submerged and further weakened. It was submitted that the Master Plan of Jaipur, 1976 establishes that approximately 200 ac of land located in Vijay Mahal (including the 100 ac land leased to the appellant) was to be developed for tourism purposes. Thus, obviously, the 100 ac land leased to the appellant pre-existed the execution of the lease deed dated 22-11-2005 and was available much before the project was undertaken.

95. It was further contended on behalf of the appellant that the hydrological modelling undertaken by Project Development Corporation of Rajasthan (PDCOR) in detailed project report (DPR) scientifically determined a sustainable water level. DPR explored the following water level scenarios and finally chose a water level of 98 m RL. The water level scenarios examined scientifically reported that water could not be maintained at 100 m RL because at this level in the monsoons water can flood the neighbouring areas that are densely populated since at this level water would be at Amer Road level. Consequently, the Jal Mahal monument would be nearly wholly submerged. It was added that technically supplying so much quantity of water all the year around was not possible.

96. It was further contended that the water could not be maintained at 99 m RL because at this level lake spread and volume is difficult to maintain throughout the year this being a technical matter. Consequently, the lower floor of Jal Mahal monument would be submerged having only terrace and first floor for reuse. Thus, the appellant submitted that 98 m RL being the next lowest water level after 99 m RL was considered ideal for maintaining water level. It was argued that most important thing if water level were to be fixed at 99 m RL i.e. full tank level then also there would have been more than 100 ac of land available to lease, yet the appellant was granted only 100 ac.

97. The learned counsel for the appellant further elaborated on this by relying upon the detailed project report (DPR) and urged that as a matter of fact DPR found that the Lake at present is an approximately 130 ha in its full spread. However, "at first, a much smaller natural shallow lagoon existed, on the edge of which, the Jal Mahal structure was located. Thus, originally the spread of the Lake was much smaller than at present. The spread of the Lake has increased and the depth decreased in recent times mainly due to the silt deposits as a result of erosion."

98. It was contended that neither the respondent-PIL petitioners have challenged the correctness of DPR nor its scientific basis. Thus, it is not open to them to advance arguments that indirectly seek to question DPR. It was submitted that the respondents are bound by the report of DPR entirely and wholly.

99. The appellant further referred to the arguments advanced by the learned Attorney General on behalf of the State of Rajasthan and submitted that the approach of the High Court was wrong as it proceeded on an erroneous basis that the lake bed was manipulated to make the Project viable while there was no such manipulation. The Attorney General has further argued that DPR was correct and the decision to maintain water level at 98 m RL was a conscious, well-informed and deliberated decision taken to protect the integrity of the monument. The counsel for the appellant, therefore, submitted that since the water level was determined scientifically and much before the appellant came into the picture, rather was not even born in regard to this dispute, the question of its tampering with the Lake so as to reduce the size of the Lake does not arise and, therefore, the finding of the High Court on this aspect is contrary to DPR and hence deserves to be set aside.

100. In regard to the question pertaining to general conditions in Environment Impact Assessment, 2006 (EIA), it was submitted on behalf of the appellant that even according to the respondent, Ministry of Environment and Forests (MoEF) is the appropriate authority with jurisdiction to decide on the environmental impact of the project in the present case. MoEF being the author of EIA, 2006 has construed its own notification (EIA, 2006) to mean that general conditions do not apply to Item 8(*a*) and 8(*b*) projects. Adding further on this it was contended that it ought to be clarified that the need to issue OM dated 24-5-2011 was felt because OM dated 28-4-2011 in broad terms provided that Category B projects that fell within 10 km of notified

critically polluted areas would be treated as Category A and general condition would be applicable to such projects. MoEF in order to clarify OM dated 28-4-2011 issued OM dated 24-5-2011 that expressly provided that the projects falling under Items 8(*a*) and/or 8(*b*) do not attract general condition even if such projects fell within critically polluted areas.

101. It was urged on behalf of the appellant that it has received environment clearance from SEIAA dated 29-4-2010. This clearance is in terms of EIA, 2006 and is, therefore, valid. It was added further that as the general conditions do not apply to the present project, as made clear by MoEF in its affidavit and also by OM dated 24-5-2011, the appellant did not require clearance from MoEF. Therefore, the impugned judgment[1] of the High Court ought to be reversed on this aspect as it failed to appreciate these crucial facts. It was still further submitted on this that even otherwise on an interpretation of EIA, 2006, it becomes apparent that MoEF has consciously decided not to stipulate general condition in Column 5 against Items 8(*a*) and 8(*b*) because EIA, 2006 has issued originally and till date does not stipulate general condition against Items 8(*a*) and 8(*b*) in the Schedule, while it does so with respect to a number of other items in the Schedule.

102. It was added on behalf of the appellant that MoEF vide Notification dated 1-12-2009 had carried out wide ranging amendments to the Schedule in EIA, 2006 and in doing so general conditions had been stipulated/inserted for the first time against certain items. However, while doing so, MoEF has not stipulated the general condition against Item 8(*a*) or 8(*b*). It is, therefore, evident that MoEF consciously as a policy decision has chosen not to stipulate general conditions against Item 8(*a*) or 8(*b*). Further Para 4(*iii*) of EIA, 2006 provides activities included as Category B in the Schedule which require prior environment clearance from SEIAA except those that fulfil general conditions stipulated in the Schedule. It was, therefore, submitted that since general condition is not applicable to Items 8(*a*) and 8(*b*) projects irrespective of the location of such project, therefore, the contention of the PIL petitioner-respondents and the finding of the High Court that since the project is within 10 km of Nahargarh Sanctuary it ought to be declared as illegal, is without substance and is liable to be rejected.

103. The learned Attorney General Mr Vahanvati on behalf of the State of Rajasthan had also argued that the finding of the High Court on this aspect is entirely incorrect as the environment clearance from MoEF is not required for this project as the general conditions specified in EIA, 2006 did not apply to this project. Therefore, neither general nor specific conditions apply to Item 8 to the Schedule and hence environment clearance given by SEIAA is legal and valid.

104. The PIL petitioner-respondents had also contended that the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 (for short "the 1974 Rules") have been violated since Jaipur Municipal Corporation

1 *K.P. Sharma* v. *State of Rajasthan*, Civil Writ (PIL) Petition No. 6039 of 2011, decided on 17-5-2012 (Raj)

while allotting land to RTDC has violated certain norms and that the premium was not charged from RTDC for the land allotted to it and secondly, without any General House Resolution allotment of land was made to RTDC. On this aspect, it was submitted on behalf of the appellant that both the contentions are misplaced for the reason that under Rule 18(2) and the proviso to the 1974 Rules, the State Government can exempt the payment of cost of land being allotted by Jaipur Municipal Corporation to any government department. In the present case, the Government decision dated 9-2-2004 makes it clear that RTDC shall not have to pay any cost of land to the land owning agencies including Jaipur Municipal Corporation as the whole intent of this allotment in favour of RTDC was to only facilitate the project of the Government. As a matter of fact, Jaipur Municipal Corporation through its General House Meeting dated 28-4-2004 was attended by at least 58 of its members who resolved to allot the said land to RTDC in order to implement the Project. Thus, it is more than apparent that the Government had exempted charge of any kind from RTDC for the transfer/allotment of land to which a furthermore RTDC through a transparent and well-considered resolution comprising of its members resolved to allot this land to RTDC. Thus, the contention of the respondent that the 1974 Rules have been violated is wholly unsustainable and finding of the High Court on this aspect therefore needs to be reversed and set aside.

105. It was still further contended that the Jaipur Development Authority Act, 1982 was not violated in any manner and the appellant submitted that Rule 18 of the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 enabled JDA to allot land without any adding cost of the land if the State Government exempts any department of the Government from paying cost of the land. In the present case, the Government of Rajasthan vide its meeting dated 16-9-2003 had noted that JDA had issued orders for transfer of land to RTDC. The object of a gazette notification under Section 54(3) is to keep matters in the public domain but not to affect third party rights since the land is merely being transferred from a subordinate State instrumentality to the sovereign State itself. Thus, there is no project cost in view of non-gazetting of the decision of the Government under Section 54(3). Reference to Official Gazette under Section 54(3) must be read as directory and not mandatory and the provision has been specifically complied with.

106. It was further submitted on behalf of the appellant that admittedly development of tourism in Jaipur on the southern and western side of Mansagar Lake has been an avowed object of the Jaipur Master Plans, 1976, 2011 and 2025. Thus, the project is in alignment with the Master Plan. The Jaipur Master Plan is a statutory document under Section 21 of the JDA Act, 1982. Section 26 mandates that once the Master Plan is in force, JDA must take action for implementing the plan as may be necessary. Thus, it is statutorily incumbent on JDA to implement the Master Plan, inter alia, which enables development of tourism in the given area. Undisputedly approximately 43 ac in the 100 ac lease was vested in JDA and transfer to it for the purpose of developing the tourism project in the area designated in the

Master Plan referred to above. Therefore, the land allotted by JDA to RTDC was also for implementation of JDA's Master Plan. Therefore, it cannot be disputed that the present project is a tourism project. Thus, there was ample authority with JDA to allot land to RTDC under the JDA Act, 1982, particularly Section 54(1) for implementing its Master Plan.

107. Cumulatively, it was submitted that JDA under Section 54(1) has the power to allot land vested in it for the purposes of the JDA Act, 1982 subject to the rules by the Government of Rajasthan. It was submitted that obviously for allotment of land to implement the Master Plan of the JDA Act, 1982, Rule 18 gives the Government of Rajasthan power to exempt the State Department from paying cost of the land when land from JDA is allotted. Exemption by the Government of Rajasthan in favour of RTDC acting on behalf of the Department of Tourism as an agent from paying cost of the land is traceable to power vested under Rule 18 read with the Government of Rajasthan decision dated 9-2-2004. Hence for all these reasons, non-gazetting under Section 54(3) was not a requirement.

108. Contesting the argument raised by the PIL petitioner-respondents that the State Government has changed the rules of the tender so as to favour the petitioner company in awarding the contract is not borne out by the record that has been produced before this Court in the form of various collegiate, transparent meetings that have been presided over by the highest functionaries in the State Government, inter alia, including the Chief Secretary, the Principal Secretary and various head or statutory authorities who participated in these meetings. On a perusal of the pre-qualification evaluation report dated 6-10-2003 which was prepared by Project Development Corporation of Rajasthan (PDCOR), a joint venture between the Rajasthan State Government and IL & FS, it is clear beyond any doubt that the threshold qualification criteria required to be satisfied by the appellant KGK Enterprises (the lead member of KGK Consortium) stood more than adequately made out when KGK Enterprises satisfied the technical requirement and the financial requirements required under the request for proposal. It is pertinent to point out that KGK Enterprises satisfied the substantive provision of the pre-qualification evaluation criteria (namely, the technical and financial capabilities). In other words, the technical and financial bids were yet to be opened and the criteria that was satisfied by KGK Enterprises was only threshold preliminary criteria at the pre-qualification evaluation stage. A further perusal of this report makes it apparent that PDCOR has observed that the tender submitted by KGK Consortium through KGK Enterprises, the lead bidder was a partnership firm, therefore, the argument of the respondent that there was concealment with respect to material fact does not stand and is for this reason unsustainable.

109. PDCOR as a part of its evaluation report and other correspondence recommended that apart from the other two bidders who had satisfied the pre-qualification evaluation criteria, even KGK Consortium should be

permitted for being considered at the technical evaluation phase as KGK Consortium satisfied the substantive conditions at the pre-qualification evaluation stage. PDCOR in its recommendation further opined that condition of KGK Enterprises at the subsequent stage would promote competition amongst the bidders and, therefore, be in public interest. The intent of RFP according to PDCOR was never to exclude any bona fide legal entity that may consider putting its bid subject to it satisfying the other threshold criteria as already stated hereinbefore.

110. It is pertinent to mention again that the above recommendations were transparent, bona fide and were put for approval before the Government of Rajasthan for considering the recommendations of PDCOR. The Government of Rajasthan after due deliberation permitted KGK Enterprises to be considered for technical evaluation.

111. Another important feature of the tender process was that after the financial bids were opened, only KGK Consortium was found to be the highest bidder by 39%, the matter was considered by the Empowered Committee on Infrastructure Development ("ECID", for short) meeting held on 9-2-2004 headed by the Chief Secretary with other senior government functionaries attending. In the said ECID meeting, on perusing the entire tender process, it was decided to award the project to the highest bidder being KGK Consortium. Thereafter, these recommendations of ECID were put up for the approval of the then Chief Minister who unreservedly endorsed the decision of ECID dated 9-2-2004.

112. Thereafter, on 30-9-2004, the Government of Rajasthan issued a letter of intent to KGK Enterprises (lead member of KGK Consortium) for award of the project. The final decision in the decision-making process that culminated in the execution of the lease and licence agreement was taken by the Chief Minister on 27-10-2005 whereby it was approved that the execution of the lease and licence agreements be entered into by the State Government with the highest bidder M/s Jal Mahal Resorts (P) Ltd., a special purpose vehicle company of KGK Consortium.

113. It was, therefore, submitted that on a perusal of this detailed decision-making process undertaken by the Government of Rajasthan during the regime of successive Chief Ministers after which the Government contested the PIL petitioner before the High Court as also before this Court through the Attorney General, there is no doubt that the decision taken to approve the project and execution of lease deed was a bona fide decision for the general and overall betterment of the project meeting the area around Jal Mahal and, therefore, no fault can be found in regard to the decision even if certain procedural relaxations were granted for approving the project. In sum and substance, it was submitted that insofar as the relaxation granted is concerned, the action of the State Government was bona fide approved by the previous and subsequent Government of Rajasthan which was bona fide and cannot be called unfair or illegal in any manner.

114. In support of the submission, the learned counsel for the appellant has cited several authorities of this Court inter alia being *B.S.N. Joshi & Sons Ltd.* v. *Nair Coal Services Ltd.*[11] and the relevant portion at p. 571, paras 66(*v*) and (*vii*) states as follows: (SCC p. 572)

> "*66.* (*v*) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;
>
> * * *
>
> (*vii*) where a decision has been taken purely on public interest, the court ordinarily should exercise judicial restraint."

115. Similarly reliance was also placed on *Poddar Steel Corpn.* v. *Ganesh Engg. Works*[12] by the appellant, wherein this Court held that: (SCC p. 276, para 6)

> "*6.* … As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, it is not entitled to waive even a technical irregularity of little or no significance."

Thus, it was held that minor technical irregularity and deviation from non-essential or ancillary/subsidiary requirement can be waived and the Government would be justified in waiving technical compliance with a tender condition.

116. The thrust of the aforesaid case law cited is to reinforce the submission that when there is substantial compliance with the terms of tender, the Government is entitled to waive any non-essential term in the tender for the bona fide reasons and in public interest. In any case, since the Project in terms of RFP had to be executed through an SPV and the appellant being such an SPV, then the vehement insistence by the respondent that the lead member must be a company is not a violation of a substantial condition of the tender. In conclusion, therefore, it had to be held that there were no mala fides in the decision-making process and the finding given by the High Court is perverse and cannot be sustained and deserves to be set aside.

117. On perusal of the background and other materials on record, it could be noticed that the genesis of restoration and conservation of Mansagar Lake goes back to 1984 whereby the efforts of the State from 1984 onwards have been directed towards restoring and developing the largest water body in Jaipur (that was lying disused with sewage, filth, stench and effluent) into an attractive public interest destination with a pleasing environmental ambience for attracting tourists from all over the world.

11 (2006) 11 SCC 548
12 (1991) 3 SCC 273

118. The figures and conclusions in the impugned order itself indicate the enormous difficulty and repetitive failures of the State Government to either implement the restoration itself or to get any private entity to do so over a period of approximately 20 years from 1984 to year 2003. Indeed, the attempts immediately preceding the present tender from year 2000 to 2002 have also admittedly failed. Had the figures found in the impugned order or the conclusion of the impugned order that the project proposal constituted a squandering of State largesse had been correct, the applicants would have been falling over themselves to bid for the project not only in the present tender but also in the preceding unsuccessful attempts. Even in the present case, despite the attendance of as many as 20 major participants (including corporate names like Oberoi, Taj, Ansal, Neemrana to mention a few) who admittedly attended the pre-bid meeting, no one except the SLP appellant-petitioner and three others ultimately came forward. Obviously, the proposal was ex facie not an attractive one for potential investors, and the inescapable conclusion is that all attempts to restore the Lake and develop the area as a tourism hub had failed when the SLP appellant-petitioner was nowhere in the picture.

119. We have further taken note of the reasons for the clear reluctance of potential investors which have been stated as follows:

> The pre-existing state of the entire area of approximately 310 ac of Lake and more than 100 ac of land seemed physically irreparable which has been demonstrated by the photographs submitted [V/X]. There was no water body; the so-called Lake consisted of an empty large hollow filled with sewerage stench, filth and huge sedimentation; two major nallahs of the city were emptying all their sewerage and effluents into the Lake; the monument was completely dilapidated, there was overgrowth of shrubbery, and was not visited by anyone for decades; the nearby land was barren, filled with mud and dirt and therefore not in use.

120. The impugned order further appears to have ignored that the whole structure of the tender was conceptually different and had been thus in all previous attempts failed as:

> (*i*) It sought huge investment by the successful bidder to restore the entire area which, at conservative estimates, would cost approximately Rs 100 crores (in the year 2003), and now with the gross delay occasioned by the PIL petitioner, involves an investment of (approximately) Rs 500 crores.
>
> (*ii*) No commercial exploitation either of the monument or of the Lake was involved and indeed was not permitted.
>
> (*iii*) Approximately 10.5 ac out of 14 ac would be utilised for a walk-way around the Lake involving no commercial return.
>
> (*iv*) The successful bidder would pay the State Government/RTDC Rs 2.52 crores per year which would be escalated by 10% every 3 years, which, if calculated in the 99th year of the lease would amount to Rs 27 crores approximately, and if calculated in the 50th year of the lease would amount to Rs 12 crores approximately.

(*v*) The accommodation/resort could only be constructed within an FAR of 0.1362. Relevantly, the normal FAR permitted is 2 while the FAR permitted for the SLP petitioner's project is only 0.1362.

(*vi*) No structure in the entire project could exceed the height of 9 m and also could not exceed more than a total of two floors viz. ground and first.

(*vii*) Almost 12 ac of land would be devoted to a handicrafts village showcasing the cultural heritage of Rajasthan where the commercial return to the bidder would be only in the form of lease rent, and the sales occurring due to footfalls would accrue to the sub-lessee who sells the craft and not to the SLP petitioner.

(*viii*) The project has a long gestation period not only in terms of restoration and development costs but also construction of infrastructure, and the footfalls would increase only over time after the project has fully established its credentials.

(*ix*) In a nutshell, therefore, huge investments, sure, certain and unavoidable, were front ended; possible returns, unsure and uncertain, were back ended.

(*x*) All the foregoing admitted points have been completely ignored in the impugned order, or not noticed or cursorily mentioned and not decided, and in any event not given adequate probative weight.

(*xi*) Equally ignored has been the very raison d'être of the project actuated by the fundamental object by the State Government to restore heritage site and to create a sustainable and pleasing environmental ambience. The lease rent model, increasing as time goes on had always been the consistent approach of the State since 1999 when restoration was first envisaged. It is inconceivable that this model could be created to assist or benefit the bidder like the SLP petitioner who came into the picture for the first time only in year 2003.

121. The learned Attorney General had submitted that it is an axiomatic legal principle that revenue maximisation cannot and need not be the sole or even the predominant object of a State initiative. Indeed, revenue maximisation as the sole object is frequently antithetical to public interest projects involving long gestation periods, a history of disuse and failure, reluctant bidders, certain and unavoidable front ended investments and highly uncertain back ended gains. As a matter of law, also as matter of business reality and commercial efficacy, it is universally recognised that even direct invitation to potential investors/bidders without any bid or auction at all is a fully valid manner of creating infrastructure where non-existed, especially in nascent areas and new areas projects. In respect of this submission reliance has been placed on (*i*) *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*[13], SCC at p. 87, para 119, 120-CLC 1/153-244 @ 206;

13 (2012) 10 SCC 1

(*ii*) *Sachidanand Pandey* v. *State of W.B.*[14], SCC at p. 314, para 19, @ 264 pr. 35, @ 266 pr. 39, @ 266-67 pr. 40-41, 43; (*ii*) *M.P. Oil Extraction* v. *State of M.P.*[15], SCC at pp. 612-613, para 45-CLC 1/271-285 @ 284; (*iv*) *Kasturi Lal Lakshmi Reddy* v. *State of J&K*[16], SCC at p. 13, para 14-CLC 1/286-300 @ 294.

122. In fact, we have noted that there was not one but repeated attempts at tendering which had failed. While the earlier attempts failed, the present tender open to the whole world, shrunk from 20 parties to 9 parties and then to only 4 parties at the time of submission of bids (whereby the SLP petitioner succeeded on merits). If the project value correctly involved 4 and 5 crore figures mentioned in the impugned order, it is inconceivable and inexplicable as to how and why neither the 20 nor the 9 nor the 3 ultimate bidders apart from the SLP petitioner offered a maximum figure of Rs 2.52 crores only. The bidding process was open and transparent considering tourism development.

123. We have taken note of the factual submission that the reserve figure of lease rental expected by the State had been fixed at Rs 1 crore in the RFP (Vol. 3/551 @ CL 3.2). This was not merely an ad hoc magical figure plucked out from the air but arrived at after repeated transparent evaluation by Expert Committees and proclaimed openly to the whole world. There is not even an allegation of surreptitious or ex parte dealing at the stage of conceiving and designing the tender or stipulating its multiple parameters. This minimum rent had been determined with the objective of providing a rate of return of 20-22% per annum from the project to the private sector developer. Such a rate of return was considered a reasonable return for a long-term capital asset which at the end of the lease would have no terminal value for the developer, as it would require to be transferred back to RTDC who is acting on behalf of R2 [PDCOR-R6 WS in HC(B pr 6)]. Thus, it is evident that sufficient economic diligence was used before issuing RFP and subsequently accepting KGK Consortium's highest financial bid. In conclusion, therefore, it had to be held that there were no mala fides in the decision-making process and the finding given by the High Court, cannot be sustained and hence deserves to be set aside.

124. On a careful analysis of the submissions of the contesting parties in the light of the materials referred to before the High Court as also this Court, we further cannot overlook the historical background and the sequence of events which led to the culmination of the project for which a lease deed was executed on 22-11-2005 and 5 to 6 years thereafter the respondents herein filed three public interest litigations which clearly fail the test of utmost good faith. It needs to be recollected from the sequence of events and the historical background related hereinbefore that the Jal Mahal Tourism Infrastructure Project was conceived and approval was given by the Standing Committee on

14 (1987) 2 SCC 295
15 (1997) 7 SCC 592
16 (1980) 4 SCC 1

Infrastructure Development (for short "SCID") for the first time in its third meeting held on 21-12-1999. Resolution had been filed in which it was stated that at that point of time Jaipur Municipal Corporation must own the project. Hence bids were initially invited in the year 2000-2001 without identification of the land to be used and without studies with regard to environment impact assessment. The bid process was, therefore, scrapped and JDA was made the sponsoring department for the lakeside development component in the meeting of Board of Infrastructural Development and Investment Promotion (BIDI) held on 23-8-2002 and 3-9-2002. After approval, an expenditure sanction was granted by MoEF, for the Lake restoration component but MoEF had clearly granted approval to the lakeside development component of Mansagar Lake.

125. It is no doubt urged on behalf of the respondent-PIL petitioner and taken note of by the High Court that the National Lake Conservation Plan did not contemplate any commercial venture upon the Lake to be restored under the plan. But it cannot be overlooked that the State Government had full authority to carve out a plan for development of the Lake and the Lake area considering the fact that way back in 1962 the Lake's glory as a pristine water body lasted only until the former rulers had their control over the city and unpleasant history of the Lake began when the new administration of Jaipur diverted walled city sewage in 1962 through two main waste water drains, namely, Brahmapuri and Nagtalai. It is borne out from the factual history of the Lake that most notorious aquatic weed water hyacinth entered into the Lake in 1975 and the waterfowl population started affecting the resident and migratory species. It is in this background that the Government of Rajasthan submitted project for restoration of Mansagar Lake to the Central Government.

126. Thereafter, Jal Mahal tourism infrastructure was conceived and approved by the Standing Committee on Infrastructure Development in its meeting held on 21-12-1999 and initially Jaipur Municipal Corporation was to own the project. The bids were invited in the year without identification of the land to be used and without studies with regard to the Environment Impact Assessment. Hence, the bid process was scrapped and Jaipur Development Authority was made the sponsoring department for the lakeside development component in the meeting of the Board of Infrastructure Development and Investment Promotion (for short "BIDI") held on 23-8-2002 and 3-9-2002. Hence, Project Development Corporation of Rajasthan (for short "PDCOR") got a detailed project report prepared which contemplated the following components:

(*i*) Restoration of Mansagar Lake;

(*ii*) Restoration and reuse of Jal Mahal monument;

(*iii*) Development of tourism/recreational components at the Lake precincts.

127. Thereafter, in the meeting of BIDI held on 9-8-2003, it was decided that nodal agency for the Jal Mahal Tourism Project will be the Tourism

Department of the Government of Rajasthan instead of JDA. Thereafter, the Tourism Department assigned the responsibility to Rajasthan Tourism Development Corporation (for short "RTDC") vide order dated 6-9-2003. The last date for submission of deed was 5-9-2003. The petitioner on the other hand and also the Attorney General clarified that the need to issue office memorandum dated 24-5-2011 was felt because OM dated 28-4-2011 in broad terms provided that Category B projects that fell within 10 km of the notified critically polluted areas would be treated as Category A and general condition would be applicable to such projects. MoEF in order to clarify OM dated 28-4-2011 issued OM dated 24-5-2011 that expressly provided that the projects falling under Items 8(*a*) and/or 8(*b*) do not attract general condition.

128. On an analysis of the aforesaid aspects, it is clear that the project that was conceived, deliberated and given effect to emerged from the status of the land adjoining the Lake area which had a history behind it and in view of the garbage, filth stench on the area, decision had been taken to develop the two project sites.

129. We have further taken note of the arguments advanced by the learned Attorney General who had submitted that the High Court has not taken into account the steps that were taken in the project since 1998 onwards. The learned Attorney General representing the State had relied on a comprehensive list of dates beginning from 1984 onwards discussed hereinbefore to show the step-by-step decision taken before the project was awarded to KGK Consortium including the Jaipur Master Plan of 2011.

130. It may further be noted that the argument advanced by the counsel for the respondent-PIL petitioner that 100 ac land leased to the petitioner was part of the lake bed, does not get supported from the revenue entries placed on record or any other material which makes it clear and establishes that only 13 bighas 17 biswas is classified as "gair mumkin talab" (lake bed) being Khasra No. 67/317 which would be approximately 8.65 ac. However, the balance land that is 100 ac less 8.65 ac is in fact recorded as "banjar" in the revenue record and not lake bed. We find sufficient substance in the plea that this Court in the past have placed reliance on revenue entries to determine the nature of land from which it follows that based on the revenue entries, no other khasra of land forming part of 100 ac of land leased to the petitioner is lake bed. It may further be noted that as per the appellant-petitioner 14.15 ac of land is "banjar" and not lake bed whereas according to the PIL petitioner it is a lake bed/wetland which is contrary to the revenue record.

131. From the version and counter-version of the counsel for the parties, it is obvious that although the PIL petitioners had challenged the 100 ac land as lake bed so as to assail that the same could not have been a part of the lease area, the fact remains that the entire emphasis is only in regard to the land comprising 14.15 ac equivalent to 22 bighas and 10 biswas and another chunk comprising 8.65 ac equivalent to 13 bighas and 17 biswas. The counsel for the appellant lessee submitted that if the revenue record for 13 bighas 17 biswas equivalent to 8.65 ac noted as "gair mumkin talab" lake bed bearing

Khasra No. 67/317 is relied upon by the Court, then further revenue entries classifying 14.15 ac of land recorded as barren land/banjar also should be accepted, adopting the view taken in *Okhla Bird Sanctuary case*[7] that revenue entries are fit to be relied upon in order to determine the nature and character of the land.

132. However, we are of the view that in order to avoid this controversy in regard to these two chunks of lands as to whether the same form parts of the lake bed or not, it would be just and appropriate to slash this part of the land from the leasehold area as per Clause 18.4 of the lease deed itself implying that these two areas shall not form part of the leasehold area so as to be given out on lease to the appellant-petitioner. In view of this 13 bighas and 17 biswas of land equivalent to 8.65 ac which has been classified as "gair mumkin talab" bearing Khasra No. 67/317 shall not be treated as a part of the leasehold area and the same shall be within the control and domain of the Government of Rajasthan which will be free to reconvert this area into the Lake area.

133. Insofar as 14.15 ac of land recorded as barren land/banjar is concerned, we are pleased to hold that this area shall be treated as a construction free zone and neither party i.e. the State of Rajasthan nor the lessee, appellant herein shall be permitted to raise any construction thereon. We are informed that this area is being used as a public promenade (walkway) for the use of the public which shall be allowed to continue.

134. Insofar as the balance area of land pertaining to the lease deed is concerned, we are pleased to hold that the respondents/PIL petitioners have not been able to lead any iota of evidence or material to prove that this area was at all or at any point of time lake bed or wetland. This fact is further proved from the historical background of this litigation as it is the case of the appellant lessee, the PIL petitioner which gets reinforced from the record and the detailed project report of PDCOR indicating that the efforts were being made to develop this land way back from 1984 and in the year 1999 as already noted hereinbefore reflected from the minutes of the third meeting held on 21-12-1999, the Standing Committee on Infrastructure Development (SCID) agreed that Jaipur Municipal Corporation must own the project to develop this land and the bids were invited in the year 2000-2001 with regard to the development of the land. However, the same was scrapped and JDA was made the sponsoring department for the lakeside development component in the meeting of the board of infrastructure development and investment promotion held on 23-8-2002 and 3-9-2002.

135. From the aforesaid history, it gets factually established that this land in any view was available for development at least way back from 21-12-1999 and no question was ever raised that this was not available for infrastructural development. In fact, we have further noted that in the three Master Plans of Jaipur, 200 ac of land were shown for infrastructural development for tourism purpose and out of that 100 ac was made a part of

7 *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744

the lease deed after extensive research conducted by Project Development Corporation of Rajasthan which got detailed project report prepared way back in 2001 when the appellant-petitioner was not even in the picture so as to develop the land. Even if the Ministry of Environment and Forests of the Central Government did not accept the position that it had given clearance for this project, the fact remains that the land was lying within the domain of the State Government due to which it had full administrative discretion to take a decision in regard to development of the land and it is not that it was done in a huff or hurry without deliberation or study. In fact Project Development Corporation (PDCOR) got the detailed project report prepared way back in 2001 and thereafter in 2003, steps for inviting tender were taken by the PIL petitioners. If at all the bona fides of the respondent-PIL petitioners were clear, they ought to have assailed the invitation of tender which finally got executed only in the year 2005.

136. Thus, from the year 2001 when detailed project report was prepared, decision to award tender was taken, "Expression of Interest" invitation of tender and bid was invited and accepted, the PIL petitioners never ever challenged these activities on the part of the State which was approved, accepted and continued by the successive Governments which were ruling in the State of Rajasthan. Thus, the submission of the counsel for the appellant that the PIL lacks bona fides and good faith cannot be brushed aside totally although the same has neither been a reason with the High Court nor with us to reject the petition as we have ignored the delay and also lack of bona fides on the part of the PIL petitioner-respondents herein and have examined the matter on merit taking note of every meticulous argument and counter-argument advanced by the contesting parties.

137. From this, it is clear that although the courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State authorities, specially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers. In fact, this

Court in *M.P. Oil Extraction* v. *State of M.P.*[15], SCC at p. 611 has unequivocally observed that: (SCC para 41)

> "*41.* The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."

138. However, we hasten to add and do not wish to be misunderstood so as to infer that howsoever gross or abusive may be an administrative action or a decision which is writ large on a particular activity at the instance of the State or any other authority connected with it, the Court should remain a passive, inactive and a silent spectator. What is sought to be emphasised is that there has to be a boundary line or the proverbial "laxman rekha" while examining the correctness of an administrative decision taken by the State or a central authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed specially in an age of economic liberalisation wherein global players are also involved as per policy decision.

139. In a matter of the instant nature, where the policy decision was taken way back from 1976 followed by master plans to develop a particular chunk of land by adopting the mode of private-public partnership method and a global tender was floated, obviously the private players were bound to participate specially in an age when private partnership is not an anathema. In that view of the matter when a particular policy decision was taken to develop a particular project supported by extensive research and study by the experts in the field who prepared the project report relying upon the three successive master plans of the city of Jaipur and the global tender was floated for development of land for tourism adjoining the lake area, entertaining PIL petition on the ground that the area in question is a wetland without substantiating the same in any manner i.e. neither from the revenue record nor any other material, the perception of PIL petitioners without factual basis cannot be allowed to prevail over the decision of the entire group of experts which was finally accepted by the State Government through the project development report of a State agency which got the detailed project report (DPR) prepared and nothing could be brought to the notice of the court that DPR was not fit to be relied upon or that it was prepared in a clandestine manner. In our considered view unless the detailed project report, Master Plan of Jaipur, revenue record indicating the nature of land that the Project was fraught with risk of environmental degradation which could establish with facts and figures that the decision is not in public interest, interference

15 (1997) 7 SCC 592

by the Court adopting an overall view smelling foul play at every level of administration is bound to make the governance an impossibility. Therefore, the courts although would be justified in questioning a particular decision if illegality or arbitrariness is writ large on a particular venture, excessive probe or restraint on the activity of a State is bound to derail execution of an administrative decision even though the same might be in pursuance of a policy decision supported by other cogent materials like survey and search by a reliable expert agency of a State after which the State project or private and public partnership project is sought to be given effect to.

140. At this juncture, we take note of two overriding considerations which combined, narrow the scope of review. The first is that of deference to the views of administrative experts and the other we take assistance from the words of Chief Justice Neely who expressed as follows:

> "I have very few illusions about my own limitations as a judge and from those limitations I generalise to the inherent limitations of all appellate courts reviewing rare cases."

The learned Chief Justice further observed as follows:

> "I am not an accountant, electrical engineer, financier, banker, stock broker, or systems management analyst. It is the height of folly to expect judges intelligently to review a 5000 page record addressing the intricacies of public utility operation.
>
> It is not the function of a judge to act as a super board, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator. The result is a theory of review that limits the extent to which the discretion of the expert may be scrutinised by the non-expert judge. It was suggested that the alternative for the court is to desist itself from interference on technical matters, where all the advantages of expertise lie with the agencies. If the court were to review fully the decision of an expert body such as State Board of Medical Examiners, 'it would find itself wandering amid the maze of therapeutics or boggling at the mysteries of the pharmacopoeia'."

141. Bearing the aforesaid aspects in mind, we are prone to infer that the disputed area of the lease deed borne out from the revenue record is clearly confined to 14.15 ac plus 8.65 ac and the balance area of the lease deed could not have been interfered with so as to set aside the entire project.

142. However, we have noted that the period of the lease deed had been finally fixed as 99 years which in our view could not have been done by the State Government as that clearly converts the lease deed into a perpetual lease. In fact we have noted that when the tender was floated for granting the lease deed, the maximum period for the lease deed as per the rule could not have been more than 30 years yet the tender was floated for a period of 60 years which was later extended to 99 years. This in our view could not have been done by the State Government as one can infer even at a glance that the same being contrary to the rules, could not have granted it for a period of 99 years.

143. We, therefore, set aside the period of lease which has been granted in favour of the appellant for a period of 99 years and the same shall stand reduced to a period of 30 years only which could be the maximum period of the lease for the land under the rules which should start ordinarily from the date of its execution so as to expire on or before the period of 30 years. But we are conscious of the fact that much time has lapsed after execution of the lease deed in 2005 due to which only Phase I of the project could start after which it got stuck and the project is in a state of limbo due to delay on account of the litigation started at the behest of the PIL petitioner-respondents who questioned the validity of the lease deed executed and finally succeeded in getting it set aside. We are, therefore, of the view that the lease deed which could not be made effective in view of the intervening litigation due to which the project got delayed, it is legally just and appropriate to direct that the period of 30 years of the lease shall now be counted from the date of this judgment and order.

144. We are further of the view that on or after expiry of 30 years to be counted from the date of this judgment and order, if for any reason whatsoever the lease deed is not renewed in favour of the appellant lessee or the appellant chooses not to seek its renewal, the appellant shall be adequately compensated for the property and structure which stands developed at the instance of the appellant during the period when the lease subsisted in its favour. Subsequently, however, as to what would be the adequate period of lease to be granted in favour of the existing or a new lessee obviously would be determined by the State Government at the relevant time but insofar as the instant lease deed is concerned, the existing period of 99 years shall stand decreased to 30 years to be counted from the date of judgment and order of this Court.

145. Thus, the lease deed although was executed for a period of 99 years shall pursuant to this decision, run for a period of 30 years which shall commence from the date of this judgment and order and may be extended by the State Government for such other period as may be considered legally viable based on the rules and regulations at the relevant period. We further add in the interest of justice, that after expiry of 30 years of lease period and in case the lease deed is not renewed in favour of the appellant, the State Government shall compensate the appellants at the market value of the project including compensation for the loss of business and profit. It is clarified that in the event of any dispute arising with respect to quantum of compensation, it may be resolved by availing the remedy of arbitration mechanism provided in the lease deed.

146. We are informed that the first phase of the Project has been completed since February 2011. It is, therefore, directed that the completion certificate and the lease agreement for the first phase be issued expeditiously but not later than a period of 30 days from the date of receipt of this order. Accordingly, the State Government shall issue the restoration completion certificate for Phase I to enable the Project along with the Jal Mahal monument as per the lease deed, to open for entry and visit of the members

of the public. Upon issuance of the Phase I certificate, the project developer/lessee/appellant shall be allowed to undertake the construction as per the approved plan in terms of the lease deed.

147. We further hold that the area of 8.65 ac equivalent to 13 bighas and 17 biswas shall not form part of the leasehold area as already stated hereinabove and the same shall stand retransferred to the Government of Rajasthan which shall be recarved and added to the Lake area and the same shall be maintained by the competent authorities of the State. However, the area of 14.15 ac equivalent to 22 bighas and 17 biswas although shall be notionally treated as part of the lease deed, the said area shall be treated as a construction free zone which will be allowed to be used as a walkway/the public promenade free of any charge at the instance of the lessor and the lessee. Remaining portion of the land forming part of the lease deed shall remain intact to be used by the appellant as per the terms and conditions of the lease deed already executed. However, by way of abundant caution, we clarify that Mansagar Lake Restoration Project, if undertaken by the State or the Ministry of Environment, the same shall not get affected by virtue of the lease deed in any manner.

148. It is further held that since the land which is a part of the leasehold area barring 2 chunks viz. 8.65 ac equivalent to 13 bighas 17 biswas of land and 14.15 ac of land approximately 22 bighas 10 biswas, in all 35 bighas and 27 biswas equivalent to 22.80 ac, the Wetland Rules of 2010 shall not apply to the project since environment clearance had already been issued under PIA, 2006 prior to commencement of the project. In any view the leasehold area barring the land equivalent to 35 bighas and 27 biswas having not been held as wetland or lake bed as per the revenue record as also the fact that it was available for development way back from 1982 which gets established from the various master plans of Jaipur and the historical background referred to hereinbefore, no dispute relating to application of the Wetland Rules, 2010 shall be allowed to be raised hereinafter with retrospective effect in regard to the leasehold area of the land which has been granted for development of the project and could not be proved to be wetland barring 22.80 ac equivalent to 35 bighas and 17 biswas. It is further clear by now that the project comprising the leasehold land is not in conflict with the development of Lake area or Jal Mahal monument so as to raise issues or concern regarding the Lake area or environment degradation as restoration and maintenance of Jal Mahal cannot possibly disturb the monument or lead to environmental degradation. In any view, the dispute being confined to the leasehold area for development of the project which we have now resolved, we direct that the appellant lessee shall be entitled to restart the project forthwith subject to what we have recorded hereinbefore.

149. The judgment and order[1] of the High Court thus stands quashed and set aside to the extent by which the lease deed has been cancelled except an

1 *K.P. Sharma* v. *State of Rajasthan*, Civil Writ (PIL) Petition No. 6039 of 2011, decided on 17-5-2012 (Raj)

area of 13 bighas 17 biswas equivalent to 8.65 ac and the balance disputed area claimed to be lake bed comprising 14.15 ac shall be notionally treated as part of the lease deed but the same shall remain a construction free zone where neither the State Government of Rajasthan nor the appellant lessee Jal Mahal Resorts (P) Ltd. shall have the right to raise any construction on this area as the same shall remain exclusively for the use of public promenade/walkway free of charge.

150. In view of the analysis made hereinbefore, these appeals stand partly allowed to the extent indicated hereinabove but in the circumstance, the parties are directed to bear their own costs.

(2014) 8 Supreme Court Cases 866

(*Record of Proceedings*)

(BEFORE GYAN SUDHA MISRA AND P.C. GHOSE, JJ.)

JAL MAHAL RESORTS PRIVATE LIMITED .. Petitioner;

Versus

K.P. SHARMA AND OTHERS .. Respondents.

SLPs (C) No. 17701 of 2012† with Nos. 19239-40, 22467, 22820 and 24341 of 2012, decided on February 5, 2014

Constitution of India — Art. 136 — Withdrawal of SLP if permits SLP petitioner as respondent in other SLP(s) to take a different stand from one taken in withdrawn SLP — Withdrawal of SLP by petitioner State, after conclusion of arguments — Thereafter State, as respondent in other SLPs, changing stand taken earlier before High Court and in Supreme Court before withdrawal of SLP — Held, impermissible — It is the prerogative of the party to press or withdraw its petition(s) and, therefore, the Court would not come in the way of permitting the State to withdraw these petitions — However, in spite of withdrawal of SLPs, petitioner State cannot take a diametrically opposite stand to which it had taken before the High Court and Supreme Court when the arguments were concluded — Civil Procedure Code, 1908 — Or. 23 R. 1 — Practice and Procedure — State as a Litigant/Party — Approbate and Reprobate (Paras 4 and 6)

B-D/53400/C

Advocates who appeared in this case :

Dr A.M. Singhvi and Shyam Divan, Senior Advocates [Kamaldeep Dayal, Ankur Saigal, Abhinav Agrawal, Arvind Jain, Harsh Kulshrestha, E.C. Agrawala (AOR) and Ms Ruchi Kohli, Advocates] for the Petitioner;

S.P. Singh, Jaideep Gupta and P.S. Narasimha, Senior Advocates [Mohan Prasad Gupta, S. Nagarajan, S.N. Terdal, B. Krishna Prasad, Aruneshwar Gupta, Irshad Ahmad (AOR), K.B. Rohatgi, Mahesh Kasana, Ms Aparna Rohatgi Jain, Avinash Kumar, Mukul Kumar, Ajay Choudhary, Ankit R. Kothari, Ajay Singh, Ishan, Rakesh Dahiya, Aditya Jain and Brig. M.L. Khatter, Advocates] for the Respondents.

† From the Judgment and Order dated 17-5-2012 in DBCWP No. 6039 of 2011 of the High Court of Rajasthan at Jaipur

ANNEXURE-E

Corrected Copy
As per Order dated 3rd February, 2015 in M.A. No. 73/2015.

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

Appeal No. 04 of 2012

In the matter of:

1. Nirma Ltd.
   Nirma House
   Ashram Road,
   Ahmedabad

..... Applicants

Versus

1. Ministry of Environment &Forests
   Government of India
   Parayavaran Bhawan,
   CGO Complex,
   Lodhi Road, New Delhi- 110003

2. Revenue Department
   (Through: Secretary)
   State of Gujarat
   Sachivalaya, Gandhi Nagar,
   Gujarat

3. Gujarat Pollution Control Board
   Through its Member Secretary
   Sector 10-A, Parayavaran Bhawan
   Opp. Bij Nigam
   Gandhinagar-382010

4. Shree Mahna Bandhara Khetiwadi
   Pariyavaran Bachav Samittee,
   Through its Secretary
   At SPO Madhiya
   District Bhavnagar,
   Gujarat

.....Respondents

Counsel for appellant:
Mr. Dushyant Dave, sr. advocate along with

Mr. Ramesh Singh, Mr. Prashanto sen, Mr. Ashish Goel and Ms. Anushruti, Advs. for appellant

Counsel for Respondents:
Mr. Vikas Malhotra and Mr. M.P. Sahay Advs. for respondent No. 1
Ms. Preeti Bhardwaj and Mr. Dhruve Pal Adv. for Ms. Hemantika, Advs. for respondent no. 2 & 3.
Mr. Anand Yagnik and Mr. Abhimanue Shrestha, Advs. for Respondent no. 4

Present:
Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Mr. Dr. G.K. Pandey (Expert Member)

JUDGMENT

Per U.D. Salvi J.(Judicial Member)

Dated: 14th January, 2015

1. The Present Appeal is preferred against the order dated 1st December, 2011 issued by the Respondent No. 1- Ministry of Environment and Forest (shortly referred to MoEF) under section 5 of the Environment (protection) Act, 1986 ("hereinafter referred to as the Act") to revoke the Environment Clearance dated 8th December, 2008 to the cement plant (Cement plant 1.91MTPA, 1.50 Clinker), Coke oven plant (1.5 LTPA), and Captive Power Plant (50 MW) to be established and operated near village Padhiyarka Taluka, Mahuva, District Bhavnagar, Gujarat.

2. Briefly, speaking it is the case of the appellant that the Environment Clearance granted after detailed and transparent enquiry in accordance with the provision of Act/Rules has been reviewed and recalled on account of extraneous and political considerations. A glance at the impugned order dated 1st December, 2011 gives paranomic view of respondent's case. It appears that the Expert Committee of five independent reputed scientists was constituted by the Hon'ble Supreme Court of India vide order dated 18th March, 2011 in special leave to appeal (civil) no. 14698/2010 from the Judgment and order dated 26th April 2010 in 3477/2009 of the High Court of Gujarat at Ahmadabad disposing of the petition (PIL opposing setting up of the cement plant with captive electricity generation plant in question) to visit the site and answer the following issues:

   a. Whether the lands in question were wet lands/water bodies?
   b. Whether the project could come up on such wetlands/water bodies and if so what would be its impact on Environment? Would it lead to Environmental degradation?
   c. If at all the project could come up what steps the user agencies would take in the interest of Environment Protection;
   d. Prescribed current situation of the project may also be indicated by the Expert body.

3. In pursuance to the report of the Expert Committee, the impugned order further reveals, the **EAC** recommended

revocation of the **environment clearance** on the ground that it was initially accorded on **undisclosed** and **incorrect postulates**; Acting on the order dated 9th September, 2011 of the Hon'ble Supreme Court in the said SLP, the MoEF on examination of the material on record, namely, the Expert Committee report and the record of hearings given to the project proponent and the additional documents submitted by the project proponent revoked the environment clearance granted to the project of the appellants referred to herein-above.

4. Some of the facts giving the background of the land allotted to the project proponent, admeasuring 268-86-52 Ha. of villages Vangar, Padhiyarka and Doliya for total consideration of Rs. 8,30,39,736/- by the State Government vide order dated 27th December, 2007 can hardly be disputed. Topo sheet of the year 1952 of the land in question described the terrain as a waste land. On 17th July, 1978 the Government of Gujarat appointed a High Level Committee for the purpose of chalking out programme for fixing priority of works to be undertaken to arrest salinity ingress in the coastal areas of Saurashtra and Kutch. On 2nd March, 1983 the Committee recommended the construction of Bandharas and indicated detail regulation amongst other measures to arrest salinity ingress from flooding the areas of cultivation. On 25th May, 1999 the Collector, Bhavnagar

passed an order transferring Government waste land and Gaucher land totalling to the tune of 222-06-24 Ha.(58-07-26 Ha. of village Doliya and 163-98-98 Ha. of village Padhiyarka) to Executive Engineer, Salinity Control Department, Bhavnagar for the purposes of developing Samadhiyala Bandhara. On 17th June, 1999 the collector Amreli passed an order transferring Government waste land as well as Gaaucher land totalling to the tune 178-55-03 Ha. (103-55-03 Ha. of village Samadhiyala and 75-00-00 Ha. of village Patva) of Taluka, District Amreli to the Executive Engineer Salinity Control Department, Bhavnagar. Thus, the total land transferred in favour of Executive Engineer, Salinity Control Department for the aforesaid purpose was 400-61-27 Ha. Necessary order of transfer was passed after the order of resumption was passed in respect of Gaucher land as per the provisions of 108 of Panchayats Act. The construction work of Samadhiyala Bandhara was over in the July, 2000.

5. According to the appellant an application for grant of land of Vangar, Padhiyarka and Doliya was made to the Collector on 24th February, 2002. On 5th April, 2004 the Mamladar, Mahuva gave his report in respect of demand of the land referred to above with following recommendations;

I. The land in question is not claimed by any Government or Private Body and is also not useful for agricultural.

II. Gram Panchayat of village Vangarhas passed resolution agreeing to allot land in question including the Gaucher land to M/s Nirma Ltd.

III. Part of the land in question was transferred to the Salinity Control Department, but the said Department does not require the land anymore and so the same may be transferred to M/s Nirma Ltd.

IV. Mahuva Taluka it is not a developed area having no industry and hence the proposed plants will provide job opportunities to local villagers who may not have to migrate to other places seeking jobs which will also help for overall development of the area.

6. The Gujarat Pollution Control Board (**GPCB**), the respondent no. 3, opined on 30th April, 2004 that the Board has **no objections** for the allotment of proposed land to the project proponent, **provided**, it shall **obtain environment clearance** from MoEF, New Delhi as per the EIA Notification dated 27th January, 1994. The Executive Engineer, Salinity Control Department, Bhavnagar gave his report on 22nd April, 2004 favouring the proposed transfer of land of Samadhiyala Bandhara to the company. The Salinity Control Department on 13th December, 2005 gave a report in the matter of releasing some of the Bandhara land for industrial purposes subject to certain terms and conditions. Following a public hearing held the Executive Engineer, Salinity Control Department, Bhavnagar gave a positive report for allocation of the land in question to the project on 16th May, 2006.

7. It is an undisputed fact that the policy regarding the Conservation of wet land was issued by MoEF on 2nd February, 2007; and an application for grant of Environmental Clearance to the project was made by the appellants to MoEF on 5th September, 2007.

8. On this backdrop, admittedly, the Government of Gujarat passed resolution approving the grant of land ad measure 268-52-5 Ha. of the said villages to the Company on some material terms and conditions. Which are reproduced herein below:

> "*iv) For equalizing the storage of rainwater, the company would undertake necessary digging of the lands of S.Nos. 27 and 179 of Samadhiyala village, which is Government waste/gaucher land at its own expense as suggested by the Superintending Engineer, Central Design Organisation Gandhi Nagar.*
> *v) Three channels i.e. two approach channels with one connecting channel, will have to be made as suggested by the NWRWS&K Department to draw the rain water in Samadhiyala Bandhara and the repairs and maintenance of these channels will have to be made by the company at its own expenses. Further, in case of any damage caused due to rainy water, the company will be solely responsible to carry out the works in that regard at its own expense.*
> *vi) The company will have to make separate arrangement for necessary quantity of water required for drinking and industrial use and that it would not make use of the bandhara water, directly or indirectly.*
> *vii) The company will have to carry out the additional work as suggested by the Central Design Organisation, Gandhi Nagar by making reverse small channels, i.e. reverse gradient channels for conveying water at the field locations.*
> *Viii) The company will have to carry out all the above works under Control of NWRWS&K Department.*

9. The Collector Bhavnagar passed consequential order allotting the aforesaid land to the company for setting up the said project on 16th April, 2008.

10. Chronology of events leading to the grant of environment clearance in question is as under:

    1. On 5th September, 2007 an application for environment clearance was made to MoEF.
    2. On 27th February, 2008 terms of Reference (TOR) was issued by the MoEF.
    3. On 14th July, 2008 draft EIA report was submitted to GPCB.
    4. On 1st August, 2008 Notice of Public Hearing was given by the GPCB in Gujarati as well as English newspaper.
    5. On 9th September, 2008 the GPCB conducted public hearing in the matter of Environment Clearance to the project and the minutes are sent to MoEF.
    6. On 6th October, 2008 the final EIA report submitted to MoEF.
    7. On 8-11th December, 2008 the MoEF granted environment clearance to the appellants.
    8. On 17th December, 2008 a newspaper advertisement regarding the grant of environment clearance appears in Indian Express and Aaj Kal.
    9. On 17th December, 2008 Collector Bhavnagar conducted a public hearing in respect to the land allotted to the Nirma Ltd.

11. The Respondent No. 4 Shree Mahuva Bandhara Khetiwadi Pariyavaran Bachav Samittee filed PIL-SCA 3477/2009 opposing the said project before the Hon'ble Gujarat High Court on 25th March, 2009. This was followed by grant of consent to establish the said cement and captive power

plant by the GPCB on 25th May, 2009.On the representation made by Dr. Kanubhai Kalsariyad, the State Government appointed an expert committee headed by Shri S.K Shelat, then learned Advisor to Hon'ble Chief Minister and other experts in the field to visit the site, hear representations of the affected persons, consider the suggestions and objections, obtain reports/opinions source from various experts in the field and to report to the Government on the issue, on 29th May, 2009. The Hon'ble High Court directed the appellants to place their grievances before the said Committee and the Committee was directed to take note of the same including the note of other aspects in the matter and to take proper decisions accordingly, vide order dated 26th June, 2009. The Shelat Committee accordingly gave its report on 4th August, 2009. The State Government formed a sub-committee of the ministers to consider the said report and the said sub-committee gave its report and made following recommendations on 19th November, 2009:

(i) Out of the initial allotment of 268 hectares of land to the company for its proposed cement project, 54 hectares of land from the south should be returned back to the State Government and that the company should give consent in writing about the same.

(ii) Out of the aforesaid 54 hectares of land, after leaving periphery area, the company should deepen 40 hectares of land so as to increase the water capacity to the extent of 22.7 %.

(iii) As per the expert opinion of the Government of India undertaking called WAPCOS, the company should deepen about 62 hectares of land out of the available area of 75 hectares, so as to increase the capacity of Bandhara water by 21.23 mcft (million cubic feet). The company shall have to undertake the said activity under the guidance of the Irrigation Department.

12. According to the appellant there occurred heavy monsoon in the year 2005 resulting in temporary submergence of Bandhara land for a few months; and the sub-committee had taken into considerations the record figures in respect of submergence of land in the said year into consideration as benchmark for calculating the rain water conservation capacity of Bhandhara land for the purposes of making the aforesaid recommendations. The State Government issued a GR dated in terms of the recommendations made by the sub-committee in its report dated 19th November, 2009. The appellants gave a written consent to surrender admeasuring54 Ha. as per the GR 8th December, 2009 on 9th December, 2009.

13. The Hon'ble Gujarat High Court vide order dated 16th December, 2009 directed the appellants to demarcate 54 Ha. of land; and accordingly on the 54 ha. of land of village Doliya was demarcated and surrendered by the appellant on 23rd December, 2009.

14. After hearing the parties and considering the facts and material on record, particularly, the Government order dated 16th April, 2008 allotting 268.86.56 Ha. of land on certain conditions, detailed report of the salinity division on the impact of construction of factory on the Bhandhara reservoir, Shelat Committee report GR- 8th December, 2009. Shailesh R Shah's Case, various pronouncement of the Apex court and appellants willingness to surrender additional 46 Ha.of land, the Hon'ble High Court of Gujarat disposed off the PIL-SCA3477/09 with the following directions:

26. Under the circumstances, this petition is disposed of with following directions:

1) *Respondent No. 4 Company shall, in addition to 54 hectares of land ordered to be surrendered by the Government in its order dated 8th December 2009, surrender further 46 hectares of land indicated in the map at Annexure I to the affidavit dated 16th April 2010, copy of which map is attached to this Judgment at Exh. A and shall include any land to be occupied by canals which company is obliged to construct;*
2) *Respondent No. 4 Company shall strictly adhere to its obligation to construct canals A,B and C shown in the official maps and maintain the same as directed by the Government and further ensure that it is desilted periodically, so that the flow of rain water from the surrounding areas to the Reservoir is not obstructed;*
3) *Respondent No. 4 Company shall excavate and deepen 75 hectares of Government waste land as directed by the Government;*

4) *Respondent No. 4 shall excavate and deepen part of 54 hectares of land returned by it under the Government order dated 8th December, 2009;*

5) *Respondent No. 4 shall excavate and deepen any part of the additional 46 hectares of land as may be suggested by the Government. For this purpose, the Government shall have a survey carried out and make suggestions for excavation of the land as per the topography of the area to ensure that this additionally surrendered land also forms part of Samadiyala Bandhara and increase the water carrying capacity of the Reservoir.*

6) *Respondent No. 4 Company shall not use any water form reservoir for its activities.*

7) *Respondent No. 4 Company shall ensure that its activities shall not pollute or contaminate the Reservoir water in any manner.*

8) *It will be open for the respondent no. 4 Company to recommence its construction of the factory on condition that within four weeks from today, the company after proper measurements by the DILR surrenders further 46 hectares of land as already directed herein above;*

9) *The Government shall ensure that respondent no. 4 Company has complied with all the above directions before issuing certificate of completion of construction or before granting permission to start the factory;*

10) *The Government shall, on the basis of the records of rainfall in the region and the total amount of water collected in the Reservoir immediately after the monsoon, judge whether on account of setting up of the factory there has been any significant reduction in income of the fresh water in the Reservoir. If so, the Government shall require respondent No.4 Company to take such remedial measures as may be found necessary.*

15. Order disposing of SCA No. 3477/2009 was challenged by the respondent no. 4 and one Khimja Bhai Barariya by preferring a two separate SLP's into (SLP No. 1501/10 and SLP No. 14698/10 respectively) before the Hon'ble Apex Court in the Month of May, 2010. A Review Petition seeking review of the Judgment and order dated 26.04.2010 being MCA No. 1473 of 2010 was also filed by the same parties initiating the SLP on 14.06.2010. On the orders of the Hon'ble Apex Court the Review Petition was expeditiously heard and dismissed on 27.09.2010.

16. During pendency of the SLP's before the Hon'ble Apex Court the respondent no. 1 MoEF issued a notification regarding Wetland (Conservation and Management) Rules 2010 on 04.12.2010. However, the MoEF filed an affidavit supporting the project pursuant to the directions of the Hon'ble Apex Court in the said SLP on 08.01.2011.

17. According to the appellants the MoEF took U-turn as to the validity of the project and the environmental clearance granted to it at the instance of one Ms. Sunita Narayan who addressed an email to the then Hon'ble Minister of Environment and Forest Mr. Jairam Ramesh to have a re-look into the project. The MoEF sought adjournment, when the aforesaid petitions came up before the Hon'ble Supreme Court for hearing on 17.01.2011, in order to buy time to start the process of reversing the environmental clearance granted to the project previously. The MoEF appointed an Expert

Committee of 7 Members headed by Prof. C K Varshney to check the ground situation on 21.01.2011. Even before the Committee has visited the project site the Hon'ble Minister of MoEF Mr. Jairam Ramesh publicly declared that the appellants plant was situated on the wetland on 03.02.2011. Varshney Committee reported that Samadhiyala Bandhara possessed all the characteristics features of wetland ecosystem. The report was considered by the EAC in its meeting held on 22nd/23rd.02.2011. On 11.03.2011 a show cause notice was issued to the appellants under section 5 of environment (Protection) Act 1986 to show cause as to why environmental clearance accorded to the project should not be revoked. This notice was challenged by the appellants before the Gujarat High Court in writ petition being SCA No. 3542 of 2011. The Hon'ble High Court issued the notice but refused to grant stay in the said writ petition. The appellants therefore moved the Hon'ble Apex Court by preferring an SLP bearing no. 559 of 2011 against the refusal to grant stay by the Hon'ble High court of Gujarat.

18. When the bunch of said SLPs preferred by the respondent no. 4 and another came up for the hearing before the Hon'ble Supreme Court on 18.03.2011 the Learned Solicitor General submitted that he would like to revisit the environment clearance granted to the project and there upon the Hon'ble Apex Court directed the Expert Appraisal Committee of the MoEF to call for the report of an Expert Body consisting of 5

independent reputed scientist who were to visit the site and answer the following issues:

(a) Whether the lands in question were wet lands/ water bodies;

(b) Whether the project could come up on such wet land/water bodies and if so, what would be its impact on environment? Would it lead to environmental degradation?

(c) If at all the project could come up, what steps the user agency should take in the interest of environment protection; and

(d) The precise current status of the project may also be indicated by the Expert Body,

and further directed the MoEF to take decision upon the report of the Expert Body. The Expert Body was directed to give hearing to the project proponents and the objectors to the project. Learned Counsel appearing on behalf of the appellants the project proponents there upon made a statement before the Hon'ble Apex Court that the writ petition filed by them in the Hon'ble High Court would be withdrawn.

19. Accordingly, 5 Member Expert Body comprising of Independent Reputed Scientists headed by Prof. C. R. Babu was appointed to go into the fact situation and answer the aforesaid questions raised by the Hon'ble Apex Court. Later on one Mr. Paritosh Tyagi, Ex-Chairman of the Central

Pollution Control Board was included in the body of experts at the instance of the Project Proponent. This Expert Body gave its findings upon making certain inquiries. According to the Expert Body headed by Prof. Babu (for short herein after referred to as Prof. Babu Committee)the Project site lies within the water spread of catchment, and the water run-off terrain of Samadhiyala Bandhara; and what earlier was a costal saline natural eco system was converted into fresh water man-made eco system providing assistance of lift irrigation. According to the Prof. Babu Committee, the site may be classified only as a wet land and water body and the existence of the plant at the site is incompatible with ecology and the Project may not be proceeded with.

20. Prof. Babu Committee Report was placed before the Hon'ble Apex Court. The Hon'ble Apex Court while passing the order dated 9th September, 2011, observed that the narrow issue which arose for determination in a said Special Leave Petitions was whether the EC has been obtained by suppressing the material fact. The Hon'ble Apex Court noticed that the EAC in its Report dated 5th May, 2011 had concurred with the view expressed by the eminent scientist saying that the site has been appropriately re-classified as water bodies, and a Show Cause notice was issued by MoEF on 11th May, 2011 to Nirma Ltd accordingly, and therefore MoEF was obliged to the decide whether clearance dated 8th December, 2008 should or should not be revoked. The

Hon'ble Apex Court directed the Appellant's Nirma Ltd., to give its objection / reply to the report dated 5th May, 2011 of EAC as also to the Show Cause Notice dated 11th May, 2013. The MoEF was directed to take its decision on revocation of the clearance dated 8th December, 2008 on the said of the objection / reply as aforesaid within 3 months from the date of the order dated 9th September, 2011. The Hon'ble Apex Court also drew the attention of the MoEF to the directions passed in Lafarge Umiam Mining Private Ltd. v. Union of India, case (2011 (7) SCC 338) requiring framing of questions in appropriate cases wherever MoEF deemed fit and refer those questions to the experts (institutions) from its panel.

21. According to the Appellants, they undertook study on the issue of waste land through Department of Environmental Science and Engineering **GJU Institute of Science and Technology,** Hisar, Haryana, and as the study undertaken was not completed, it could not submit its additional / supplementary reply to the Respondent No. 1 (MoEF) and explain its position vide letter dated 23.11.2011addressed to the MoEF. The Appellants also informed the MoEF that they would be seeking appropriate directions from the Hon'ble Apex Court in that regard on 9.12.2011. The Appellant submits that the Respondent No. 1 (MoEF) without giving any heed to their request for granting one more opportunity for final hearing on critical issue proceeded to pass impugned order / direction dated 1.12.2011 with **undue haste**.

22. On 9.12.2011 the Hon'ble Apex Court was apprised of the impugned order, whereupon the Hon'ble Apex Court disposed of the aforesaid SLPS accepting the request of the Appellants to proceed against the impugned order in accordance with law.

23. It is on this back drop the present appeal has come up for hearing before us. Suffice it to state that the Respondent No. 1 (MoEF) has refuted the case of the Appellant and on the other hand the Respondent No. 2 and 3, the State of Gujarat and **Gujarat Pollution Control Board** maintain that the land in question was waste land / gauchar land/ intwado land and not a wet land / water body and the relevant revenue record makes a reference accordingly. According to the Respondent No. 3 **(Gujarat State Pollution Control Board)** a reference to Bandhara was made in the public hearing conducted for the grant of environmental clearance and there is no adverse environment impact of the Project on the land / Bandhara in question. The Respondent No. 4 is the most vociferous contending parties amongst the array of Respondents and has vehemently refuted the case of the Appellants and urged for the revocation of the environment clearance to be maintained both on the points of law and facts.

24. During the pendency of this Appeal, the Expert Members of the Bench inspected the Project site in question twice in order to have clear perspective with the reference to the waste land /

water bodies Bandharas and adverse effect of the Project on the environment. First visit to this site in question of the Expert Members was during June 7-9, 2013. However, the Respondent No. 1 and Respondent No. 4 filed applications (M.A No. 504/2013 and 497/2013 respectively) for staying the operation of the order of the Tribunal for site inspection by the Expert Members passed on 20th May, 2013. Parties were heard and these applications were duly dismissed on the same day. Inspection of this site by the Expert Members was conducted as ordered vide order dated 20th May, 2013. Interestingly on 23rd August, 2013 a common prayer was made by the Learned Counsel appearing for the parties asking for second visit to the site in monsoon season for assessing complete and **comprehensive** situation with regard to wet land and likely damage to the water body. The request for second visit was acceded to by us and accordingly a second inspection of the site in question was conducted by Expert Members on 7th September, 2013. Pertinently the Expert Members during their first visit in June 2013 observed that the Bandhara was totally dry despite goodover short period (75 mm rainfall recorded at Bhavnagar on 7th June, 2013). On the second visit in September, 2013 the Expert Members observed that the Bandhara was almost at full level with shallow level depth all over in submergence and growth of aquatic vegetation and presence of few water/migratory birds. They further the observed that no part of the Proposed plant was

under submergence and the joint areas beyond the boundaries of the proposed cement plant were having a shallow water accumulation. Though there have been misgivings about the inspection done by the Expert Members of the Bench, we may like to clarify that the concept of inspection of any property or thing by the adjudicatory authority – the court is not alien to the judicial process and the procedure adopted by the courts. Order XXVIII Rule 18 of the Code of Civil Procedure provides for the local inspection by the court. Local inspection of any property or thing is undertaken by the Judge or adjudicating authority for the purpose of understanding appreciating and better following of the evidence adduced by the parties and to bring acuity to the judicial view in relation to the evidence placed before it. Material placed before us by the parties including various Committees / Expert Body Reports can therefore be better appreciated by us in light of the observations made by the Expert Members for dispensation of Justice.

25. Before we appreciate the factual matrix of the case it is necessary to determine the scope of the Appeal in light of the Judgments passed by the Gujarat High Court and the Hon'ble Apex Court in the matters inter se parties. Admittedly, the environmental clearance dated 11-12-2008 accorded to the cement plant, Coke Oven plant and the captive power plant in question did not find any challenge in the manner prescribed under the law in force then from any quarters except the PIL

(SCA3477/2009) preferred before Gujarat High Court by the respondent no. 4 herein. From the perusal of the Judgment dated 26-4-2010 passed by the Hon'ble High Court of Gujarat in the said petition, it appears that the main grievance of the petitioners therein was in respect of the allotment of land by the Government of Gujarat for setting up of such plant in the middle of sweet water reservoir created by the construction of 250 meters long waste weir called Samadhiyala Bandhara; and the proposed site of the plant also occupied the land falling in catchment area of reservoir; and construction of the cement plant in such circumstances would destroy the entire reservoir. The respondents therein dismissed this application as ill-founded and contended that the capacity of the reservoir upon implementation of the recommendation of the Expert Committee as directed by the Government would increase and setting up of cement plant would generate local employment. The Hon'ble High Court of Gujarat took into account the facts, which prompted construction of Samadhiyala Bandhara and its dual purpose arresting - ingress of sea water with consequent resolution of salinity problem and creation of sweet water reservoir with an estimated capacity of 62.31 million cubic feet. A fact that the land going in the submergence due to said Samadhiyala Bandhara mainly came from Government waste land as well as part of Gaucher land from surrounding villages, which the village panchayats agreed to surrender to the Government was also taken into

account by the High Court. It was also taken into consideration that nearly 100 Ha. Of land out of total land allotted i.e. 268.86.52 Ha. was part of Bandhara reservoir and there could be reduction in capacity of the reservoir to the extent of 21.18 million cubic feet of water. It appears that the Hon'ble High court had in its view while passing the said judgment a report from the salinity division recommending certain measures for meeting the challenge posed by reduction of capacity of the reservoir due to the proposed allotment of land as well as the recommendations made by the High Level Committee headed by Shri Shelat, Advisor to the Chief Minister and the State Government's action on the said report to pass directions to the company Nirma Ltd. to return 54 Ha. of land which formed part of Samadhiyala Bandhara and to deepen 40 Ha. of the said land for increasing the water carrying capacity of the reservoir by 22.7 per cent. M/s Nirma Ltd. bowed down to the recommendations made by the Shelat Committee and agreed to carry out the directions passed by the state government to deepen the land in addition to 75 per cent of government waste land to be deepened and to provide for 3 different channels after measuring 13 meter in width following 3 sides of the factory to ensure free flow of water from surrounding areas into the reservoir on this back drop Learned Counsel for petitioners therein Vehemently contended that the land allotted to the Nirma Ltd. was part of the water body and in view of the Judgement passed by the

Division Bench in case of Shailesh R. Shah's case no part of such land can be alienated much less granted to the private companies. He also point out from the satellite imagery of the area in question that water gets collected during monsoon where the land has been allotted to the company and measures suggested to compensate the loss of land and in flow of water are not adequate he further contended that the state government had not even notified Samadhiyala Bandhara as the water body despite the directions issued by the Division Bench of the Gujarat High Court in the case of Shailesh R Shah (Supra). Besides laying stress on the decision of the Division Bench of the High Court of Gujarat in relation to the water bodies in the case of Salesh R Shah (Supra) the petitioner therein cited several decision of the Hon'ble Apex Court-Countering these submissions, several judgments of the Apex Court were also cited by the contending respondent M/s Nirma Ltd. we need not detain ourselves much on the submissions of the rival parties in light of the judgments cited by them as we do not propose to sit in Judgement over the decision of the Hon'ble High Court of Gujarat. Suffice it to say that the Hon'ble High Court of Gujarat did consider these judgments and the rival submissions and took into account respondent no. 4 M/s Nirma Ltd's willingness to surrender further 46 Ha. of land excluding area comprising of canals to be constructed by the company in addition to surrender of 54 Ha. of land pursuant to the Government order and proceeded

to answer the pertinent question as to whether all the measures provided by the Government coupled with surrender of additional 46 Ha. of land was sufficient to safeguard, protect and preserve the Samadhiyala Bandhara reservoir so as to permit the respondent no. 4 company to carry on with the further construction of the cement factory.

26. The Hon'ble High Court of Gujarat was of the view that with certain minor fine tuning conditions to surrender the land by the company was sufficient to safeguard, protect and preserve Samadhiyala Bandhara reservoir and with further surrender of 46 Ha. of land the company would have surrendered equal area of land going under submergence. It appears from the reading of the said judgment that the principle of sustainable development was at the back of the mind of the Hon'ble High Court of Gujarat while delivering the said judgment. This could be perceived from the para 24 of the Judgment.

27. Pertinently, the Hon'ble High Court of Gujarat after hearing the parties dismissed the Review Application preferred by the petitioners in special 3477/2009, on merits and the petition for special leave to appeal (civil) (14698/2010) preferred against the Judgment and order dated 26-04-2010 passed by the Hon'ble High Court of Gujarat in SA 3477/2009, was disposed of following the statement made on behalf of M/s Nirma Ltd that the competent authority under Environment (Protection) Act, 1986 had passed an order against Nirma on 1st December, 2011 and the company would proceed in appeal

before us vide order dated 9th December, 2011.Thus the entire controversy over the project being established on the land in question came to an end except the narrow issue whether environmental clearance dated 8thDecember, 2008 had been obtained by suppressing the material facts. This could be read from the prelude to the order dated 9th December, 2011 disposing of the said petition.

28. On 18th March, 2011 the Hon'ble Apex Court without expressing any opinion on merits of the case sought answers to certain pertinent questions as regards the nature of the land in question and its impact on environment as well as the current states of the project from the expert body consisting of 5 independent reputed scientists and directed the MoEF to take its decision uninfluenced by any observations made in the pending proceedings. In light of the answers given by the expert body. The Hon'ble Apex Court On 9th September, 2014 observed that the narrow issue before the MoEF was whether his decision of granting environmental clearance should be recalled being based on the footing that the cement plant would be constructed on the waste land and the MoEF was required to decide whether environmental clearance should or should not be revoked. The Hon'ble Apex Court set the calendar for taking appropriate decision in the matter by the MoEF and directed the MoEF to complete the exercise of decision making within 3 months from the date of the said order. It is pursuant to these directions that the impugned

decision was taken and the Hon'ble Apex Court having found nothing more to consider on merits disposed of the said petitions by order dated 9th December, 2011. Thus, we have only to examine in the present appeal whether the action of revocation of the environmental clearance on the ground of material suppression of fact was justified or not. No other issues by virtue of the Judgments passed by the Hon'ble High Court of Gujarat and the Hon'ble Apex Court, therefore, survive for our consideration.

29. Learned Counsel for the appellant at the outset submitted that the Central Government could not have done or revoked the environment clearance granted to the project by due process of law in directly by invoking the provisions of Section 5 on the specious premise of the land being *"wetland as per Ramsar Convention"* which otherwise could have been directly done by duly declaring the same land as wetland-an ecologically sensitive area. He pointed out from the revenue record and Wet land At-lass that the land in question allotted to the project was not identified as a wetland/ water body but were shown in the revenue record as Waste land /Gauchar land/Intwado land. He further submitted that public hearing was conducted for transfer of the same land in question from salt department to the revenue department before it was allotted to the project. He further pointed out that the process as prescribed under EIA Notification, 2006 for grant of EC was duly gone through including second public hearing for EC

purposes was conducted wherein reference to Bandhara was made; and it is only after the due process of law being followed the EC was granted. He further submitted that the grant of EC found no challenge except the aforesaid writ petition preferred to the Hon'ble High Court of Gujarat; and the Hon'ble High Court of Gujarat had duly disposed of the said petition after taking into consideration all aspects in relation to the artificial water body created on construction of Bandhara. The Hon'ble Apex Court having dismissed the petitions preferred against the Judgment of the Hon'ble High Court of Gujarat, he argued no issue regarding the water body artificially created by the Bandhara and possible adverse environmental impact of the project on the water body survived for judicial consideration. According to him invoking of the provisions of Section 5 for revoking the EC duly granted at the instance of one Sunita Narayan vide email dated 14.01.2011 was inappropriate and demonstrated malice in law, and as such the impugned order of revocation deserved to be set aside. He invited our attention to the Judgment delivered by the Hon'ble Apex Court in Smt. Venkataraman Case-(1979) 2 SCC Cases 491: Smt. S.R. Venkataraman Vs Union of India and Another:

30. Answering these submission learned Counsel for the Respondent No. 4 submitted that the plea of malice in law cannot be raised for the first time in the appeal when this issue was not raised before the Hon'ble Apex Court in reply to

the notice issued on the SLP. He further submitted that neither Sunita Narayan the author of the email dated 14.01.2011, nor the then Hon'ble Minister of Environment and Forest Mr. Jai Ram Ramesh have been made parties to the present appeal and, therefore, the real facts regarding the episode of email have remained shrouded for want of authentic material on record; and as such the plea of malice in law must fail. He further pointed out that there existed enough material on record to suggest the existence of water body/wetland as defined under Ramsar convention and therefore it cannot be said that the action taken by the Central Government for revocation of EC was without just cause or excuse, reasonable or probable cause. It is for this reason he argued that the plea of malice in law must fail. To buttress his submissions and to further enrich our understanding regarding malice or jurisprudence of power he placed reliance on the several judgments of the Hon'ble Apex Court, more particularly,

1. (1979) 3 SCC 229: State of U.P. and Ors. Vs Hindustan Aluminium Corporation & Ors.

2. (1985) 3 SCC 1: Raja Ram Jaiswal Vs Collector Allahabad & Anr.

3. (1980) 2 SCC 471: State of Punjab Vs Gurdial Singh & Anr.

He particularly laid emphasis on para no. 9 of the Judgment delivered by the Hon'ble Apex Court in State of Punjab and Anr. Vs Gurdial Singh & Anrs case in order to make a

submission that if the power is used for a legitimate object no malice can be attributed to such use.

31. On going through the Judgment passed in Venkataraman case we come across the meaning of "malice in law" as expounded by the Hon'ble Apex Court in the following words:

> *"para 5 ..... Thus malice in its legal sense means malice made by such as may be assumed from the doing of wrongful Act intentionally but without just cause or excuse or for want of reasonable or probable cause".*

32. In instant case the Central Government invoked Section 5 of the Environment Protection Act 1986-the Act to revoke environmental clearance which was granted by following the process stipulated in Environment Clearance Regulation 2006 framed in exercise of powers conferred by sub section 1 and clause (V) of sub section 2 of section 3 of the Act read with clause (b) of sub rule 3 of Rule 5 of the Environment (Protection) Rules 1986. Pertinently as observed herein above the said EC had attained finality for the reason of it not being challenged as per the provisions of the Act and or the challenge to it by way of the writ petition coming to an end as aforesaid. Section 5 of the Environment Protection Act 1986 permits the Central Government, subject to the provisions of the said Act, to issue directions in writing to any person in exercise of its powers and performance of its functions under the said Act. The Central Government therefore could not have invoked the provisions of Section 5 for revoking the EC which had attained finality particularly when there existed a

specific provision under the Environment Clearance Regulation, 2006 for revocation under sub para (vi) of para 8 of the Regulation.

33. This takes us to further enquiry as to whether the action initiated purportedly under Section 5 of the Environment Protection was without any probable cause or legitimate object. Such enquiry is necessitated not only in light of the meaning expounded by the Hon'ble Apex Court in Venkataraman case but also para 9 of the Judgement in Gurdial Singh case which is quoted herein below:

> *"The question, then, is what mala fides in the jurisprudence of power is? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidated the exercise of power- sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions – is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the cue for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat. that all power is a trust- that we are accountable for its exercise- that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If*

considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act".

34. Assuming that Ms. Sunita Narayan addressed the email to the then Hon'ble Minister Jai Ram Ramesh of the MoEF pointing out that there were sufficient grounds to hold existence of water body which called for revocation of the EC, then it would be prudent to examine whether Ms. Sunita Narayan was prompted to address this email for some legitimate object. We have before us the reports of Shelath Committee, Prof. Varshney Committee and Prof. Babu Committee. All have pointed out unanimously that there existed a Bandhara which laid to the creation of water body due to accumulation of rain water. Prof. Babu Committee recommended classification of the land in question as 'wetland' and 'water body' and observed that it had manifold ecological utility besides helping recharge of ground water, sustain rich biodiversity, provide pastures and support settlements and as such common property resource. It appears that accepting the findings and recommendations of the Babu Committee and in its wake the MoEF was prompted to invoke the provisions of Section 5 of the Environment Protection Act. It is therefore difficult to hold that there was no probable cause or the legitimate object for initiation of such action. We are, therefore, of the considered opinion that the actuation or catalysation of such action by the email purportedly addressed by Ms. Sunita Narayan was not

legicidal and, therefore, the plea of there being malice in law in actuation of the proceedings under Section 5 as raised by the appellant must fail.

35. However, the revocation of EC granted as per EIA Notification 2006 ought to have been done in the manner provided under para 8 sub-para (vi) of the Regulation, 2006 which reads as under:

> "(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".

36. Reading of this provision makes it abundantly clear that the prior environmental clearance granted following deliberate concealment and/or submission of false or misleading information or data, which is material to any of the stages leading to the grant of environmental clearance qualifies for cancellation of such clearance. Act of concealment and or submission of false or misleading information or data, however, should be a deliberate one.

37. Revocation of the environmental clearance mainly proceeded on the premise that the environmental clearance accorded was founded on undisclosed and incorrect postulates mainly as regards the character of the land in question recognised by the

Prof. Babu Committee as a "Wetland". It is true that the appellant described it as "Wasteland" when the proposal for the grant of EC was initiated and not as a wetland. Explanation offered for this aberration is that the land in question was not identified as a wetland by the authorities concerned and was shown in the revenue records throughout by the State of Gujarat as a wasteland and the confusion in understanding of its nature led to such aberration which cannot be termed as an act of deliberate concealment and/or submission of false or misleading information or data to the authorities under the Environment Clearance Regulations 2006. According to the appellants the existence of the Bandhara and formation of water body as a result of accumulation of rain water during monsoons surfaced in the public hearing and the decision of grant of EC was taken in light of such revelations. We find from the records that there was disclosure regarding Bandhara during the public hearing conducted by GPCB in the process leading to the EC in question; and following such disclosure the project proponent had clarified the issues specifically relating to salinity control Samdiyala Bandhara, school crematorium and road at the time of its presentation in 86th meeting of the EAC held at MoEF New Delhi on 22nd October, 2008 vide presentation slide no. 58 and 59. The decision recommending the grant of EC was thus consequentially taken and the grant was recommended by EAC to the MoEF. Fact of the existence of

the water body and the effect of the project there upon was also taken into account in the proceedings before the Hon'ble High Court of Gujarat while passing the verdict which had attained finality.

38. Issue of conservation of wetlands worldwide vis. a vis. development was taken cognisance of by the international community in Ramsar Convention in the following words:

Wetland should be conserved by ensuring their **wise use**. Wise use is defined as "Sustainable utilisation for the benefit of mankind in a way compatible that the maintenance of the natural properties of the ecosystem" – Sustainable utilisation is understood as "Human use of wetland so that it may yield the continuous benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations. *"Wise use"* may also require strict protection.

39. The Ramsar Convention defined wetlands as below:

> *"Wetlands are area of Marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static are flowing, fresh, brackish or salt, including areas of marine water, the depth was at low tide does not exceed six metres".*

40. Following the Ramsar Convention the Central Government made the wetlands (Conservation and Management) Rules 2010 for conservation and management of wetlands in exercise of the powers conferred by Section 25, read with sub section (1) and clause (V) of sub section (2) and sub section (3) of section 3 of the Environment (Protection) Act, 1986.

Definition of wetland is available at Rule 2 (g) of the wetlands (Conservation and Management) Rules 2010 in the following words:

> *2(g) "Wetland" means an area of Marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static are flowing, fresh, brackish or salt, including areas of marine water, the depth was at low tide does not exceed six metres and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and the 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 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (II) of dated the 20th February, 1991.*

41. Rule 3 therein speaks about the **Protected Wetlands** in the following words:

> "*3. Protected wetlands-Based on the significance of the functions performed by the wetlands for overall well being of the people and for determining the extent and level of regulation, the following wetlands shall be regulated under these rules, namely-*
>
> *(i) Wetlands categorised as Ramsar Wetlands of International Importance under the Ramsar convention as specified in the Schedule.*
> *(ii) wetlands in areas that are ecologically sensitive and important, such as, national parks, marine parks, sanctuaries, reserved forests, wildlife habitats, mangroves, corals, coral reefs, areas of outstanding natural beauty or historical or heritage areas and the areas rich in genetic diversity;*
> *(iii) wetlands recognised as or lying within a INESCO World Heritage Site;*
> *(iv) high altitude wetlands or high altitude wetland complexes at or above an elevation of two thousand five hundred metres with an area equal to or greater than five hectares;*

> *(v) wetlands or wetland complexes below an elevation of two thousand five hundred metres with an area equal to or greater than five hundred hectares;*
> *(vi) any other wetland as so identified by the Authority and thereafter notified by the Central Government under the provisions of the Act for purposes of these rules.*

It has been pointed out to us that the land in question is not a **Protected Wetland** falling in any of the categories of Protected Wetlands spoken of in Rule 3 of the said Rules and there is no blanket moratorium on its development except a regulatory regime prescribed under Rule 4 of the said rules.

42. Visit of the Expert Members twice to the project site, firstly in the first week of June 2013 and secondly in the month of September 2013 brought to light some material facts concerning the water body. On the first visit of the Expert Members it was noticed that the Bandhara was totally dry despite good rains over short period ("75 mm false" recorded at Bhavnagar) and on second visit it was noticed that the Bandhara was almost at full level with shallow water depth all over in submergence and no part of the proposed project land was under submergence and the adjoining areas beyond the boundaries of the proposed project land was having shallow water accumulation. Expert Members also noticed during their second visit that there was growth of aquatic vegetation and the presence of few migratory birds around the water body. One wonders how Prof. Babu Committee could document exhaustive list of birds, presence of endangered vulture and Asiatic lions and could give soil type extra in two

hours of field visit without any backing of any specific scientific study in relation to the project site. On visits to site in question the Expert Member had made pointed enquiry and asked for data/information as regards month wise rainfall pattern over the years, month wise water levels in the Bandhara, month wise irrigation area provided from the reservoir, soil type and its characteristics in the project area and adjoining area, lay out maps of the area in question along with superimposition of project boundaries from the parties to the Appeal. This information/data was made available to us and was exchanged between the parties. Having gone through the entire information/data thus made available we are of the considered opinion that the Samdiyala Bandhara serves as a temporary storage of water, which gets used by farmers or gets evaporated due to its large spread or gets percolated due to fairly high porosity of soil and as such cannot be called as a productive wetland having all perennial features of a wetland.

43. As noted above, the revenue records described the area in question as a 'waste Land' and it was never, even till today, identified as wet land by the Central Wetlands Regulatory Authority and so notified by the Central Government under the provisions of the Act for the purposes of Wetland (Conservation & Management) Rules, 2010. The Hon'ble High Court of Gujarat, however, considered the issue of water body thus created by Samadhiyala Bhandhara on such Waste Land,

particularly in light of the concerns of the local persons whom the respondent no. 4 professes to represent.

44. In the given circumstances it is difficult to hold that there was any deliberate concealment and or submission of false or misleading information or data to the authorities according environmental clearance. Moreover, the Hon'ble High Court of Gujarat, whose verdict has attained finality as aforesaid, had taken into account the recompense the appellants have made by foregoing 100 hectares of land, 80 per cent of which was under submergence, and by deepening certain portion of the land and channelizing the storm water towards the water body. We have also noticed that the project proponent have given up Coke Oven Plant and the project is designed not to discharge any effluent or any material in the water body created by Samdiyala Bandhara. These aspects of the matter were not fully taken into account either by Prof. Babu Committee or MoEF during the process leading to the revocation of the environmental clearance granted to the project proponent.

45. In our considered opinion, therefore, this Appeal needs to be allowed and is accordingly allowed. The Impugned Order dated 1st December, 2011 issued by respondent no. 1- MoEF is set aside.

46. With a view to enrich our understanding regarding the wise use of such sites we feel that the effect of the project on the water bodies of such nature thus created by the Samdiyala

Bandhara need to be monitored and study undertaken in that regard for a period of 2 years on the commencement of the project. We, therefore, direct the respondent no. 3-State Pollution Control Board to monitor and undertake study of the effects of running of the project on the water body of such nature created by Samdiyala Bandhara in conjunction with CPCB Zonal Office at Baroda from the date of the commencement of the project. The applicant- project proponent shall bear the expenses incurred by the State Pollution Control Board and CPCB for monitoring and conducting such study. Liberty is granted to the State Pollution Control Board and CPCB to take assistance of such expert body/institution in the field of Environmental Monitoring of water bodies as they deem fit. Parties shall bear their own cost. At the end of the study the report shall be tendered before us.

……, CP
(Swatanter Kumar)

……, JM
(U.D. Salvi)

……, EM
(Dr. D.K. Agrawal)

……, EM
(Dr. G.K. Pandey)

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(BEFORE DR D.Y. CHANDRACHUD AND HEMANT GUPTA, JJ.)

Civil Appeal No. 12251 of 2018†

HANUMAN LAXMAN AROSKAR .. Appellant;

Versus

UNION OF INDIA .. Respondent.

With

Civil Appeal No. 1053 of 2019

FEDERATION OF RAINBOW WARRIORS .. Appellant;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeals No. 12251 of 2018 with
No. 1053 of 2019, decided on March 29, 2019

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**

— 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 thereon (Paras 162 to 166)

— Concerns highlighted in judgment:

— (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

† 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)

— (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 disclosure 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)

— (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)

— (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)

— (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)

— (8) Issues raised in pubic 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 1 — 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"

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**

— 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 — 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. **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. **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**

— 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

Development — Development Projects — Prerequisites for/Environmental clearance/viability (Paras 45 to 62)

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 — 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)

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 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

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)

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. (Para 42)

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)

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)

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)

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)

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)

Baseline data of environmental parameters which may be affected by airport activities is collected through primary monitoring in the study area and through secondary sources. The baseline data facilitates the evaluation of the predicted impact on environmental attributes in the study area by using scientific analysis and EIA methodologies. The object is to also aid in the preparation of an EMP that would outline measures for improving environmental quality as well as retain the scope for future expansions in a sustainable manner. The Guidance Manual specifically requires collection of baseline data on the following: (*i*) land environment; (*ii*) water environment; (*iii*) air environment; (*iv*) noise environment;

(*v*) biological environment; (*iv*) socioeconomic environment; and (*vii*) solid waste. (Para 64)

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)

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***

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)

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)

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*

Alternative submission that disclosure about forests was made not tenable

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

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

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)

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)

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*

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)

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)

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 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)

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)

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 Umiam Mining (P) Ltd. v. *Union of India*, (2011) 7 SCC 338, *relied on*

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)

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*

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)

United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowe d=y>; Bruntdland definition of Sustainable Development, *referred to*

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)

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 1. (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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13. (2000) 10 SCC 664, *Narmada Bachao Andolan* v. *Union of India* 458*a*
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The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.—

INDEX

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 21-8-2018[1] 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.

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:

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.

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.

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".

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.

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

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.

6. In March 2011, the State of Goa, as the project proponent submitted Form 1 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.

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.

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;
>
> • 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;
>
> • 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. EAC, at its 152nd meeting on 20-10-2015, sought a further clarification from

the project proponent on the reply submitted by the Federation of Rainbow Warriors. At that meeting, EAC 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 7-11-2017[2], 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 22-11-2017[3], 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 8-3-2018[4], 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

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.

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 21-8-2018[1], 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).

13. On 18-1-2019[5], notice was issued in the appeals and an order of status quo was passed by this Court. The appeals were admitted for hearing and final disposal.

B. ***Submissions***

14. We have heard Ms Anitha Shenoy, learned counsel appearing on behalf of the appellants. Mr K.K. Venugopal, learned Attorney 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.

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 1 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.

16. In this backdrop, the principal submissions urged by the appellants before the Court are as follows:

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 1, which was submitted by the project proponent, was silent in regard to the

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

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 1 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 1 as well as in Clause 2.1.5 of the EIA report that only a few trees were required to be felled is factually incorrect.

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 1 of the 2006 Notification and covers one full year. In the present case, while furnishing details of ESZs falling within an aerial distance of 15 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

(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

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

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:

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.

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.

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*).

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.

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

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.

25.3. A strict prohibition on "red category" industries.

25.4. A prohibition on building and construction projects of 20,000 sq m.

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.

26. Based on the above recommendation of HLWG, it was submitted that the proposed airport project, which falls under Category 'A' projects as delineated by the 2006 Notification, is regulated by it and does not attract a blanket prohibition.

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.

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.

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:

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.

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:

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

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.

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.

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.

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.

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 21-8-2018[1], 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.

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 1 of the development is Rs 1900 crores while the cost of the entire project is likely to

1 *Federation of Rainbow Warriors* v. *Union of India*, 2018 SCC OnLine NGT 831

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.

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.

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.

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*

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.

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.

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

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.

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.

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.

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:

> "...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."

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.

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.

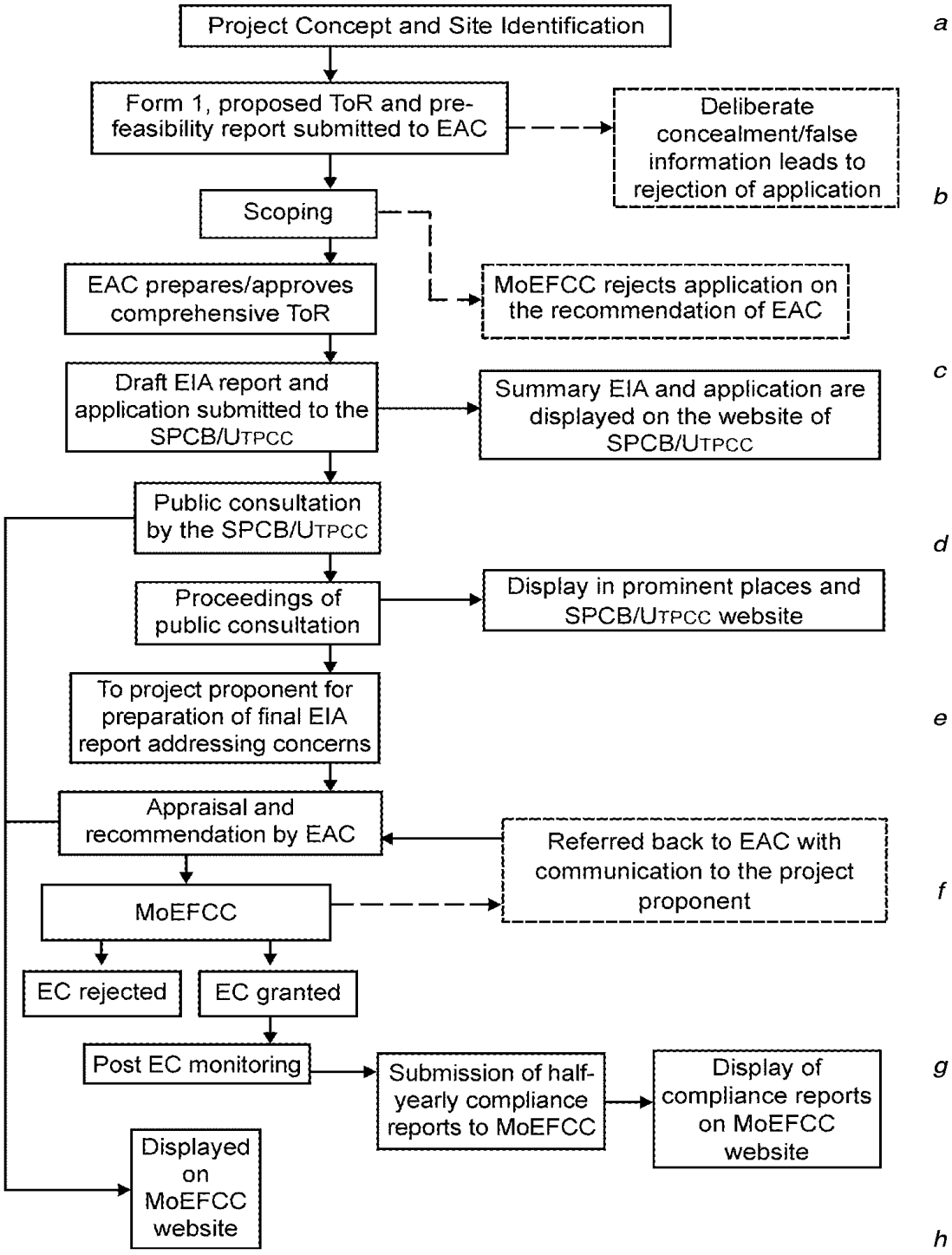
41.5. Under the 1994 Notification, the final approval was granted by IAA. Under the 2006 Notification, though the final regulatory approval is granted by MoEFCC or SEIAA, as the case may be, the approval is to be based on the recommendations of EAC functioning in MoEFCC or the State Expert Appraisal 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



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-A[8], 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* projects[9] 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.

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 1/Form 1-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 1, 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

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.

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

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:

(*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.

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.

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.

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.

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.

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.

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.

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.

60. 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 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.

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 1 alone.

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 1 and Form 1-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 1 within the validity period.

62. 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. Clause (*vi*) of Para 8 of the notification provides thus:

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

C.2. *Guidance Manual for Airports*

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:

> "Primary data through measurements and field surveys; and secondary data from secondary sources are to be collected in the study area within 10 km radius from Aerodrome Reference Point (ARP). Primary data should cover one season other than monsoon and secondary data is to cover one full year. The basis for selection of these criteria is that the aircraft gains

a height of 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."

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; (*iii*) air environment; (*iv*) noise environment; (*v*) biological environment; (*vi*) socioeconomic environment; and (*vii*) solid waste.

65. The importance of collecting data on land environment is emphasised in the following extract:

"The terrain and hill slope, general slope and elevation of the area, the flow direction of streams and rivers, the water bodies and 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 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, 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 routes with respect to the project site is obtained within the study area and plotted on a map. This map will show the natural slopes and the drainage

patterns, which give a guideline while planning the drains in the airport project. The drains help in discharge of storm water from the airport to avoid flooding and waterlogging in the project area."

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."

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."

Local emissions attributed to aircraft operations at airports include oxides of nitrogen (NOx), carbon monoxide (CO), hydrocarbons (HC), sulphur dioxide (SO_2), 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:

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

an integral component of the wider landscape scale ecological network. To accomplish this:

(*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,

(*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.

D. ***Forests***

70. The essence of the challenge to EC is twofold:

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".

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.

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

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

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."

76. Subsequently, in *Okhla Bird Sanctuary*[7], this Court explained the position: (SCC p. 762, para 35)

> "*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."

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.

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.

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:

Sl. No.	*Description*	*Area (sq m)*	*Area (ha)*
5.	Forest-Tree Clad Area-Dense	6,63,41,913.84	6634.19

7 *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744

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

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 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment: a "heads I win, tails you lose" approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law.

E. ***Ecologically Sensitive Zones (ESZs)***

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

> "Ecologically Sensitive Zones, Ministry of Environment and Forests had constituted a High-level Working Group (HLWG) under the Chairmanship of Dr K. Kasturirangan, Member (Science), Planning Commission vide office order dated 17-8-2012 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."

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:

> "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:

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

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.

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, SO_2, NO_X, CO and HC, ambient air quality monitoring stations were set up at six locations. They are at Sinechaadvin, Katwal, Mopa Village, Pernem, Nagzor and Patradevi. All are in Goa. The location at Patradevi was on the border shared by Goa with Maharashtra. The study area extended to a radial distance of 10 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

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***

95. Para 4.2 of the EIA report states that groundwater quality was measured at four locations: Mopa Village, Pernem, 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***

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***

97. The EIA report indicates that the area surrounding the site for the proposed airport has dense forests[10]. These total up to nearly 6634.19 hectares[11]. 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.

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:

> "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

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:

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

(*i*) *Birds of Goa* by Heinz Lainer & Rahul Alvares;

(*ii*) *The Goan Jungle Book* by Nirmal Kulkarni;

(*iii*) *A Photographic Guide to Butterflies of Goa* by Parag Ragnekar;

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

(*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:

"(*a*) A rapid survey to assess mammal presence at Barazan Plateau, Mopa, Goa, India conducted by Girish Punjabi (Wildlife Biologist) and Atul S. Borker (Full Member of IUCN/SSC Otter Specialist Group) that Schedule I species such as gaur, leopard and Indian Pangolin; Schedule II species such as giant squirrel, common palm civet; Schedule III species such as sambar, wild pig and Schedule IV species such as Indian hare, Indian porcupine.

The report also mentions the presence of the Sawantwadi — Dodamarg wildlife corridor within the 10 km proposed project site.

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

(*c*) Report on two days' survey to find evidence of plant and bird species at Mopa Plateau conducted by Aparna Watve (Ecologist) and Sanjay Thakur (Wildlife Biologist) that found Schedule I species such as the Indian peafowl and the Dipcadi Concanese which is critically

endangered. The study clearly mentions that the EIA study is entire deficit as it does not accurately consider the flora and fauna of the area as well as the number of trees to be cut."

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:

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

The above column was left blank by the project proponent in Form 1. According to the Guidance Manual, secondary data has to be collected within an aerial distance of 15 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.

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)

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).

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.

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.

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 aside[4] 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.

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*

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.

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

> Note on Occurrence and Distribution of Dipcadi Concanense". By invoking precautionary principle, we direct the project proponent to draw up a conservancy by plan/scheme for "Dipcadi Concanense" in collaboration with Forest Department, State of Goa and Botanical Survey of India and ensure its implementation."

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.

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.

108. The Goa, Daman and Diu Preservation of Trees Act, 1984 defines the expression "tree" in Section 2(*j*) in the following terms:

> "**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."

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

environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance.

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.

112.3. The duty of SPCB to conduct hearings and to forward the proceedings to the regulatory authority within the stipulated time.

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.

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.

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.

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:

(*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.

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.

114.2. Nearly forty springs would be affected along with flora and fauna.

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.

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.

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.

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.

114.14. No study has been carried out in the 10 km radius falling in Maharashtra.

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:

> "(*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)

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.

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)

> "*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

12 2009 SCC OnLine Del 3836

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 negatived. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary."

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 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.

H. ***Appraisal by EAC***

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:

(*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".

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;

(*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;

(*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."

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:

"(*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.

(*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."

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:

"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.

The PP further provided their reply to the rebuttal by the said NGO on various issues.

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.
>
> (*ii*) The approach and exit roads to the airport would be approved from the NHAI and should be according to IRC norms.
>
> (*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:

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.

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.

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:

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.

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.

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.

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."

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.

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.

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.

I. ***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);"

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 principles[13].

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 21-8-2018[1] 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) 4 SCC (Civ) 87

1 *Federation of Rainbow Warriors* v. *Union of India*, 2018 SCC OnLine NGT 831

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.

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:

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

Having reviewed the information furnished in Form 1 by the project proponent as well as the multiple reports on record on the bird species involved in the site for the proposed project, 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".

135.2. Similarly, in *Sreeranganathan K.P.* v. *Union of India*[15], the grant of an EC to the KGS Aranmula 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 1, 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)

"*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,

14 (2013) 1 All India NGT Reporter 1
15 2014 SCC OnLine NGT 15

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 Aranmula 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 *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*[16] (*Lafarge*) 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 Nongtrai Village, East Khasi Hills District, Meghalaya. EC was granted for the project in 2001. Pursuant to a letter by the Principal Chief Conservator of Forests to 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 Nongtrai 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 Nongtrai 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

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."

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 EC. The parameters in regard to the existence of substantial questions of law have hence been established in the classical or conventional sense of that expression.

J. ***Environmental Rule of Law***

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 alike[19]. The environmental rule of law seeks to address this gap.

144. The environmental rule of law provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace[19]. It imbues environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance[19]. 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,

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&isAllowe d=y>

contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights[19]. 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 rights[20]."

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 standard[21] to a standard based on freedoms[22]. 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.

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".

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&isAllowe d=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>

21 Bruntdland definition of Sustainable Development

22 Amartya Sen, "Sustainable Development and Our Responsibilities". Available at <http://www.comitatoscientifico.org/temi%20 SD/documents/SEN%20 Responsibility&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 Law[23] 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 thesis[24] 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 <://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:730202ce-f2c4-4d2f-9575-938a728fe82a>

(*iv*) Quality education;

(*v*) Gender equality;

(*vi*) Clean water and sanitation;

(*vii*) Affordable and clean energy;

(*viii*) Decent work and economic growth;

(*ix*) Industry, innovation and infrastructure;

(*x*) Reduced inequalities;

(*xi*) Sustainable cities and communities;

(*xii*) Sustainable consumption and production;

(*xiii*) Climate action;

(*xiv*) Protecting life below water;

(*xv*) Life on land;

(*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:

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 CO_2 increased by almost 50%.

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

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

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 Agreement[25] 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 commitments[26]:

(*i*) Greenhouse gas emission intensity of its gross domestic product will be reduced by 33-35% below 2005 levels by 2030;

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

(*iii*) An additional "carbon sink" of 2.5 to 3 billion tonnes of CO_2 equivalent through additional forest and tree cover will be created by 2030.

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 action[27] 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

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 1. Disclosures in Form 1 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

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.

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.
