

Next Date:
20/02/2023

636

BEFORE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO.102/2022(WZ)

BETWEEN

Sagar Kantilal Devre Applicant

Versus

State of Maharashtra Respondent
through Chief Secretary and 13
Others.

AFFIDAVIT BY RESPONDENT NO. 11
M/s. SARDAR CONCRETE

INDEX ON THE NEXT PAGE

Date: 17/02/2023

Place: Thane

Filed by:

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BE (Mechanical), ME (Industrial Management) VJTI Mumbai
Chartered Engineer, FIE, Arbitrator-IIE, LLM **ADVOCATE**

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CONTACT DETAILS OF PARTIES

BETWEEN

..... APPLICANTS

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Mulund (East), Mumbai – 400081
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Phone : 9819996048

VERSUS

..... RESPONDENTS

1. State of Maharashtra
through the Principle Secretary (Environment),
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E-mail : psec.env@maharashtra.gov.in
Phone : 022-2819517
2. Chairman
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E-mail : chairman@mpcb.gov.in
Phone : 022-24042418
3. Divisional Officer- Thane
Maharashtra Pollution Control Board,
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Near Gopala Ashram Hotel, Wagle Estate, Thane - 400604
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4. Municipal Corporation of Thane
through the Commissioner,
New Administrative Building, Chandan Wadi,
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Phone : 022-25336523

5. Office of the Chief Conservator of Forest (Territorial) Thane
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Near Ramdev Studio, Lodhadam,
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7. M/s Creative RMC
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randbinfraprojectpvtltd12@gmail.com
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11. **M/s Sardar Concrete,**
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Village-Maljipada. Tal-Vasai- Virar, Mumbai - 401208
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12. M/s New India RMC,
Near Ramdev Studio, Lodhadam
Mumbai- Ahmadabad highway no. 8
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E-mail : buconreadymixllp@gmail.com
Phone : 9920374769

13. M/s One Team RMC,
Near Ramdev Studio, Lodhadam
Mumbai- Ahmadabad highway no. 8
Village-Maljipada. Tal-Vasai- Virar, Mumbai - 401208
E-mail :
Phone :

14. M/s J Kumar Infra,
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Ghodbundar Road, Thane West, Thane - 400601
E-mail : rmk@jkumar.com
Phone : 9167224813

ABBREVIATIONS USED

Short	Full-form
AAQM	Ambient Air Quality Monitoring
CAAQMS	Continuous Ambient Air Quality Monitoring Station
CPCB	Central Pollution Control Board
CRZ	Coastal Regulation Zone
CTE	'Consent to Establish'
CTO	'Consent to Operate'
DC Rule	Development Control Regulations
DG	Deiseal Generated
EC	Environmental Clearance
ENV. DEPT	Environment Department
ESZ	Eco-Sensitive Zones
EPA	Environmental Protection Act
KM	Kilometre
m ²	square meter
MA	Miscellaneous Application
MCZMA	Maharashtra Coastal Zone Management Authority
MDRs	Major District Roads
MIDC	Maharashtra Industrial Development Corporation
µg/m ³	Micrograms per Cubic Meter; unit of Measurement
MMRDA	Mumbai Metropolitan Region Development Authority
MPCB	Maharashtra Pollution Control Board
MRSAC	Maharashtra Remote Sensing Application Centre
NGT	National Green Tribunal
NH	National Highway
NOC	No Objection Certificate
OA	Original Application

Short	Full-form
OM	Office Memorandum
PCB	Pollution Control Board
PIL	Public Interest Litigation
PM	Particulate Matter
PP	Project Proponent
R25	M25 is a grade of concrete mix
RCC	reinforced cement concrete
RMC	Ready Mixed Concrete
RTI	Right To Information
SEIAA	State Environmental Impact Assessment Authority
SRO	Sub Regional Officer
TMC	Thane Municipal Corporation
WP	Writ Petition
WZ	Western Zone

DIARY OF EVENTS

Sr.	Date (yy/mm/dd)	Activity / Particulars
1.	2018/12/04	MPCB Consent to Operate
2.	2019/07/19	MPCB Consent to Operate – Current permission
3.	2022/08/20	Cause of action first arose: – Complaint Notice under section 19(B) of EPA
4.	2022/08/20	Cause mentioned in the Original Application: - – Complaint Notice
5.	2022/12/28	MPCB Visit Report

MOST RESPECTFULLY SUBMITTED:

1. I, Kalpesh Shah, am working as Partner with Respondent No. 11 Sardar Concrete. (hereafter referred to as the **Respondent**). I have information from records and have perused the contents of the Original Application. I am authorized to file this affidavit for and on behalf of the respondent.

2. I deny all the allegations made by the Applicant. Those are false and incorrect. Nothing shall be construed as accepted simply because it was not responded to.

3. I have submitted the affidavit in reply on the basis of the information available at the moment. I crave leave to file the additional affidavit and rejoinder once the other respondents file their affidavit.

4. I say and submit that the Respondent has purchased the said unit from API Readymix. MPCB issued closure directions to all RMC plants in the surrounding area as a carpet bombing on 02/04/2020. I am not aware of the made allegation and it is surprising that not a single communication was received from any Government Authority like MPCB or PS Environment Department of Maharashtra.

LIMITATION (PRELIMINARY OBJECTION)

5. I state and submit that the mentioned unit was functional from 01/01/2016 i.e., First Consent to Operate. There after Respondent has received the fresh consent to operate from MPCB with new name and existing capacity. Which is valid till 31/07/2025 **[Ax. D ■]**. As such the cause of action has first arisen on 01/01/2016 when operation of unit started i.e., issuance of first consent to operate. This OA has been filed on 13/12/2022. **This is 2538 days (6 years and 11 month)** after the triggering of the cause. Hence it is hopelessly time barred.

6. While considering the point of limitation which decides the jurisdiction of this Hon'ble Tribunal, the only important thing is the relevant date that triggers the limitation. The merit of the case is not the issue at this stage. Assuming but not admitting, even if there is merit, then the remedy to that shall not be before this Hon'ble Tribunal. Applicant then missed the bus.

7. I state and submit that the delay has not been admitted by the applicant. There is no prayer explaining how the applicant was prevented from applying in time. The condonation of delay is not a matter of right. Once the delay period is over, then Hon'ble Tribunal can't condone the delay beyond

what has been permitted in the Act.

8. Applicant has made Application as per the provision of s19(b) of the Environmental Protection Act and followed the limitation of 60 days from the issued notice. But this submission made by the applicant is not qualifying the criteria of s14 of the NGT Act 2010. Notice under s. 19(b) is required for lodging the criminal prosecution in the criminal court and not in the Hon'ble Tribunal.

The National Green Tribunal Act, 2010: s14:

.....

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

JUDGEMENT ON LIMITATION (EXTRACTS)

9. Hon'ble NGT Principal Bench Order: In matter no. OA No.31/2020 (Shashikant Kamble V/s M/s Embassy Property Development Pvt Ltd), the Hon. Principal Bench of the NGT has upheld the objection of limitation and dismissed the application as no part of the cause of action had arisen within five years prior to the filing of OA. **[Ax. E ■ : NGT Order dated 10/02/2022]**. I say and submit that the Hon'ble Tribunal has no power to condone the delay

beyond the limitation period.

Page: 2 Para: 5,6 & 7

“5. The PP has filed a reply inter alia raising the plea of limitation. It is submitted that no part of cause of action has arisen within five years prior to filing of the OA. No continued violation pointed out. Thus, the Tribunal cannot entertain the application beyond statutory limitation.

6. We have heard learned counsel for the parties.

7. We find that the petition was filed on 04.02.2020 and no cause of action in five years preceding the filing of OA has been pleaded. In view of the above, we uphold the objection of limitation and dismiss the application. I.A. No. 136/2020 also stands disposed of.”

10. Hon’ble NGT Western Zone Bench Judgment: MA 74/2015 in OA 10/2014(WZ) Lakhan Musafir V/s Sardar Sarovar Narmada Nigam Ltd.: (s.14 is to be read with s.15 and 18, jointly) **[Ax. A ■]**

Page: 38, Para: 27 of the Judgement:

“Coming to Sub-clause (3) of Section 15, it is manifest that any Application for grant of compensation or relief or restitution of property, or environment under Section, can be entertained by the Tribunal only if it is made within period of five (5) years from the date on which cause of

action for such compensation or relief first arose. Here is the distinguishing line between Sub-Section (1) of Section 14 and Sub-section (3) of Section 15 of the NGT Act, 2010. While Section 14 (3) governs domain of “adjudication of dispute arising out of implementation of enactments specified in Schedule-I, or any substantial question relating to environment and then the limitation period would trigger from date on which cause of action for ‘such dispute’ arose first”. Sub-section (3) of Section 15, relates to limitation period of five (5) years in respect of cause for such “compensation or relief” whatever it may be, first arose. There is much difference between process of adjudication of dispute and process of making provision for grant of relief or restitution of property/environment. In our opinion, Section 15 of the NGT Act, 2010, gives discretion to the Tribunal to provide for relief and compensation to victims of pollution, restitution of property damaged due to degradation of environment for such area etc. Needless to say, reliefs sought under Section 15, are not required to be mandatorily granted unless and until adjudication of dispute under Section 14, is completed. For example, compensation to victims of pollution cannot be contemplated unless and until the dispute regarding environmental question arising out of implementation of

enactments specified in Schedule-I, or legal right pertaining to violation of mandate of environment is settled, which could show that such Applicant is victim of any violation of enactments specified in Schedule-I, of the NGT Act, 2010, or that it is clear case of an accident, admittedly being result of environmentally adverse impact. In other words, Section 15, cannot be isolated from Section 14 and Section 18 of the NGT Act. All these provisions will have to be considered together.”

Page: 50, Para: 33 of the Judgment

“We are aware that this Tribunal is not bound by procedure laid down by the code of Civil Procedure, 1908, but shall be guided by the under principles of natural justice, as provided under Section 19(1) of the NGT Act, 2010. At the same time, Sub-Section (4) of section 19, gives power to the Tribunal which indicate that the NGT has all trappings of “Civil Court”. The power to restitute a property under the code of Civil Procedure, 1908, is provided under Section 144, which reads:

“Section 144

144. Application for Restoration.-(1) Where and in so far as a decree [or an order] is [varied or reversed in any appeal, revision or other

proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree [or order] or [such part thereof as has been varied, reversed, set aside or modified]; and, for this purpose, the Court may make any orders, including orders for the refund, which are properly [consequential on such variation, reversal, setting aside or modification of the decree or order].

[Explanation- *For the purposes of sub-section (1) the expression “Court which passed the decree or order’ shall be deemed to include-*

- (a)** *Where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdictions, the Court of first instance;*
- (b)** *Where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;*
- (c)** *Where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were*

instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]

2. No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)”

Perusal of Section 144 of Civil Procedure Code, 1908, reveals that restitution depends upon final outcome of adjudicatory process. It would also depend upon any variance or subsequent orders passed in the Appeal. The adjudicatory process is, therefore, pre-condition, may be either interim adjudicatory process or final one, but prior to adjudicatory of dispute, the order for restitution in Application under section 15 read with Section 18, in our opinion, per-se, may not be within legal domain, having regard to scheme of Chapter-III of the NGT Act, 2010.

11. Hon’ble NGT Western Bench Order: In matter no. OA No.63/2019 (Ajay Jayvantrao Bhosale Vs. Union of India through MoEF&CC & Ors.), the Hon’ble Bench of the NGT has upheld the objection of limitation and dismissed the application. **[Ax. G ■: NGT Order dated 01/12/2022].**

Page: 10, Para: 19 & 20 of the Order

19. We are not inclined to accept this argument

because according to his pleading, he had full knowledge in the year 2011 itself when the construction had started. The pretext of having come to know about this project being constructed through RTI on a later date as stated above appears to be only in order to bring the present Original Application within limitation period. We agree with the learned Counsel for the Project Proponent (PP) that it is very easy for any person to use RTI to seek information for any project on any date chosen by him. We are of the considered opinion that such kind of practice cannot be allowed. We are not inclined to accept the argument made by the learned Counsel for the Applicant in Original Application and are convinced with the argument raised by the learned Counsel for the Respondent No. 11/Project Proponent. We find that this Original Application is time barred, hence this Original Application stands dismissed as time barred. 20. All connected I.A.s also stand disposed of

I say and submit that the Hon'ble Tribunal has no power to condone the delay beyond the limitation period.

PLURAL OF CAUSES

12. I state and submit that one single application can raise only one single cause of action, as specifically prohibited in Rule 14. The applicant may

file a fresh application OR amended application, as desired by him. This application has raised many causes, which can't be entertained in one application. Hence the application will have to be outright rejected on this ground alone.

BONAFIDES OF APPLICANT

13. I state and submit that Hon'ble Supreme Court has directed that the Hon'ble National Green Tribunal must verify the bonafide of the applicant in the matters filed before them. **[Ax. F ■]**.

14. This application is of the nature of PIL. The applicant is not staying anywhere nearby. The applicant is staying approximately 28 km away from the site. The applicant is not personally affected by the operations of the respondent. The applicant has not suffered any injury, damage, or loss.

15. I state and submit that the nearest residential area OR populated area is approximately 1.5 km away from the site. In the last 6 years, none have complained about the operations.

THERE IS NO 'SUBSTANTIAL QUESTION RELATED TO ENVIRONMENT' AS DEFINED IN 2(M)

16. I state and submit that the 'National Green Tribunal Act 2010' has very clearly and in detail

defined what the 'substantial question related to the environment' in Clause 2(m).

There is no direct violation of the statute. There is no measurable damage to public health. The operations are not affecting the public at large.

ENVIRONMENTAL REGIME FOR ON-SITE CONCRETE MIXING

17. All construction activities need cement concrete. Irrespective of construction area, the concrete is prepared on-site by mixing cement, sand, and gravel aggregate with water. In the M25 grade of concrete (having crushing strength of 25 kg/cm², the cement mortar mix ratio is (1:1:2), consisting of one part cement, one part sand, and two parts aggregate. Water: Cement ratio is 0.38.

18. All the above ingredient material is procured on-site. The mixer has to be powered by Diesel Engine on site, which will generate noise and emissions. These DG sets are part of the concrete mixer and hence do not require separate PCB approvals. In the city area construction of major projects has to be done at night time and hence the operation of such mixers on-site is not an environmentally sound practice. The on-site mixing of cement, sand, and gravel occupies space, causing trouble to nearby passers and residents. The leftover

material spreads on the pavements or roads and is not often collected back by the sub-contractor. The crew of workers on-site doesn't have basic civic amenities, toilets, area to wash and eat.



19. However, if this entire polluting activity has done on-site, even when done during the day-time obstructing the passers-by/ traffic/ schools/ hospitals/ ESZ, doesn't need any 'Consent to Establish' OR 'Consent to Operate' OR NOC or permission. Currently, this is not covered by the environmental regime. If the area of the project is <math><20,000\text{ m}^2</math>, then such project also doesn't need Consent from MPCB or an EC from SEIAA. This mixing of the on-site concrete can be done, without any separate Consent OR EC.

RMC PLANTS

20. This activity was not there in CPCB list of industries till 07/03/2016. This activity is classified as a **GREEN** industry, i.e., having low pollution potential. It is categorized as Sr. No. 37 Ready mix cement concrete as per the CPCB guideline name as a 'Harmonisation and Categorisation of the industrial sectors under Red/ Orange/ Green/ White categories' dated 07/03/2016. **[Ax. B ■]**

21. RMC plants, on the other hand, are away from residential areas. They have sufficient vacant land to store the raw material ingredients. The workforce has civic amenities. Noise, Air pollution, water utilization, and spill over pollution are controlled and curtailed.

22. I state and submit that the Respondent started the unit after valid permissions from MPCB and concerned authorities. Respondent received the consent to operate on 19/07/2019 which is valid till 31/07/2025. As I stated above Respondent industry is mentioned as a GREEN CATEGORY industry per the CPCB guidelines which shows that there is very low or NIL pollution potential for this type of industry.

23. I state and submit that the Respondent himself operating the alleged unit for more than 3 years and previously it was operated for 3 more years. but Respondent has not received a single complaint from the neighborhood against the operation of this unit or not a single complaint was filed before MPCB or any other authority. Respondent already submit the ted required documents to MPCB and has valid consent for the alleged activity or unit.

24. I say and submit that the Respondent unit is a commercial unit with a small capacity of 60000 m³/A only. The operation of the unit is very limited and

demand base. The operation of the unit is only in the day time i.e., up to 6 pm. Respondent has complied with all the conditions and guidelines prescribed by the MPCB. Therefore, the pollution level is very low or almost NIL.

25. I state and submit that the plant is a commercial plant, supplying 60% material to private buyers and 40% to government projects. But Respondent operating the plant as per the guidelines prescribed by the MPCB in the issued consent to operate.

MAIN ALLEGATIONS IN OA

26. I state and submit that the main allegations and averments are on the following points. **These are without any supportive data of their own.** The applicant making such allegations and raising 'substantial question related to the environment' must discharge its primary onus by giving some tangible material and verified data. Else, Hon'ble Tribunal can be flooded with such frivolous applications. Such allegations are of generic nature and are not related to our operations. Moreover, these are all of the nature of non-compliance with the conditions of consent.

27. This is not a standalone commercial RMC plant. This is part and parcel of the project activity that has

comprehensive EC and Consent. Even then, all the norms that are applicable to the RMC plant and good environmental practices are being followed by the respondent. Pointwise reply to the Allegations;

Allegation Page No.5, Point 1.1

Illegal running of the RMC plants.

■ **REPLY:** Respondent having valid consent to operate from MPCB on 19/07/2019 which is valid till 31/07/2025.

Allegation Page No.6, Point No.1.1

No statutory permissions from Thane Municipal Corporation.

■ **REPLY:** Respondent having valid permission from local body i.e., Grampanchayat. Respondent's unit is situated on his own leased land.

Allegation Page No.7, Point No.1.3

Provisions and norms of RMC guidelines are violated

■ **REPLY:** Respondent is complying with all the RMC

guidelines.

Allegation Page No.12, Point No.2.1.1

The unauthorized filling and destruction of mangroves were done in Protected Forest and CRZ-I to destroy the mangrove.

■ **REPLY:** This is a vague allegation Respondent unit does not come under CRZ-I Or protected forest. There is no presence of the mangroves. Alleged location is coming under the jurisdiction of the Gram Panchayat and the Respondent has already received permission for the establishment of the RMC unit. Respondent also wants to clarify that there is not the destruction of the mangroves or no filling activity carried out by Respondent.

Allegation Page No.12, Point No.2.1.2

Violations of provisions of the Water Act, 1974, and Air Act, 1981.

■ **REPLY:** Respondent neither violated the Water (P&CP) Act 1974 nor the Air (P&CP) Act 1981. Whereas MPCB issued the consent to operate to Respondent to carry out the operation of the said unit. Applicant has neither described the violated

condition nor produced any proof supporting to his allegation. The made allegations are vague and generic.

Allegation Page No.12, Point No.2.1.3

No water sprinklers or industrial vacuum cleaners are installed at RMCs plants.

■ **REPLY:** Respondent has provided the water sprinklers and dust collection system.

Allegation Page No.12, Point No.2.1.3

No two-level tyre washing facility is available.

■ **REPLY:** Respondent has provided a Two-level tire washing facility.

Allegation Page No.12, Point No.2.1.3

The internal premises is not concreted or asphalted.

■ **REPLY:** Internal roads are made up by concrete.

Allegation Page No.12, Point No.2.1.3

No tree plantation in the premise.

■ **REPLY:** Respondent has planted ample trees inside the premise as per the direction of MPCB consent. Responded has planted trees near the main gate.

ALLEGATION VERIFICATION BY MPCB:

As per the direction of this Hon'ble Tribunal dated 12/12/2022 Respondent no. 3 (RO MPCB, Thane) inspected the site and verified the allegations made by the applicant. MPCB concluded that Respondent no. 11 complied with all the conditions imposed by MPCB through the 'Consent to Operate'. MPCB submitted this fact before this bench through a reply affidavit dated 09/01/2023.

Remark: 'Complied with consent conditions'

PRAYERS IN OA

28. The following are the main prayers in the OA.

- [A] Order an inquiry through Joint Committee consisting of officers of the Env. Dept., MPCB, TMC. To inspect the site and issue the closure directions with a Compensatory penalty as per assessment.
- [B] Pending the hearing and final disposal of this Application. Forth wise seal, Stop, and foreclose all RMC plants

29. I state and submit that these RMC plant operations are to be supervised by the MPCB, which is the only prescribed statutory authority under the Water/Air Acts. They have the necessary infrastructure, technical staff, and expertise for the sampling and analysis of environmental samples.

30. I state and submit that such lawfully designated authorities can't be substituted by Committee. There is no special expertise required than that is available with the MPCB. If not, then the MPCB can always engage the experts as required. But the prayer of the nature of setting aside the statutory authority OR to form a committee without there being any need or provision of law, for setting aside the MPCB, is not an acceptable prayer.

31. The verification that needs to be done of the RMC facilities is mentioned in the Guidelines published by MPCB. Appointing a committee to inspect what MPCB has published, can be done only when MPCB is incapable, dysfunctional or not existing. This is not the case here.

NGT JURISDICTION & MPCB DUTY

32. The question involved in this application is NOT a substantial question relating to the environment. The issue is squarely falling under the Water (P& CP) Act 1974, Air (P& CP) Act 1981, and compliance with

the RMC Guidelines that are applicable to RMC plants. This is not a direct violation of any statute or statutory provision. This is simply a matter alleged of compliance and non-compliance to the Guidelines. The guidelines have to be flexible, if the situation so warrants, with proper justification to it. Such study and reasoning can be done only by the lawfully authorized statutory prescribed and constituted MPCB for this purpose.

FEES PAID FOR FORM-II

The applicants have NOT filed in any Form-II as specified under Schedule-II for seeking any 'relief, compensation, restitution'. The applicants himself have no claim or locus standi in relation to his personal grievance, injury, or health risk.

OTHER PENDING MATTERS

33. Respondent does not have any pending litigation related to this matter.

In light of the above submissions on the law points of limitation, wrong party name, and plural causes in one application prohibited by Rule 14, this application needs to be dismissed. Thereafter, if the application survives, so also on merit.

AND for this act of kindness, as duty bound shall ever pray.

For SARDAR CONCRETE

X 

PARTNER

Place: Thane

DEPONENT

Date: 16-Feb-23

Respondent No. _____

VERIFICATION & AFFIDAVIT

I KALPESH. JAYANTILAL. SHAH, age 44 years, resident of BORIVLI (WEST), MUMBAI. do

hereby verify that the contents of paras ___ to ___ are true to my personal knowledge and paras ___ to ___ are believed to be true on legal advice and that I have not suppressed any material fact. Further, the translation of it has been explained to me in brief. वरील अर्जाचा गोषवारा मला मराठीतून समजावून सांगितला व मला समजला, व तो मी सांगितल्यानुसार बरोबर आहे.

I have made the above affidavit on solemn affirmation and oath.

For SARDAR CONCRETE

X 

PARTNER

Place: Thane

Date: 17th -Feb-2023

DEPONENT

Identified by & signed before me:

Advocate Raghunath Mahabal Roll No. MAH/349/2012

For SARDAR CONCRETE



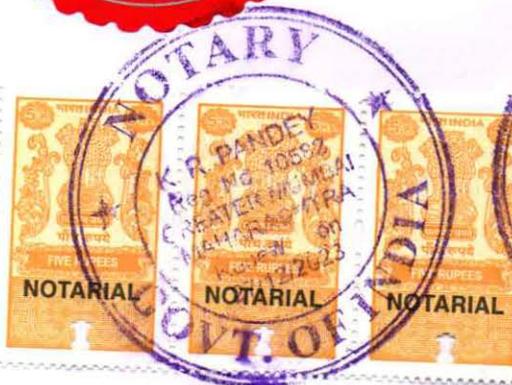
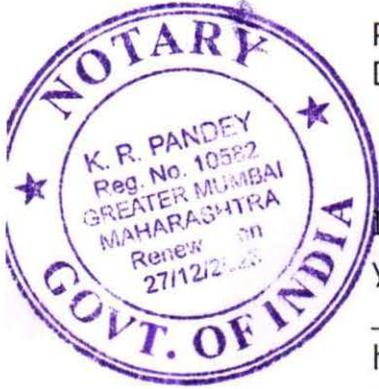
PARTNER

ATTESTED BY ME IN MUMBAI


K. R. PANDEY

Advocate High Court & Notary
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Mumbai - 400 066

7 FEB 2023



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

**MISC. APPLICATION NO. 74 OF 2015
(ARISING OUT OF APPLICATION NO.10 OF 2014)**

CORAM:

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(Judicial Member)
HON'BLE DR. AJAY A.DESHPANDE
(Expert Member)**

In the matter of:

1. LAKHAN MUSAFIR.

Village Umarva (Joshi),
Tal. Nandod, P.O. Gora Colony,
Dist. Narmada, Gujarat.

2. ROHIT PRAJAPATI.

37, Patrakar Colony, Tandalji Road,
Vadodara 390 020, Gujarat.

3. SAVITABEN GANPATBHAI TADVI.

Village Indravarna, Tal.Nandod,
Dist. Narmada, Gujarat.

4. MAVAJIBHAI JESANGBHAI TADVI.

Village Nana Piparia, Tal. Nandod,
Dist Narmada, Gujarat.

.....**APPLICANTS**

VERSUS

T.C.

1. SARDAR SAROVAR NARMADA NIGAM LIMITED,

Through Chairman, Block No.12,
New Sachivalaya,
Gandhinagar,
Gujarat-382 010.

2. THE STATE OF GUJARAT,

Through Chief Secretary,
Having his office at 1st Block,
3rd Floor, Sachivalaya,
Gandhinagar, Gujarat.

3. UNION OF INDIA,

Through the Secretary,
Ministry of Environment & Forest,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi-110 003.

4. THE CHAIRMAN,

Environment Sub Group of
Narmada Control Authority,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi-110 003.

5. UNION OF INDIA,

Through the Secretary,
Ministry of Social Justice and
Empowerment, Shastri Bhavan,
New Delhi-110 001.

6. THE CHAIRMAN,

R & R Sub-Group of
Narmada Control Authority,

Ministry of Social Justice and
Empowerment, Shastri Bhavan,
New Delhi-110 001.

7. UNION OF INDIA,

Through the Secretary,
Ministry of Water Resources,
Shram Shakti Bhavan, Rafi Marg,
Parliament Street, New Delhi-110 001.

8. THE CHAIRMAN,

Narmada Control Authority (NCA),
Shram Shakti Bhavan, Rafi Marg,
Parliament Street, New Delhi-110 001.

.....**RESPONDENTS**

Counsel for Applicant (s):

Mr. Mihir Desai Advocate a/w Lara Jesani, Avubha Rastogi, Neha Pathak, Mr. Asim Sarode, Alka Babaladi Advocates.

Counsel for Respondent (s):

**Mr. P.S. Narsimha, Additional Solicitor General,
Mr. Maninder Singh Additional Solicitor General,
Mr. Tushar Mehta Additional Solicitor General a/w
Mr Nirzar S. Desai, a/w Mr. Parth H. Bhatt, Mr. Nalin Kohli, Mr. Virrrar S. Desai Advocates for Respondent No.1.
Mr. Parth H. Bhatt, Adv a/w Mr. Nirzar Desai Advocates for Respondent No.2
Shweta Busar Adv holding for Mr. Ranjan Nehru Advocates for Respondent No.3.**

Mr. Krishna D. Ratnaparkhi Advocates for Respondent Nos. 5 to 8.

DATE : 1ST SEPTEMBER, 2015

JUDGMENT

1. Brief submissions put forth by way of objections regarding maintainability of the Application are certain material preliminary issues raised by the contesting Respondent Nos.1 and 2.

2. We may reproduce the preliminary objections raised on behalf of them, which are indicted in the Order dated March 3rd, 2015.

“Heard learned Counsel Mr. Mihir Desai for the Applicant, Mr. Maninder Singh and Mr. Tushar Mehta Additional Solicitor Generals for the Respondent No.1.

There are preliminary objections raised on behalf of Respondents. Preliminary objections are three (3):

i) That the Application is barred by limitation, if it is considered under Section 15 of the National Green Tribunal Act, 2010, along with Ss.14 (1) as well as 14(3), because extension of period under the Limitation Act, 1963, is impermissible since NGT Act, 2010 does not allow extension of limitation as per the Land Acquisition Act, 1963, being a special enactment and Section 33 of the NGT Act, gives overriding effect to the general Law.

ii) The Application is barred as the Applicants have no *locus standi* to file such Application for the reason that the Applicant Nos.1 and 2 either are busy bodies, who have no concern with the project in question or have no connection with result of the project, nor they are affected by the project, in any way and do not benefit within Section 15 of the NGT Act and other Applicants are beneficiaries, who are estopped from claiming any further relief due to their conduct.

iii) The Application is barred by the principle of “*Res-judicata*”, in view of Judgment of the Apex Court in ‘**Narmada Bachao Andolan**’, and other Judgments cited by them because the issue is covered by abovementioned Judgment and, therefore, now, there is no reason to separately deal with such issue to reconsider or allow the same to be re-agitated and legally decided.

Out of the preliminary objections, above preliminary objections have been argued by Mr. Tushar Mehata and Mr. Maninder Singh, Additional Solicitor Generals.

Mr. Mihir Desai, learned Advocate makes a statement that so far as question of limitation is concerned, the Application is filed under Ss. 14(1) and 14(3) of the NGT Act, and only if he can surmount difficulties regarding limitation for filing of such Application under Ss. 14(1) and 14(3) of the NGT Act, by showing this Tribunal that such Application is maintainable, then and then alone his Application may be considered for the relief which he is seeking i.e.

for restoration, or, else his Application under Section 15 for restoration will go away. In other words, if the Applicants would be able to show that the Application is filed within period of six (6) months and thereafter grace period of sixty (60) days, is available if satisfactory reason shown for extension of time, then this Tribunal may entertain the Application and may allow the Applicants to cross the hurdle, else, penultimate result would be that the Application would fail.

So far as question of locus standi is concerned, Mr. Mihir Desai, is yet to argue and make his stand clear as to whether his Application will be maintainable. He has yet to make submissions on third objection regarding Res-judicata. Learned ASG has submitted copies of the Judgments on question of Res-Judicata, in order to clarify third preliminary objection raised and would submit that the matter was directly and substantially in issue in previous proceedings, therefore, now the present Application is liable to be dismissed.

In this view of the matter, we would proceed further with the arguments of Mr. Mihir Desai. “

3. However, considering cumulative tenor of submissions put forth by Additional Solicitor Generals Sh. Narsimha Rao, Sh. Tushar Mehta and Sh. Maninder Singh, following points are set out as being the preliminary objections:

- i) Whether the Application cannot be entertained because of constitution of Narmada Control Authority (NCA) as controlling mechanism by Judgment of the *Narmada Bachao Andolan vs Union of India and Ors.*?
- ii) Whether the Application is barred by Limitation, because it does not fall within ambit of Section 15 read with Section 18 of the NGT Act, 2010?
- iii) Whether the Original Application is maintainable at the instance of the Applicant or liable to be dismissed, due to absence of '*locus standi*'?
- iv) Whether the Application is barred by principle of Res-judicata and, as such, is not maintainable in view of the principle underlying Explanation-IV of Section 11 of the Code of Civil Procedure, 1908?

POINT NO. (i):

Whether the Application cannot be entertained because of constitution of Narmada Control Authority (NCA) as controlling mechanism by

Judgment of the *Narmada Bachao Andolan vs Union of India and Ors.*?

4. The Applicants have filed the present Application seeking reliefs against the Respondents inter alia for staying/stopping ongoing construction at or in respect of Garudeshwar Weir, initiating legal action against the erring officers, individuals and companies that have started construction or given permission for construction of Garudeshwar Weir in contravention of the provisions of the Environment (Protection) Act, 1986 and Environmental Sub Group (ESG) and Relief and Rehabilitation Sub Group (RSG) of the Narmda Control Authority (NCA) and for restitution of the project area to *status quo ante*. It is the case of the Applicants that the Respondents have encroached construction in respect of the Garudeshwar Weir project, without having obtained environmental clearance, without having carried out any environmental impact assessment and/or without having undertaken any environmental safeguards and measures.

5. The Applicants submit that Garudeshwar Weir project is a project spread out over vast land tracts, which is irreversible in nature and is bound to lead to

the submergence, fully or partially, of 11 villages and affect directly or indirectly, about 11,000 villagers in Gujarat. The Garudeshwar Weir project is admittedly a Category 'A' Project under the Environment Impact Assessment Notification, 2006. The Garudeshwar Weir project will have significant social and environmental impacts, and would have the potential of affecting the fisheries in the upstream and downstream areas; and also, affect the river downstream and its biodiversity and other related aspects right up to sea. It is the case of the Applicants that no concrete plan or social impact assessment for the Garudeshwar Weir has been submitted by the Respondents prior to commencement of construction of Garudeshwar Weir. No environmental clearance has been obtained in respect of the Garudeshwar Weir project to date, and in any event, no environmental impact assessment or any other environmental safeguards and measures have been undertaken prior to commencing construction in respect of the Garudeshwar Weir Project.

6. We may, however, also state that prior to raising above three (3) specific preliminary objections, one of the preliminary objection was raised by

learned Additional Solicitor General Sh. P.S.Narsimha, during course of hearing dated December 23rd, 2014, on the ground that due to constitution of Narmda Controlling Authority (NCA) under directions of the Apex Court in case of **“Narmada Bachao Andolan vs Union of India and Ors“ (2000) 10 SCC 664**, all the relevant issues will have to be decided by the said Authority, which has exclusive jurisdiction to deal with relevant issues, stated in the present Application and hence, the National Green Tribunal (NGT), cannot entertain instant Application under Ss. 14,15 and 18 of the NGT Act, 2010. In other words, it was argued that jurisdiction of this Tribunal to entertain Application stands ousted due to establishment of NCA and as such, the main Application cannot be entertained at all.

7. So far as question of ouster of jurisdiction is concerned, learned Advocate Mihir Desai, appearing for the Applicants would submit that NCA has been established by the Govt. with a view to device grievances redressal system for States of Gujarat, Maharashtra and Madhya Pradesh. He would submit that Judgment of the Apex Court in **“Narmada Bachao Andolan”** (supra), does not bestow any

powers to the Tribunal viz. Narmada Sarovar Control Authority (NCA) to deal with 'settlement of environmental disputes', as provided under Section 14(1) of the NGT Act, 2010, but objective thereof is to ensure implementation of Resettlement and Rehabilitation (R & R) Policy, in three (3) States, namely, Gujarat, Maharashtra and Madhya Praesh. The above three (3) States were to get benefits of project as well as some of the families were likely to be affected by the project called "Sardar Sarovar Project" (SSP). He referred to paragraph (22) of Judgment of the Apex Court.

8. Countering arguments of Mr. Mihir Desai, learned Additional Solicitor General Sh. P.S. Narasimha, invited our attention to paragraph (174) of the Judgment (as referred in 'Manupatra'). It is stated in sub-para (7) of paragraph (174), that the authority was "to undertake any of the authority in the matter of resettlement and rehabilitation (R&R) pertaining to SSP and IPS". Taking cue from such statement in sub-para (7), it is argued that the statutory authority will have jurisdiction to decide which of the activities related to resettlement and rehabilitation are permissible and legal. In other words, restitution or compensation, as can be

considered, under Section 15 of the NGT Act, 2010, cannot be matter of decision making process that may be undertaken by this Tribunal. It is amply clear from the record that the Applicant No. 4 had filed proceedings claiming enhancement of compensation under provisions of the Land Acquisition Act, 1894, alleging that his lands were acquired for the purpose of “Garudeshwar Weir” in 1987. He was paid compensation by the District Court. Dissatisfied with the amount of compensation awarded, he approached the Hon’ble High Court of Gujarat, claiming more amount of compensation. He is beneficiary of acquisition of the lands. He is not legally entitled to claim relief of compensation, inasmuch as issue is already settled under the Land Acquisition Act, 1894 which is a special enactment. Nor he is entitled to restitution of the property, because once the land acquired by the Govt. under provisions of the Land Acquisition Act, 1894, the property stands transferred in favour of Govt. As regards the Applicant Nos.1 and 2, they are not person affected due to project in question. The question pertaining to “settlement of dispute” is different from the scope of Section 15 of the NGT Act, 2010. In this view of the matter, the jurisdictional issue raised by the learned

Additional Solicitor Sh. Narsimha Rao bears no ring of merit. We deem it fit to reject the objection in this context, and hold that the original Application is maintainable. Constitution of NCA, in our opinion, will not oust jurisdiction of the NGT in case of the Application falls within ambit of Section 14(1) of the NGT Act, 2010.

POINT No.(ii):

Whether the Application is barred by Limitation, because it does not fall within ambit of Section 15 read with Section 18 of the NGT Act, 2010?

9. We shall now proceed to deal with the objection as regards Limitation. According to contesting Respondent No.1, Garudeshwar Weir is an integral part and parcel of comprehensive project of SSP, which was envisaged a way back. The cause of action to file such Application could have arisen when project of SSP, inclusive of Garudeshwar Weir, was contemplated, planned and approved in or about 1985-86. The planning department of Gujarat Govt. was directed to execute the project vide letter dated October 5th, 1988, issued by Planning Commission, Yojana Bhawan, Sansad Marg, New Delhi. It is contended that agricultural lands were acquired

thereafter and compensation was paid to the said Project Affected Persons (PAP), including the Applicant Nos.3 and 4, as per the Award rendered under the Land Acquisition Act, 1894. The main project was inaugurated on April 5th, 1961. The land acquisition proceedings were commenced in 1987 by issuance of Notification under Section 4 of the Land Acquisition Act, 1894. So, the Applicants had full and clear knowledge regarding proposed project of Garudeshwar Weir, for which the lands were being acquired at the relevant time.

10. In order to describe nature of activities of Garudeshwar Weir, it is stated that the same is of much public significance, because it would enable reversible power generation at the underground power house units (6 Turbine) of 200MW each, (already constructed and commenced several years ago), which will enable production of maximum electricity under all conditions of water availability by use of reversible turbines. The water from Weir would be pumped back during night time for reversible use to run turbines through canal head power used at a higher elevation thereby generating additional power at peaking hours for the same quantity of water through river bed power house.

11. Chief bone of contention raised by the Respondent No.1, is that limitation period prescribed under Section 14(1) of the NGT Act, is only of six (6) months, in view of sub-clause (3) of Section 14. The period of limitation cannot be extended by the Tribunal, because the NGT Act, 2010, is a special enactment to which provisions of Limitation Act, 1963, are not applicable. The Application having not been filed within period of six (6) months from first day of alleged 'cause of action', which had arisen a way back, when Sardar Sarovar Project (SSP), was envisaged, or at all even, as alleged in the Application the work was allotted to M/s Ritwick Construction Pvt. Limited in 2012 then the limitation triggered because the original Applicants have come out with a case that they had knowledge of absence of environment impact assessment. It is contended that period of limitation is not of five (5) years, but is only of six (6) months, in view of Section 14(3), because, Section 15, does not apply to the fact situation.

12. Per contra, the Applicants allege that letter of Shri. Shekhar Singh, an individual Member of the Respondent No.4, i.e. Environmental Sub Group (ESG), brought on surface of the record illegalities regarding construction activities of Garudeshwar

Weir project. Therefore, the Applicants urged Respondents to stop construction activity at the site. Inaction of the Respondents to do so would give rise to the cause of action. The Applicants allege that construction in respect of Garudeshwar Weir project commenced only in the year September/October, 2013. So, until commencement of actual construction, they had no occasion to be alarmed about illegality of the project. The acquisition of lands for the project in the past could not give rise to cause of action, because such acquisition of lands had no bearing upon issue of knowledge regarding absence of required EC to the project in question. The Original Applicants would submit, therefore, that cause of action first arose when construction activity was illegally started by the Respondents. Reliance is placed on observations in "**Amit Maru vs The Secretary, MoEF and Ors**" (M.A. No.65/2014 in **Application No. 13 of 2014**), dated October 1st, 2014, delivered by this Bench and in the matter of "**Kehar Singh S/o Sh. Singhram vs. State of Haryana**" (**Application No.124/2013**) dated September 12th, 2013, delivered by Hon'ble Principal Bench of the NGT.

13. Nobody will deny that question of limitation is ordinarily, a mixed question of law and facts. The facts which are undisputed may be considered to deal with the issue before examining as to whether the Application would be maintainable within purview of Section 14 of the NGT Act, 2010. The Applicants have placed on record letter dated March 24th, 2013, issued by Sh. Shekhar Singh, who was the Member of ESG of Narmada Control Authority (NCA) -an Inter-State Administrative Authority. It appears that he gave his opinion that Garudeshwar Weir will have potential of stock of fisheries in the immediately surrounding areas and also in the area downstream river and its biodiversity and other relevant aspects. He made it clear that he had no knowledge as to how without assessment of cumulative environmental impact of the project and activities in the area, evaluation of bids for construction of Garudeshwar Weir were called for and the bidder M/s Rithwik Project Pvt. Ltd, Hyderabad was awarded the contractual work. He also made categorically clear that “I understand that subsequent to this decision, the work of construction of Garudeshwar Weir (GW) has been started on the ground”.

14. The above letter is the main plank of the Applicants based upon which the Applicant Nos.1 and 2, issued a letter dated 26th October, 2013, to the MoEF & CC. This letter dated 26th October, 2013, reiterates what Sh. Shekhar Singh opined and stated in his letter.

15. Now, it does appear that the Respondents have not produced any record to show as to what kind of response was given to above communication. The question herein is as to whether absence of response, if it is not given within reasonable time, can indefinitely extend period of limitation. Secondly, whether letter of Sh. Shekhar Sing, which was not in public domain, could trigger limitation for filing such an Application under Section 14(1) read with Section 18 of the NGT Act, 2010, is yet another question. So far as case of the Applicants is concerned, their averments in the Application may be reproduced as follows:

Limitation:

The Applicants herein are seeking stoppage of construction of Garudeshwar Weir which commenced only in October 2013 and are approaching this Hon'ble Tribunal within the limitation of 5 years as specified.

16. The averments made in the abovementioned paragraph clearly indicate that the Applicants laboured under impression that limitation of five (5) years, as specified under Section 15 of the NGT Act, 2010, could be availed by them, inasmuch as construction of Garudeshwar Weir had commenced only in October, 2013. They never came out with a case that they had no knowledge about absence of EC to the project of Garudeshwar Weir. Nor it is their case that because of absence of inaction on the part of Respondents/Authorities the period of limitation stands extended. As stated before, by order dated March 3rd, 2015, it is recorded that learned Advocate Sh. Mihir Desai, made a statement that so far as question of limitation is concerned, the Application is filed under Ss. 14(1), (3) of the NGT Act, 2010 and only if he can surmount difficulties, by showing this Tribunal that such Application is maintainable, then and then alone the Application may be considered for reliefs which he is seeking, namely, for restoration etc. or else, his Application under Section 15 for will go away. Obviously, it is essential to examine whether the Application is within limitation, as provided under Section 14(1) read with Section 14(3) of the NGT Act, 2010. We have already clarified that there is

no question of granting relief of compensation, because the affected owners of the lands have been paid such compensation under the Land Acquisition Act, 1894. Once such compensation is paid, there cannot be duality of granting the same relief in any other proceedings. There cannot be two opinion about legal position that the NGT Act, 2010, being a special enactment, the Tribunal has no power to extend period of limitation. There is plethora of case law on this legal aspect. We may only mention few of such cases viz (1) **Save Mon Region Federation vs Union of India & Ors** (M.A No. 104 of 2012 arising out of Appeal No.39 of 2012) as well as (2) **Medha Patkar vs MoEF & Ors Ors** (Appeal No.1 of 2013) and those others as discussed hereafter in paragraph 32 in the Judgment. We need not deal with each of the case law for want of avoiding reiteration of settled legal position in this behalf.

17. The scope of Section 14 (1) of the NGT Act, 2010, is to deal with “substantial question relating to environment”. These questions may include infringement / infraction of any legal right of a person relating to environment. The questions relating to environment, however, ought to be demonstrated, being in the category of

implementation of the enactments specified in Schedule-I of the NGT Act. The Applicants would submit that grounds to be put forth in the Application, fall within domain of the Environment (Protection) Act, 1986, which is shown in Schedule-I. The legal rights of the Applicants were allegedly trampled in or about September, 2013, when the actual work of Garudeshwar Weir started and they were alarmed after commencement of the work. It is not for the first time that they came to know about nature of Garudeshwar Weir project. They had already been well informed that Garudeshwar Weir project required acquisition of lands. In fact, agricultural lands of Applicant No. 4- Mavjibhai were acquired. He had contested the acquisition proceedings, had claimed more compensation and had fought for such claim up to the Hon'ble High Court. Thus, the Applicants had knowledge of potential implementation of Garudeshwar Weir project, which was in the offing. The knowledge could be traced back to 1978 or at least, till acquisition proceedings, which had commenced somewhere in 1997. There was no whisper at that time about legal rights relating to environmental issues arising out of the Environment (Protection) Act, 1986. The said Act

had already come into force when acquisition proceedings were initiated. The second occasion was when the construction of Garudeshwar Weir work was allotted to M/s Ritwick Construction Pvt. Ltd in 2012.. The Applicants have not mentioned date when actual construction at the site was noticed by them. It appears that instant Application was presented to this Tribunal on January 16th, 2014.

18. At this juncture, it is pertinent to note that the Environment (Protection) Act, 1986, came into force w.e.f. May 26th, 1986. Before the said enactment, the field was governed by a Notification issued by the MoEF & CC on January 27th, 1994. By virtue of the said Notification, certain restrictions were placed on expansion and modernization of activities of the new project, without obtaining EC, in accordance with S.O. No.80-© dated January 28th, 1993. Earlier, there were only internal guidelines of the MoEF. Needless to say, till commencement of the Environment (Protection) Act, 1986, and more particularly EIA Notification of January, 1994 no EC was required for any such project.

19. Perusal of record shows that Garudeshwar Weir was the project activity envisaged much before

the Environment (Protection) Act, 1986, came into force. Whether actual construction started was in 2013, is not of much significance. The very fact that since year 1997, the acquisition proceedings had started and that was well known to the Applicant Nos. 3 and 4 as well as other beneficiaries, go to show that the said project was an ongoing activity. The Apex Court in “**Goan Real Estate and Construction Ltd & Anr Vs Union of India**, Through the Secretary, Ministry of Finance & Forest and Ors, (W.P. (c) No.329 of 2008)” held that “subsequent change in legal position in that case viz “**Indian Council for Enviro Legal Action Vs. Union of India & Ors**”, (1996) 5 SCC 281), could not be applicable to “ongoing project and would not impact such ongoing activity which was already underway.”

20. So far as the project of Garudeshwar Weir is concerned, there is no dispute about the fact that it is being set up around 12kms downstream of Sardar Sarovar Dam situated in Narmda district (East Gujarat). The Applicants, named above, categorically state in the pleadings of instant Application as follows;

“In 1987 a conditional EC and in 1988 conditional planning commission EC was given to this Project. A copy of conditional EC is at Annexure-2 and a copy of conditional planning commission EC is at Annexure-3.....”

“The present Application is only concern with a small segment of this entire project. The main segment of Sardar Sarovar Dam has already been substantially constructed.”

“The original Sardar Sarovar Project (SSP), which got permission in 1987, did not concretely envisage this Weir, did not include assessment of social or environmental impact of this Garudeshwar Weir.....”

“While there may have been ideas at some stage a Weir may be constructed at Garudeshwar, the Environmental Authorities did not have power with them in the 1980’s, with any concrete plan or social impact assessment for this Weir, nor would be environmental impact and how much submergence would take place. This Weir is practically a separate project and not something which is covered by 1987 conditional EC.”

21. According to Applicants, in September, 2013, work in respect of this Dam (Garudeshwar Weir) started, and alarmed by this, the Applicants took various steps. They came to know that way back on

24th March, 2013, Sh. Shekhar Singh, an independent Member of Respondent No.4, of Sub-Committee had addressed a letter to the Chairman of the Respondent No.4, in which it was stated that issue pertaining to social impact of construction and operation of Garudeshwar Weir had not been brought before the Environmental Sub-Group (ESG) of NCA. The Applicants further aver that Garudeshwar Weir is a part of the power component of SSP in which Madhya Pradesh and Maharashtra have 57% and 27% share respectively, in both costs and benefits. Therefore, implementation of Garudeshwar Weir cannot be taken up without express consent from these States, which these States have not agreed with the way Gujarat has decided to go ahead. It is the case of Applicants that cause of action arose for filing of the Application only in October, 2013, and hence, they have approached the Tribunal within period of five (5) Years. Thus, it is their case that the Application is squarely covered by Section 15 of the NGT Act, 2010, and hence, limitation of five (5) years can be availed. The construction of Garudeshwar Weir, assuming for a moment, that it is a separate project, its work was allegedly undertaken in October, 2013. The Applicants have not mentioned any

particular date of knowledge as to when they noticed work of construction. However, in para (F) of the Application, it is stated that around March, 2012, it was decided to award contract to one bidder M/s Ritwik Project Pvt. Ltd, for construction of Garudeshwar Weir.

22. On behalf of Respondents, learned Additional Solicitor Generals contended that the Application is barred by limitation, in view of embargo specifically put on raising of dispute after period of six (6) months, under Section 14 (1) of the NGT Act, 2010. They argued that mere perception of Sh. Shekhar Singh, one of the independent Member of ESG in his letter dated 28th October, 2013, will not give rise to cause of action. They argued that Garudeshwar Weir is the part and parcel of SSP and hence, no separate permission/EC was required for the same. They further argued that when lands of affected persons, including the Applicant No. 4, were acquired in 1991, there was knowledge available to them about project activity of Garudeshwar Weir. Therefore, even after counting period of five (5) years from 1991, the Application would not come within ambit of Section 15 of the NGT Act, 2010. They would submit that only Section 14 of the NGT Act, 2010, is applicable

for settlement of dispute when it is raised and Section 15 of the NGT Act, 2010, is restricted to grant of certain reliefs, which would follow if dispute is favourably decided in which victim(s) of pollution and other environmental damage arising under the enactments specified in Schedule-I, of the NGT Act, 2010, would apply for such a relief. The reliefs under Section 15 of the NGT Act, 2010, are discretionary and would depend upon settlement of environmental dispute. According to submissions of learned Additional Solicitor General Sh. Tushar Mehta and Sh. Maninder Singh, when there is bar of Section 14(1) of the NGT Act, 2010, and hence, the Application under Section 15 also cannot be entertained, because, Section 14 of the NGT Act, 2010, ought to be conjointly read for making purposive interpretation thereof.

23. Per contra, learned Advocate Sh. Mihir Desai, placed reliance on the observations in “**Aradhana Bhargav & Anr Vs MoEF and Ors (Application No.11 of 2013) (NGT-MANU/GT/0077/2013)**”. He further relied upon “**Kehar Singh vs State of Haryana, (Application No.124 of 2013)**” decided by Hon’ble Principal Bench of the National Green Tribunal, New Delhi.

In the given case, Applicant **Kehar Singh** alleged that establishing Sewage Treatment Plant (STP), at the site in question was in contravention of the EC Notification. He further alleged that in case the STP is located near the residential colonies, religious place and agricultural lands, it may cause adverse impact on environment, including bacterial diseases, fungus, parasites, increase in noise levels and visual problems. The Hon'ble Bench held that:

“the NGT has original jurisdiction in terms of Section 14 of the NGT Act, in relation to substantial question relating to environment or enforcement of legal rights relating to environment, when it arises from implementation of one or more of Acts specified in Schedule-I, of the NGT Act, 2010”.

It is also held that:

“16. ‘Cause of action’, therefore, must be read in conjunction with and should take colour from the expression ‘such dispute’. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. ‘Such dispute’ has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate

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

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

17. *Upon analysis of the above judgments of the Supreme Court, it is clear that the factual situation that existed, the facts which are imperative for the applicant to state and prove that give him a right to obtain an order of the Tribunal, are the bundle of facts which will constitute 'cause of action'. This obviously means that*

those material facts and situations must have relevancy to the essentials or pre-requisites provided under the Act to claim the relief. Under the NGT Act, in order to establish the cause of action, pre-requisites are that the question must relate to environment or it should be a substantial question relating to environment or enforcement of any legal right relating to environment. If this is not satisfied, then the provisions of Section 14 of the NGT Act cannot be called in aid by the applicant to claim relief from the Tribunal. Such question must fall within the ambit of jurisdiction of the Tribunal i.e. it must arise from one of the legislations in Schedule I to the NGT Act or any other relevant provision of the NGT Act. For instance, the Tribunal would have no jurisdiction to determine any question relating to acquisition of land or compensation payable in that regard. However, it would have jurisdiction to award compensation for environmental degradation and for restoration of the property damaged. Thus, the cause of action has to have relevancy to the dispute sought to be raised, right to raise such dispute and the jurisdiction of the forum before which such dispute is sought to be raised.”

24. Learned Counsel Sh. Mihir Desai, seeks to rely upon “**Amit Maru vs The Secretary, MoEF and Ors. (M.A. No.65 of 2014 in Application No.13 of 2014).**” This Tribunal held that: “ ‘cause of action’ for environmental dispute could ‘first arose’ when knowledge of violation of norms was gained and it is referable to the term of ‘such dispute’ as used in

Section 14(1) of the NGT Act,2010". Thus, "there must exist substantial environmental dispute between the parties relating to enforcement of any act or legal right, available under Schedule-I, of the NGT Act, 2010, 'which dispute' ought to give rise to cause of action that had arisen for first time". It is contention of Sh. Mihir Desai, learned Advocate that in the instant case, when construction activity actually started in September, 2013, public members were alarmed and after enquiry they came to know about commencement of illegal project of Garudeshwar Weir. So, even if first cause of action is counted from September/October, 2013, the Application filed on 16.1.2014, is within period of limitation.

25. True, merits of the Applicants are not required to be considered at this stage. Still, however, *prima facie*, it would be essential to look into the Application to examine as to under which provisions, will it fall for the purpose of counting limitation.

26. Chapter-III of the NGT Act, 2010 deals with jurisdiction, powers and proceedings of the the Tribunal. We may reproduce relevant parts of Ss.

14,15, 16 and 18 of the NGT Act, 2010, for amplification of understanding the scope thereof. It would help us in interpreting purpose of these provisions placed under caption of Chapter-III, together.

Section 14 :

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

- 2) The Tribunal shall hear the disputes arising from the questions referred to in Sub-section (1) and settle such disputes and pass order thereon.
- 3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose.

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

Section 15:-

15. Relief, compensation and restitution:-

- (1) The Tribunal may, by an order, provide,-
- (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
 - (b) for restitution of property damaged;
 - (c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in Clauses (a), (b) and (c) of Sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose;

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

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

Section 16:-

“16. Tribunal to have appellate jurisdiction.—any person aggrieved by,-

- (a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);
- (e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);
- (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

- (g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);
- (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);
- (i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);
- (j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003);

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

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

Section 18:-

18. Application or appeal to Tribunal:

(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by—

- (a) the person, who has sustained the injury; or
- (b) the owner of the property to which the damage has been caused; or
- (c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or
- (d) any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or
- (e) any person aggrieved, including any representative body or organization; or
- (f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 or any other law for the time being in force;

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application;

Provided further that the person, the owner, the legal representative, agent, representative body or organization shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organization have preferred an appeal under section 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

27. Coming to Sub-clause (3) of Section 15, it is manifest that any Application for grant of compensation or relief or restitution of property, or environment under Section, can be entertained by the Tribunal only if it is made within period of five (5) years from the date on which cause of action for such compensation or relief first arose. Here is the distinguishing line between Sub-Section (1) of Section 14 and Sub-section (3) of Section 15 of the NGT Act, 2010. While Section 14 (3) governs domain of “adjudication of dispute arising out of implementation of enactments specified in Schedule-I, or any substantial question relating to environment and then the limitation period would trigger from date on which cause of action for ‘such dispute’ arose first”. Sub-section (3) of Section 15,

relates to limitation period of five (5) years in respect of cause for such “compensation or relief” whatever it may be, first arose. There is much difference between process of adjudication of dispute and process of making provision for grant of relief or restitution of property/environment. In our opinion, Section 15 of the NGT Act, 2010, gives discretion to the Tribunal to provide for relief and compensation to victims of pollution, restitution of property damaged due to degradation of environment for such area etc. Needless to say, reliefs sought under Section 15, are not required to be mandatorily granted unless and until adjudication of dispute under Section 14, is completed. For example, compensation to victims of pollution cannot be contemplated unless and until the dispute regarding environmental question arising out of implementation of enactments specified in Schedule-I, or legal right pertaining to violation of mandate of environment is settled, which could show that such Applicant is victim of any violation of enactments specified in Schedule-I, of the NGT Act, 2010, or that it is clear case of an accident, admittedly being result of environmentally adverse impact. In other words,

Section 15, cannot be isolated from Section 14 and Section 18 of the NGT Act. All these provisions will have to be considered together.

28. Normally, it was unessential to give extracts of relevant provisions enumerated in Chapter-III of the NGT Act, 2010, which provide for legal remedies in relation to environmental issues, may be pertaining to enforcement of any right claimed for relief or compensation etc. We have, however, reproduced these provisions in order to highlight Section 18 (1) of the NGT Act, 2010.

Section 18(1) of the NGT Act, 2010, mandates that the Application must contain relevant particulars and be accompanied by such documents, if it is so filed under Ss. 14 and 15 or be it an Appeal under Section 16 of the said Act. Obviously, Section 18(1) of the NGT Act, 2010, mandates as to how and in what manner the Application either under Section 14 or 15 or an Appeal under Section 16, can be filed to the Tribunal. Sub-clause (2) of Section 18, is rather important for the purpose of interpretation of nature of remedy, which can be considered under any Application filed to the Tribunal. Sub-clause

(2) of Section 18, carves out an exception, because opening words used therein are “without prejudice to the provisions contained in Section 16”. It follows, therefore, that filing of Application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by a person, who falls within a particular category stated in Sub-clauses (a) to (f) and it does not provide for filing of any Application for restitution of environment for such area or areas, as per discretion of the Tribunal. In other words, though settlement of dispute under Section 14(1) by adjudication of cause of such “substantial question relating to environment” is permissible by filing Application under Section 14 read with Section 18(1) and 18(2), yet, such is not the case with Application under Section 15 (1) read with Section 18(2) of the NGT Act, 2010, at least to the extent of restitution of property damaged or for restitution of environment for such area or areas, as per discretion of the Tribunal. The Application under Section 15 read with Section 18, may be filed for relief or compensation to the victim of pollution and other environmental damages arising under the enactments specified in Schedule-I (including

accident occurred while handling of any hazardous substance), within period of five (5) years from the date of on which 'cause of action' for such compensation or relief, first arose. In such a case, the meaning to expression 'cause of action' will be rather restrictive, inasmuch as it has to be read with rider provided in Section itself; namely; "from the date on which cause for compensation or relief first arise". The cause for compensation, obviously, refers to the cause of incident, which could trigger from date of incident accident or accidental negligence arising out of spillage of hazardous substance or environmental damage, the victimization of pollution, which is result of violation of the enactments specified in Schedule-I, of the NGT Act, 2010. We cannot read anything more when the purposive interpretation of all the provisions, if considered together, is required to be considered. Otherwise, it may open floodgate to bygone litigations. For example; take a case of landslide which occurred somewhere in 2009 i.e. prior to commencement of the NGT Act and Application under Section 15 read with Section 18 of the NGT Act, 2010, and only relief for restitution of environment is sought by filing Application

under Section 15 can such case lie within purview of Section 15, of the NGT Act, only because an Applicant approaches the Tribunal with a case that he gathered information about landslide on basis of internal communication between the Meteorological Department and the Ministry concern, before four (4) years for filing the Application. In such a case, entire scenario of environment could have gone substantial change which is many a times difficult to trace out and, restitution thereof is a difficult task. The co-relation between Ss. 14,15 and Section 18(1) of the NGT Act, 2010, would make it amply clear that where a relief for grant of compensation or damages caused to the property or where death as a result from the breach of environmental Law occurs an Application containing all such particulars can be filed by the person or representative of the deceased, within period of five (5) years, on date of which 'cause of action' for such compensation or relief, first arose. This provision about five (5) years Limitation appears to be analogous to the Limitatio under provisions of Section 166 of the Motor Vehicles Act. So, date on which any incident which could have resulted into injury to a person, death of a person,

due to environmental damage, damage to property, or relief, which can be granted in terms of money due to an accident arising out of spillage, discharge of effluent of hazardous substance, or any kind of loss of fertility as a result of such of pollution, due to act of contravention of enactments specified under the Acts mentioned in Schedule-I, of the NGT Act, 2010, will be date of such incident and cannot be any other date of “knowledge regarding grant of project activity or, absence of Environment Impact Assessment (EIA)”. Those subject matters are covered by the “precautionary principle” which are to be taken into account before any project work has to be commenced. Changing of nature of such project work will, therefore, come within ambit of only and only Section 14(1) read with Section 18(1) of the NGT Act, 2010, because it requires “settlement of dispute relating to substantial question of environment”

(Emphasis supplied)

Therefore, first cause of action for filing of such Application would trigger from date of knowledge of the project activity which may smack of illegal acts undertaken by the Project Proponent (PP). Herein,

the Applicants referred to communication of Sh. Shekhar Singh, a Member of ESG, dated March 24th, 2013, addressed to the Chairman of ESG. So, they gathered knowledge at least on March 24th, 2013, that project of Garudeshwar Weir was being carried out by Gujarat Government at the site, probably without assessment of environmental impact by the ESG. They also knew that it was a Sub-Group working under the NCA.

29. Conjoint reading of both the above provisions would make it amply clear that adjudication of dispute relating to environment must be the first priority in case the Application comes within domain of Section 14(1). The National Green Tribunal can exercise its jurisdiction in case adjudication of dispute under Sub-clause (1) of Section 14, is made within a period of six (6) months from the date on which cause of action for such dispute first arose. Substantial question relating to environment involved in the instant Application, is allegedly date of construction of Garudeshwar Weir without full feasibility report and social as well as environment impact report, being submitted during course of construction and operation of Garudeshwar Weir, submitted to the

Environment Sub-Groups (ESG). The main thrust of Applicants is on the letter dated 24th March, 2013, written by Sh. Shekhar Singh, a Member of ESG. (Annex-5). Perusal of the letter dated March 24th, 2013, reveals that Sh. Shekhar Singh categorically stated that he had no knowledge whether comprehensive assessment of environment and social impact of Garudeshwar Weir and its contribution to cumulative impact of all the projects and activities in the area was done. He, however, stated that if it had been so done, he did not believe that same was put up to ESGs for its approval. Obviously, approval of ESG for the project of Garudeshwar Weir was thought necessary. According to perception of Sh. Shekhar Singh, the Committee directed Govt. of Gujarat (GoG) to take further follow up actions and, therefore, construction work of Garudeshwar Weir has been started.

30. At the cost of repetition, we may point out that the applicants have vaguely averred that they came to know about the impugned project being carried out without comprehensive assessment of environment and social impact by the ESG. They have not, however, made it clear, in any manner,

whatsoever, how the letter dated 26th October, 2013, sent by Sh. Shekhar Singh, a Member of ESG to the Chairperson of ESG, was accessible to them. It is vaguely stated that the date of knowledge of letter was in October, 2013. How come such knowledge regarding official communication between Sh. Shekhar Singh and the Chairperson of ESG, was gathered by the Applicants, is rather intriguing and the Applicants did not clarify this aspect of the matter. They did not seek such information by submitting any Application under the R.T.I. Act, 2005. The statement of Applicants that limitation commences only in October, 2013, is not only vague, but is totally unacceptable, having regard to the fact that the words “in October, 2013” are subsequently added in the typed script of the Application. The effort of Applicants *prima facie* appear to be somehow or other to bring the Application within six (6) months period, so that it would come within ambit of Section 14 of the NGT Act, 2010. At this juncture, it is pertinent to note that here also is some misconception in the mind of Applicants. The Applicants have come out with a case that they were alarmed when the construction activity was

noticed by them somewhere in September, 2013. They categorically stated in the Application *“it further appears that around March 2012, it was decided to award the contract to one M/s Ritwik Project Pvt. Ltd, Hyderabad for amount of Rs.299.43 Crores for Garudeshwar Weir”*. It is explicit from such statement in the Application that they were well aware that the project work was to commence and contract was awarded to M/s Ritwik Project Pvt. Ltd, Hyderabad in March, 2012. This knowledge has absolutely no co-relation with subsequent internal department communication between Sh. Shekhar Singh and the Chairperson of ESG of NCA. Furthermore, it is not case of the Applicants that they in any way concerned with decision of NCA, which is the concerned Authority to decide the issues ventilated through the present Application. In other words, the Applicants have made statements which are inconsistent with each other and moreover, the date of knowledge regarding so called illegal activity alleged by them, is imaginary and carved out to benefit the Application within socket of Section 14 of the NGT Act, 2010, somehow or the other.

31. Apart from what is stated above, there is no scintilla of evidence that the work was allotted in March, 2012, the executing agency took such a long time to start the actual construction activity at the site. This is rather improbable.

32. Now, there may be some room to say that word "Restitution" is used in Section 15 read with Section 18 of the NGT Act, 2010 with some connotation and meaning, though it is conspicuously absent in Section 18. We are aware that the Dictionary meaning of words "Restoration" and "Restitution" have semblance. Law Lexicon, (Dr. Shakil Ahmed Khan, 3rd Edition, 2012) defines expression "Restoration" and "Restitution" amends as follows:

RESTORATION, RESTITUTION, REPARATION, AMENDS.

"Restoration of property may be made by any one whether the person taking it or not: *restitution* is supposed to be made by him who has been guilty of the injustice. The dethronement of a king may be the work of one set of men, and his *restoration* that of another, but it is the bounden duty of every individual who has committed any sort of injustice to another to make *restitution* to the utmost of his power. "*Restoration*" and "*Restitution*" are both

employed in the sense of undoing that which has been done to the injury of another, but the former respects only injuries that affect the property, and *reparation* those which affect a person in various ways. He who is guilty of theft, or fraud, must make *restitution* by either restoring the stolen articles or its full value; he who robs another of his good name, or does any injury to his person, has it not in his power so easily to make *reparation*. The term *reparation* comprehends all kinds of injuries, particularly those of a serious nature, the word *amends* is applied only to matters of inferior importance”.

33. We are aware that this Tribunal is not bound by procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, as provided under Section 19(1) of the NGT Act, 2010. At the same time, Sub-Section (4) of Section 19, gives power to the Tribunal which indicate that the NGT has all trappings of ‘Civil Court’. The power to restitute a property under the Code of Civil Procedure, 1908, is provided under Section 144, which reads:

“Section 144

144. Application for Restoration.-(1) Where and in so far as a decree [or an order] is [varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree [or order] or [such part thereof as has been varied, reversed, set aside or modified]; and, for this purpose, the Court may make any orders, including orders for the refund, which are properly [consequential on such variation, reversal, setting aside or modification of the decree or order].

[Explanation- For the purposes of sub-section (1) the expression “Court which passed the decree or order” shall be deemed to include—

(a) Where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) Where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) Where the Court of first instance has ceased to exist or has ceased to have jurisdiction to

execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]

2. No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)".

Perusal of Section 144 of Civil Procedure Code, 1908, reveals that restitution depends upon final outcome of adjudicatory process. It would also depend upon any variance or subsequent orders passed in the Appeal. The adjudicatory process is, therefore, pre-condition, may be either interim adjudicatory process or final one, but prior to adjudication of dispute, the order for restitution in Application under Section 15 read with Section 18, in our opinion, per-se, may not be within legal domain, having regard to scheme of Chapter-III of the NGT Act, 2010.

34. Before we would consider necessity of approval of ESG of Narmada Control Authority (NCA), it will be appropriate to refer certain observations of the Apex Court in "**Narmada Bachao Andolan vs Union of India**". While

concluding the Apex Court gave direction No.6, as under:

“Even though there has been substantial compliance with conditions imposed under the EC, the NCA and ESG, will continue to monitor and ensure that all steps are taken not only to project but to restore and improve environment.”

(Emphasis by us)

35. It follows, therefore, that functions of NCA and ESGs were not restricted to protect and restore and improve environment only in the area covered by SSP. It appears that for such a reason Sh. Shekhar Singh, wrote letter to the Chairman of ESG of the NCA and to the Secretary of MoEF. Taking cue therefrom similar letter was addressed by the Applicant Nos.1 and 2 to the MoEF and Chief Secretary of GoG as well as the Chairman of Sardar Sarovar Narmada Nigam Limited (SSNNL).

36. In the context of commencement of date of limitation, which first arose, giving rise to cause of action, the Applicants are required to explain as to how and when it had arisen and as to how come the Application is within prescribed period of limitation.

37. Unless these issues are crystalized and determined, mere issue of approaching the Tribunal for the purpose of restitution which also is vaguely referred in the Application, would be rather impermissible. It need not be reiterated that the Applicant Nos. 2 and 3 and likewise affected land owners of whose lands have been acquired for Garudeshwar Weir project had already received the compensation. They fought litigation up to the High Court level and never raised any substantial question relating to environment, under Section 14(1) of the NGT Act, 2010, before filing of the present Application. They cannot claim restoration of lands, which are already vested in the Govt. somewhere in 1991, as a result of acquisition proceedings under the Land Acquisition Act, 1894. For, those lands vested in State of Gujarat, which became owner of those lands in the eye of Law. A special Notification under the Land Acquisition Act, 1894, was issued vide No. LAQ(BHAL)/36/87(P260) dated May 18th, 1987, by the Additional Collector, (Narmada) Vadodara. Perusal of said Notification clearly shows that a further Notification dated 24th April, 1987, was issued whereby it was informed to owners of the lands at village Garudeshwar, in

district Bharuch, that lands Survey Nos. 295, 296 and 298, for purpose of acquisition so as to cause alignment of an approach road to Garudeshwar Weir site were acquired. The project of Garudeshwar Weir was, therefore, within knowledge of the persons likely to be affected due to acquisition of their lands. They never raised environmental dispute of any kind before filing of the Application. The Land Acquisition Act, 1894, is also a special enactment. The NGT Act, 2010, came on statute-book after many years of enforcement of the Land Acquisition Act and also the event of acquisition of lands for project of Garudeshwar Weir. We mean to say, even assuming that the Applicants could have any reason to raise environmental dispute by filing the Application under Section 14 of the NGT Act, 2010, cause of action is attributable to them, when in or about due to allotment of the construction work to M/s Ritwik Construction Pvt. Ltd, in 2012, they were alarmed and upon enquiry came to know about commencement of illegal project of Garudeshwar Weir. Needless to say, starting point of cause of action ought to have been shown in the Application and taking a worst case and assuming that

illegality of the project of Garudeshwar Weir came to knowledge of the Applicants, in or about 2012, the Application ought to have been filed within six (6) months thereafter as required under Section 14(3) of the NGT Act, 2010. Instant Application filed on 16.1.2014, is, in any case, much beyond prescribed period of six (6) months from the date on which cause of action for raising environmental dispute had first arisen.

38. Reliance of the Applicants on certain observations in **Kehar Singh vs. State of Haryana** (Application No.124 of 2013), decided by Principal Bench of NGT at New Delhi, is misplaced. A Five Member Bench headed by **Hon'ble Chairperson (Hon'ble Sh. Justice Swatanter Kumar)** categorically observed that term "cause of action" has to be understood in contradistinction to the nature of form of a suit. It is further observed that in the restricted sense cause of action means the circumstances of forming infraction of right of immediate occasion for action.

39. In "**Aradhana Bhargav & Anr Vs MoEF and Ors** (Application No.11 of 2013) a co-ordinate Bench of NGT, held that "a person who wishes to

invoke jurisdiction of the Tribunal or Court, has to be vigilant and conscious of his right and should not let the time to go by not taking appropriate steps. The principle of continuing cause of action is not applicable to the provisions of NGT Act, 2010". It is observed at the fag end of para-30

30. Equally so is the contention put forth by the applicants that the cause of action arose only on 04.11.2012, the date on which the applicants came to know about their right. Even assuming to be so, it cannot be countenanced in law. The application proceeds on the footing as if the applicants came to know about the project activities on 04.11.2012 when the applicant no. 2 was served with a letter on 05.11.2012. The above plea has to be negatived for more than one reason. The said letter dated 05.11.2012 by the Collector, Chhindwara to the applicant no. 2 marked as Exhibit A-1 reads as follows:

"Yesterday on 4th November, 2012, the Civil Work for the construction of the Dam in Bahnwada area of Chaurai Division. I received your letter dated 4th November, 2012 at the construction site. On points mentioned in the letter, I request that the construction of the dam in the Chhindwara District is being done by the State Administration for the benefit of the farmers. Water Resource Department has taken all the requisite permission for the implementation of the ambitious project. For your easy reference and perusal the copies of the letters received from the department is being made available with this letter....."

Nowhere ii is stated in the letter that construction work commenced on 4th-5th November, 2012. From the reading of the letter, it would be quite

clear that it was a reply to a letter given by the applicant no. 2 to the Collector, Chhindwara at the dam site. On query as to the non-production of the letter of applicant no. 2, a copy of the letter was produced at the time of arguments. The letter of applicant no. 2 would clearly indicate that the agitation in respect of the dam project was going on for a period of more than seven years. Admittedly, out of 5 applicants, a few are the residents of that area where the project was undertaken and the lands of a few of the applicants were also acquired by the State for the said purpose and proceedings in respect of the acquisition was pending from the time of acquisition in 1990. Under such circumstances, it would be futile on the part of the applicants to say that they came to know about the project and all necessary particulars thereon only from 05.11.2012, the date of reply by the Collector, Chhindwara.”

40. There is basic difference between substantive provision in the section of the Act, which specifies particular limitation and excludes provisions of the Limitation Act, 1963 and Rules of the Code of Civil Procedure. As stated before, the concept of ‘extent of limitatoin’ under the Limitation Act, 1963, is inapplicable to provisions of the NGT Act, 2010, inasmuch as it is a special statute. In **“Chhatisgarh State Electricity Board Vrs. Central Electricity Regulatory Authority and Ors (2010)5, S.C.C. 23”**, the Apex Court considered Section 125 of the Electricity Act 2003, along with Proviso appended thereto. The Apex Court held that *“limitation period provided under section 125*

is of 60 days and could be extended up to 60 days under Proviso to Section 125 but there is no provision in the said Act for extension beyond this period". It is held that "the Electricity Act is a special legislation which is excluded from purview of the Limitation Act, 1963 by virtue of Section 29 (2) of the Limitation Act and, therefore, Section 5 of the Limitation Act, cannot be invoked in relation to proceedings of the special enactment". It is, therefore. Obvious that this Tribunal has no power to extend period of limitation.

41. In "Gram Ppanchayat Tiroda & Anr vs MoEF & ors". This Bench also took similar view. The period of limitation of five (5) years will be available if the Application can be considered under Section 15(3) of the NGT Act, 2010. In our opinion, for filing of such Application under Sub-Clause (3) of Section 15, cause of action for compensation or relief will have to be read with Sub-clauses (4) and (5) of Section 15.

42. Initially, we were reluctant to take up the issue of Limitation and other issues for consideration. The question of limitation is a mixed question of facts and Law and ordinarily it has to be determined only when facts are very clear. Else, such an issue should not be taken up for decision at the outset. It is

pointed out by learned Additional Solicitor Generals, appearing for the Respondent No.1 that in case of **“Arun Agarwal vs Nagrika Exports (P) Ltd& Ors (2002) 10, SCC 101, (2) K. Sagar vs A. Bala Reddy & Anr (2008) 7, SC 166 and (3) M/s Reliance Infocom Ltd vs BSNL”** CM 1831/2005 in FAO (OS) 232/2004, the issue is thrashed out. In Reliance Info Co. Ltd. Vs BSNL, by order dated February 10th, 2005, the Hon’ble Delhi High Court held that *“it would decide the issue of jurisdiction/maintainability along with merits of the case”*. That order was challenged before the Apex Court. The Apex Court by Judgment dated 7.7.2006, CA, 2930, 2006 (**BSNL Vs Reliance Infocom Ltd**) was pleased to set aside the order of Hon’ble Delhi High Court. It has been held that *“such preliminary issue, shall be decided first, if it can be demonstrated that such preliminary decision would be essential in the facts and circumstances of the given case”*.

43. Perusal of the reliefs sought by the Applicants clearly indicate that mainly they seek injunction against commencement of construction work of Garudeshwar Weir. The prayers in the Application, thus, mainly purport to show that stoppage of any further construction in Garudeshwar Weir, is the main object (Prayer) of Application. The Applicants

incidentally say that actions may be taken against the officers, who have committed defaults in going ahead with construction work without following due compliance of the Environment (Protection) Act, 1986 and ESG and RSG of NCA before allowing commencement of construction. Obviously, grievance of the Applicants is that Clearance of the Environmental Sub Group (ESG) and NCA was essential before the construction work of Garudeshwar Weir could be commenced. In other words, the Applicants meekly surrendered to the authority of ESG as the proper authority to assess and approve downstream project of Garudeshwar Weir (G.W). It is *ipse-dixit* that communication of Sh. Shekhar Singh dated March 24th, 2013, addressed to Chairman Dr. V. Rajgopalan of ESG, gave them due alarm note. As a matter of fact, said communication was not placed in public domain. It was internal communication between the Members of ESG. We don't know as to how the Applicants could have access to the said communication and on basis thereof how could they affirm that there was no Clearance from ESG.

44. At this juncture, it would be appropriate to notice that meaning of expression 'Dam and Water

Works' is set out and considered in depth in case of **State of Andhra Pradesh vs. State of Maharashtra and Ors. (2013) 5 SCC 68**. The Apex Court observed as follows;

51.1. The same book with reference to Colwell v. May's Landing Water Power Co. 19. N.J.Eq. (4 C.E.Green) 245, 248, explains the word "dam" as follows:

The word "dam" is used in two different senses.

It properly means a structure raised to obstruct the flow of water in a river, but by well-settled usage it is often applied to designate the pond of water created by its obstruction. The word is used in this conventional sense in some statutes, and it is evidently used in this sense in a statute giving power to raise the "dam and water-works" to a height mentioned.

51.2. In the Indian Standard Glossary of Terms Relating to River Valley Projects, Part B, Dams and Dam Sections [First Revision], paragraph 2.27 explains "dam" as follows:

A barrier constructed across a river or natural watercourse for the purpose of: (a) impounding water or creating reservoir; (b) diverting water there from into a conduit or channel for power generation and or irrigation

purpose; (c) creating a head which can be used for generation of power; (d) improving river navigability; (e) retention of debris; (f) flood control; (g) domestic, municipal and industries; (h) preservation of wildlife and pisciculture, (j) recreation etc.

51.3. Glossary of irrigation and Hydro-Electric Terms and Standards Notations used in India, Third Edition, published by Central Board of Irrigation and Power, explains “dam” as under:

Dam: A structure erected to impound water in a reservoir or to create hydraulic head.

51.4. “Reservoir” is defined in the said publication as follows:

Reservoir: A pond, lake, or basin, either natural or artificial, for the storage, Regulation and control of water.

51.5. “Introduction to dams”, Publication No.220 by Central Board of Irrigation and Power under the Chapter “Dam Sites – Large Dams” with reference to book by J. Coton explains the position with regard to dam sites as under:

A dam is a structure meant to retain water. Only hydraulic dams are dealt with in this paper; when

it is question of other dams, it will be specified “Talling dam”, “industrial waste dam”.

1. Generally, this retention takes place in a natural dispersions. But it can also take place in an artificial enclosure created, for instance, by embankments set-up along the banks of a river.

Moreover, the enclosure can be fully artificial; this is the case of a basin filled by pumping, created on a plateau and closed by a ring embankment, in this case, we speak about an “embankment” rather than about a “dam”.

2. Generally, the dam is set-up on a river.

But it can be constructed in a dead valley where only a trickle of water flows; the reservoir is then filled by pumping and/or by gravity diversions.

It can also close a pass on the perimeter of a reservoir, it is then called “secondary dam” as opposed to “main dam” which closes the natural depression (living valley or dead valley).

3. The dam retains generally the upstream water, its purpose may be also to retain the downstream water for a few hours. That is, an exceptional tidal wave (anti-storm dam).

45. Along with affidavit of Applicant No.2 – Rohit, communication dated June 12th, 2014, (Annex-A) issued by R & R ESG of NCA, is placed on record. It appears that decision was taken in the Meeting dated June 27th, 2013, that phase-I proposal tilted as “construction of spillway Piers to full; Height and Bridge and Installation of Gates to be kept in raised position”, was approved by SJ &-E and the Chairman of R&R Sub Group of NCA. So also, communication dated March 29/30 1984, (Annex-D) filed along with affidavit of Rohit Prajapati -Applicant No.2, reveals that Sardar Sarovar Construction Advisory Committee (SSCAC), (Govt. of India, Ministry of Irrigation) granted specific approval to Garudeshwar Weir in following way:

- iv)** A tail-pool dam located at Garudeshwar Weir about 12.0Km downstream of Sardar Sarovar Dam with a live of storage capacity of 34.36 Moum (27857 Acft) between pond level + 33.15m (103.7ft) and +27.33m (+89.6ft). The recommendation was communicated to

all the concern authorities. The acquisition of lands was started in 1991.

46. The Applicants, in fact, pleaded in the Application- para V(b) and para V(l), which shows that Garudeshwar Weir is a power component of Sardar Sarovar Project (SSP) and they were aware about litigation pertaining to entire project, which was taken up to the Apex Court. It would not be out of place to reproduce certain averments from the pleadings, before the Apex Court in a Petition that was filed in the Writ Petition (Civil) No.314 of 1994 (**Narmada Bachao Andolan**) case.

“Far from preparing a master plan for resettlement and rehabilitation within two years from the Tribunal’s award i.e. by 1981, the authorities had still not been able to prepare such a master plan. Till today, the authorities are unaware of even the approximate number of persons who are going to be affected by the reservoir alone and have not done any proper survey to determine the number of persons who will be affected by other project related works such as canal, colony, Garudeshwar Weir (in the downstream meant for pumping back water at night after power generation), compensatory afforestation etc.

47. The pleadings which are reproduced above go to show that Garudeshwar Weir was considered as part and parcel of SSP. It was known to all concern persons when Garudeshwar Weir in the downstream

was meant for pumping back water at night, after power generation, compensatory afforestation etc. Thus, the very purpose of Garudeshwar Weir was to utilize the storage capacity of reservoir as a pumping station to provide water, which could be pumped back in the night time, for power generation. One of the prayers in that Writ Petition (**Narmada Bachao Andolan**) case was thus:

“To appoint independent members and representatives from outies organizations of statutory bodies like NCA, Sardar Sarovar Construction Advisory Committee (SSCAC) and Environmental Sub Group (ESG) etc.”

48. It is interesting to note that before Environment Impact Assessment (EIA) Notification dated September 14, 2006, the procedure was different in various respects. There was first EIA Notification, 1992, issued on 29.1.1992. The Notification of 1992 was followed by Environment Impact Assessment (EIA) Notification, 1994 that was further followed by Explanatory Note, regarding Environment Impact Assessment (EIA) Notification, 1992. Until 1994, however, EC from the Central Govt. was only of Administrative decision. It lacked

legislative support and did not mandate any kind of Environment Impact Assessment (EIA), as such. It is but natural that when SSP was in contemplation along with ancillary projects like Garudeshwar Weir only administrative decision could suffice the purpose, prior to 1994.

49. Sum and substance of discussion made above is that instant Application falls only within ambit of Section 14(1) of the NGT Act, 2010 and as such it is barred by limitation.

Point No. (iii) :

Whether the Original Application is maintainable at the instance of the Applicant or liable to be dismissed, due to absence of 'locus standi'?

50. It is submitted on behalf of the Respondent Nos.1 and 2 that the Applicant Nos.1 to 4, have no '*locus standi*' to file instant Application. Chief bone of their argument is that the Applicant No.4, has received compensation, when his land was acquired and as such, he is beneficiary of the project in question. Therefore, now, he cannot turn back and challenge Garudeshwar Weir project, when he has accepted compensation, challenged land acquisition

Award and also gained more compensation in the Appeal- proceedings before the Hon'ble High Court. The Applicant No.4, alone may be debarred from filing the Application on such a ground, in case, the Application is to be considered as covered under Section 15 of the NGT Act, 2010. For comparative purpose, the Applicant Nos. 1 and 2 were not required to file any Application before they noticed illegality of the alleged construction. In case of **Goa Foundation and Ors Vs. Union of India & Ors** (M.A.No.49 of 2013 in Application No.26 of 2012)

Principal Bench of NGT, New Delhi headed by **Hon'ble Sh.Justice Swatanter Kumar**, observed:

25. The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's The Law Lexicon supra describes this expression as 'when a person is given a right to raise a contest in a certain manner and his contention is negative,

he is a person aggrieved' [Ebrahim Aboodbakar v. Custodian General of Evacue Property, AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.

26. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case. It is not possible to give a meaning or define this expression with exactitude and precision. The Supreme Court, in the case of Bar Council of Maharashtra v. M.V. Dabholkar and Others AIR 1976 SC 242 held as under:-

"27. Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning

in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

28. The pertinent question is: what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the

advocates as well as the purity and dignity of the profession.

40. The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council: an executive capacity, in which it acts as the prosecutor through its Executive Committee, and a quasi-judicial function, which it performs through its Disciplinary Committee. If we can make this distinction, as I think we can, there is no merger between the prosecutor and the Judge here. If one may illustrate from another sphere case, there is no breach of a rule of natural justice. The prosecutor and the Judge could not be said to have the same personality or approach just because both of them represent different aspects or functions of the same State.

44. The short question is as to whether the State Bar Council is a 'person aggrieved' within the meaning of Section 38 so that it has locus standi to appeal to this Court against a decision of the Disciplinary Tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and, if left unchallenged, may frustrate the high obligation of maintaining standards of probity and purity and canons of correct professional conduct among the members of the Bar on its rolls.

47. Even in England, so well-known a Parliamentary draftsman as Francis Bennion has recently pleaded in the Manchester Guardian against incomprehensible law forgetting 'that it is fundamentally important in a free society that the law should be readily ascertainable and reasonably

clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights'. It is also needlessly expensive and wasteful. Reed Dickerson, the famous American Draftsman, said: It cost the Government and the public many millions of dollars annually'. The Renton Committee in England, has reported on drafting reform but it is unfortunate that India is unaware of this problem and in a post-Independence statute like the Advocates Act legislators should still get entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our Constitutional order.”

51. In order to keep judicial propriety and discipline, we deem it proper to go by logic enumerated above in dictum of Goa Foundation case. So, it goes without saying that the Applicant Nos. 1 to 3, may not be persons directly affected by Garudeshwar Weir project. It supposes that they have “interest in environment and desire to maintain required standard of environment in the area”. Such persons can ventilate grievances by filing Application under Section 14(1), in view of Section 2(h) as well as 2(j) of the NGT Act, 2010. The expression ‘aggrieved person’ is not restricted to person, who is entitled to appeal against any adverse order, but a term used in

juristic sense. Hence, objection regarding maintainability of the Application for want of '*locus standi*' of the Applicants, is rejected.

Point No. (iv) :

Whether the Application is barred by principle of Res-judicata and, as such, is not maintainable in view of the principle underlying Explanation-IV of Section 11 of the Code of Civil Procedure, 1908:

52. As far as objections pertaining to bar of 'Res-judicata' is concerned, Learned Additional Solicitor General Sh. Maninder Singh vehemently argued that the provisions of Section 11 of Explanation IV and Explanation VI of the Code of Civil Procedure, debar the Applicants to file instant Application, when issues were decided by the Apex Court in the earlier Public Interest Litigation (PIL), initiated by a group of persons, who opposed SSP. The issue regarding environmental impact on downstream project, which is part and parcel of the SSP, cannot be reinvestigated or re-agitated at the instance of any other persons, only for the reason that such persons are group comprising of those persons, interested in the project of Garudeshwar Weir, were not parties to the earlier litigation. He vehemently argued that filing

of instant Application by Mr. Lakhan Musafir and others, is no short of 'abuse of process of Court' and, as such, the main Application filed by latter group deserves outright dismissal at the threshold. He mainly seeks to rely upon certain observations in the case of "**State of Karnataka Vs All India Manufactures Organization & Ors**" (2006) 4, SCC, **683**, particularly, which are set out in paragraphs 32 to 40 thereof.

Res Judicata

".....32. Res Judicata Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim *nemo debet bis vexari pro una et eadem causa* (P. Ramannatha Aiyer, Advanced Law Lexicon (Vol3 3rd Edn. 2005) at p.3170) ("No one ought to be twice vexed for one and the same cause") and second, public policy that there ought to be an end to the same litigation. (Mulla, Code of Civil Procedure (Vol.1, 15th Edn, 1995) at p.94. It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "the CPC") is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the Section is not to be considered exhaustive of the general principle of law. (See, Kalipada De v. Dwijapada Das) The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to re-agitate the matter again and again. Section 11 of the CPC recognizes this principle and forbids a court

from trying any suit or issue, which is res judicata, recognizing both 'cause of action estoppel' and 'issue estoppel'. There are two issues that we need to consider, one, whether the doctrine of res judicata, as a matter of principle, can be applied to Public Interest Litigations and second, whether the issues and findings in Somashekar Reddy constitute res judicata for the present litigation.

33. Explanation VI to Section 11 states:

"Explanation VI. Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."

34. Explanation VI came up for consideration before this Court in Forward Construction Co. and Ors. v. Prabhat Mandal (Regd.). (Hereinafter "Forward Construction Co."). This Court held that in view of Explanation VI, it could not be disputed that Section 11 applies to Public Interest Litigation, as long as it is shown that the previous litigation was in public interest and not by way of private grievance. (Ibid at pp. 112-113 (paragraph 21) further, the previous litigation has to be a bona fide litigation in respect of a right which is common and is agitated in common with others. (Id)

35. As a matter of fact, in a Public Interest Litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bona fide, a judgment in a previous Public Interest Litigation would be a judgment in

rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised/should have been raised on an earlier occasion by way of a Public Interest Litigation. It cannot be doubted that the petitioner in Somashekar Reddy (supra) was acting bona fide. Further, we may note that, as a retired Chief Engineer, Somashekar Reddy had the special technical expertise to impugn the Project on the grounds that he did and so, he cannot be dismissed as a busybody. Thus, we are satisfied in principle that Somashekar Reddy(supra) , as a Public Interest Litigation, could bar the present litigation.

36. We will presently consider whether the issues and findings in Somashekar Reddy (supra) actually constitute res judicata for the present litigation. Section 11 of the CPC undoubtedly provides that only those matters that were "directly and substantially in issue" in the previous proceeding will constitute res judicata in the subsequent proceeding. Explanation III to Section 11 provides that for an issue to be res judicata it should have been raised by one party and expressly denied by the other:

Explanation III to Section 11 provides that for an issue to be res judicata it should have been raised by one party and expressly denied by the other: "Explanation III. The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other."

37. Further, Explanation IV to Section 11, states:

"Explanation IV. Any matter which might and ought to have been made ground defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

38. The spirit behind Explanation IV is brought out in the pithy words of Wigram, V.C. in Henderson v. Henderson (All ER pp.381 I-382A) as follows:

"The plea of res judicata applies, except in special case (sic), not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time." (Ibid. at pp.381-382).

39. In Greenhalgh v. Mallard (hereinafter "Greenhalgh"), Somervell L.J. observed thus:

"I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the Court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them."
(Ibid. at p.257)

40. The judgment in Greenhalgh (supra) was approvingly referred to by this Court in State of U.P. v. Nawab Hussain . Combining all these principles, a

Constitution Bench of this Court in Direct Recruit, Class II Engineering Officers' Association v. State of Maharashtra expounded on the principle laid down in Forward Construction Co. (supra) by holding that:

"An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had (sic) decided as incidental to or essentially connected with (sic) subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata. (Ibid. at .741 (paragraph 35) , per LM Sharma, J.) “

53. Learned Additional Solicitor General, Sh. Maninder Singh would submit, therefore, that though issue of Garudeshwar Weir was not separately and specifically referred to or mentioned being a component of SSP while delivering Judgment in case of ***Narmada Bachao Andolan***, by the Apex Court, yet, it cannot be overlooked that estimated cost of Garudeshwar Weir was included by the Planning Commission of India (PCI), in 1988, while

approving total estimated cost of SSP and moreover, there is reference to Garudeshwar Weir in the Judgment of the Apex Court, which impliedly goes to show consideration of such a project as part and parcel of SSP. Thus, it is vehemently argued that when during pendency of PIL before the Apex Court in ***Narmada Bachao Andolan*** case, group of the Applicants (Lakhan Musafir & Ors) never agitated issues pertaining to Garudeshwar Weir and environmental impact of SSP, vis-à-vis Garudeshwar Weir, nor it was conveyed before the Apex Court that Garudeshwar Weir, is a separate component and is not part of SSP, the original Applicants cannot be permitted now to raise such issues, inasmuch as the Judgment of the Apex Court in ***Narmada Bachao Andolan*** case. Learned Additional Solicitor General Sh. Maninder Singh also seeks to rely upon certain observations in the case of ***M. Nagbushana vs State of Kerala & Ors*** (2011) 3, SCC 408 and ***State of Tamil Nadu Vs State of Kerala & Ors*** (2014) 12 SCC 696.

54. We are called upon to consider the principle of “Public Trust doctrine” and “Precautionary Principle”. The Apex Court held that: “*Principle of Public Trust Doctrine has no application in the context of safety*”.

The Apex Court observed: “the contesting party, by applying ‘public trust doctrine’ or ‘precautionary measure’ cannot through legislation do an act in conflict with the judgment of the highest Court which has attained finality. If a legislation is found to have breached the established constitutional limitation such as separation of powers, it has to go and cannot be allowed to remain. It is true that the State’s sovereign interests provide the foundation of the public trust doctrine but the judicial function is also a very important sovereign function of the State and the foundation of the rule of law. The legislature cannot by invoking “public trust doctrine” or “precautionary principle” indirectly control the action of the courts and directly or indirectly set aside the authoritative and binding finding of fact by the Court, particularly, in situations where the executive branch (Government of the State) was a party in the litigation and the final judgment was delivered after hearing them.”

55. No doubt, the Apex Court further observed that “Rule of Res-judicata is not merely technical Rule, but is based on high public policy”. Much emphasis was led on observations in Paragraphs 168,170,174 and 175 of the Judgment in **State of Tamil Nadu Vs State of Kerala** (supra). For ready reference, these paragraphs may be quoted as follows:

168. Nanak Singh has been followed by a three Judge Bench of this Court in Bua Das Kaushal. In our view, the rule of res judicata which is founded on public policy prevents not only a new decision in the subsequent suit but also prevents new investigation. It prevents the defendant from setting up a plea in a subsequent suit which was decided between the parties in the previous proceedings. The legal position with regard to rule of res judicata is fairly well-settled that the decision on a matter in controversy in writ proceeding (Article 226 or Article 32 of the Constitution) operates as res judicata in subsequent suit on the same matters in controversy between the same parties. For the applicability of rule of res judicata it is not necessary that the decision in the previous suit must be the decision in the suit so as to operate as res judicata in a subsequent suit. A decision in previous proceeding, like under Article 32 or Article 226 of the Constitution, which is not a suit, will be binding on the parties in the subsequent suit on the principle of res judicata.

170. In light of the above legal position, if the 2006 judgment is seen, it becomes apparent that after considering the contentions of the parties and examining the reports of Expert Committee, this Court posed the issue for determination about the safety of the dam to increase the water level to 142 ft. and came to a categorical finding that the dam was safe for raising the water level to 142 ft. and, accordingly, in the concluding paragraph the Court disposed of the writ petition and the connected

matters by permitting the water level of Mullaperiyar dam being raised to 142 ft. and also permitted further strengthening of the dam as per the report of the Expert Committee appointed by the CWC. The review petition filed against the said decision was dismissed by this Court on 27.7.2006. The 2006 judgment having become final and binding, the issues decided in the said proceedings definitely operate as res judicata in the suit filed under Article 131 of the Constitution.

174. The rule of res judicata is articulated in Section 11 of the Code of Civil Procedure.

175. Explanations VII and VIII were inserted in the above provision by Code of Civil Procedure (Amendment) Act, 1976 w.e.f. 1.2.1977. Explanation VIII in this regard is quite relevant. The principles of res judicata, thus, have been made applicable to cases which are tried by Courts of limited jurisdiction. The decisions of the Courts of limited jurisdiction, insofar as such decisions are within the competence of the Courts of limited jurisdiction, operate as res judicata in a subsequent suit, although, the Court of limited jurisdiction that decided the previous suit may not be competent to try such subsequent suit or the suit in which such question is subsequently raised. If a decision of the Court of limited jurisdiction, which was within its competence, operates as res judicata in a subsequent suit even when the subsequent suit is not triable by

it, a fortiori, the decision of the highest Court of the land in whatever jurisdiction given on an issue which was directly raised, considered and decided must operate as res judicata in the subsequent suit triable exclusively by the highest Court under Article 131 of the Constitution. Any other view in this regard will be inconsistent with the high public policy and rule of law. The judgment of this Court directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question before this Court, though, label of jurisdiction is different.

56. We do not find it essential to discuss elaborately third case law cited by learned Additional Solicitor General, which, of course, is in keeping with same line of observations, which are in case of **State of Karnataka Vs All India Manufactures Organization & Ors**". There cannot be duality of opinion that the principle of "Constructive Res-judicata" would be applicable when any issue which is 'directly and substantially' involved in earlier litigation, is not agitated though could have been so pleaded/agitated and decision in the earlier litigation is rendered on such issue. A careful reading of observations in **State of Tamil Nadu Vs State of Kerala**, go to show that the principles of 'Res judicata' is made applicable to cases, which are tried by the Courts of limited jurisdiction. The plea of Res-

judicata cannot be considered in isolation and in generality as such, this is procedural defence, which ordinarily, is applicable when the issue is same and is decided by the Court, having same kind of jurisdiction, or, jurisdiction of higher level and identity of the parties is of similar nature. Obviously, there must be semblance of the parties, the issue of jurisdiction before embargo is to be directly or impliedly placed by invoking such defence under Section 11 of Explanation IV or VI of the Code of Civil Procedure, 1908. Admittedly, the present Applicants were not parties before the Apex Court in **Narmada Bachao Andolan** case. We have perused pleadings in the PIL Writ Petition No.319 of 1994, filed in the matter of **Narmada Bachao Andolan** case. The pleadings in the petition of said PIL, do not refer to issue of Garudeshwar Weir and Environmental Impact Assessment (EIA) thereof. The only statement made in paragraph 15, of the said petition is as follows:

“far from preparing a master plan for resettlement and rehabilitation within two (2) years from the Tribunal Award by 1981, the authorities had still not been able to prepare such master plan till today. The authorities are unaware of even the approximate number of persons, who are going to be affected by

the reservoir alone and have not done any proper survey to determine the number of persons, who will be affected by other project related work, such as Canal, Colony, Garudeshwar Weir, if in the downstream meant for pumping back the water at night after power generation, compensatory afforestation etc.”

In the earlier pleadings, it was only stated that

“there is no figure available as to how many families will be adversely affected by other national park and sanctuary proposals connected with this project, Garudeshwar Weir to be built downstream of SSP and other such necessary parts of the project”.

57. The prayers in that PIL Writ Petition were to issue Writ of Mandamus for stoppage of construction of SSP to appoint an independent body for implementation of R & R programme and to constitute appropriate NCA. It does not appear that specific issue regarding construction of Garudeshwar Weir, without EIA was raised in that petition. Mere fact that certain lands were acquired for implementation of Garudeshwar Weir will not by itself amount to raising of such an issue in the earlier litigation and any particular finding of the Apex Court in case of **Narmada Bachao Andolan**, notwithstanding certain **Obiter Dictas** which are referred by learned Additional Solicitor General Sh. Maninder Singh. It is pertinent to note that purpose

of Garudeshwar Weir is to pump water by pumping the same to the main reservoir of SSP during night hours for power generation and affected villages are only within State of Gujarat. The cost of Garudeshwar Weir was not to be shared by three States i.e. Madhya Pradesh, Maharashtra and Gujarat, as per proposal of SSP, which was approved by the Planning Commission of India. It, therefore, appears that estimates for both the projects were prepared exclusive for each project and not comprehensively as such.

58. Be that may as it is, it is not necessary to examine whether Garudeshwar Weir is part and parcel of SSP and, therefore, it separately requires EIA. This aspect may need examination on merits of the case. We are not supposed to enter into thicket of merits of the case on facts and above observations are only *prima facie* observations to show that the issue of Garudeshwar Weir was not directly and substantially the same, which was before the Apex Court in **Narmada Bachao Andolan** case.

59. In our opinion, Rule of 'Constructive Res judicata' in the facts and circumstances of the present case, would depend upon close examination of the facts on which findings will have to be rendered

before we would be able to deal with such preliminary question. In our opinion, if the issue requires 'construction' for the purpose of applicability of Rule of Res-judicata and that too on consideration of facts of a particular case, such issue should not be decided as a preliminary one. In **Ramesh Desai and Ors Vs Bipin Vadilal Mehta 2006 (5) SCC 638** the Apex Court held that "*mixed question of fact and law, cannot be determined as preliminary issue*". It is observed that "*where a decision on issue of law depends on facts, there it cannot be tried as preliminary issue*". In the given case, it was held that "question of limitation in the particular facts and circumstances of that case was mixed question of fact and law and, therefore, it was improper to decide the same as a preliminary issue".

60. The issues pertaining to environment are flexible. There cannot be strict embargo in respect of environmental issues, inasmuch as juxta position would go on changing due to lapse of time. For example; the forest land available at the time of commencement of project activity may be reduced to large extent at the time of its implementation after the EC. There may be a case where due to afforestation the forest canopy density would be more

than what was available at the time of EC as compared to that of the earlier. In other words, environmental issues are not static and decision may not be binding on the same parties if the issues are directly involved in the earlier litigation with different identity on findings of such issues.

61. In so far as powers of the National Green Tribunal are concerned, it may be mentioned that Section 19 of the NGT Act, 2010, give leverage to this Tribunal to mould/regulate its own procedure and makes it clear that it should not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice.

62. The words “shall not be bound” as used in Section 19(1) clearly indicate the intention of legislature in unambiguous words. The legislative mandate reveals that this Tribunal is not required to be under binding procedural Rules of the Code of Civil Procedure, 1908. The Apex Court in **V. Purushottam Rao Vs Union of India (2001) 10, SCC, 305** held that “*issue of ‘constructive Res judicata’ is excluded when the Code of Civil Procedure is not applicable to the proceedings under Article 226 of the Constitution, in view of Explanation appended to Section 141 of the Code of Civil*

Procedure". Therefore, it is held that Code of Civil Procedure is not required to be followed in a proceeding under Article 226, unless the High Court itself has made provisions of Civil Procedure Code, applicable to the proceedings under Article 226 of the Constitution. The Court further noted that "*the provisions of Section 11 as well as Order 2, Rule 2 of the Code of Civil Procedure, contemplate adversarial system of litigation where Court adjudicates the rights of the parties and determines issues arising in a given case*". The Public Interest Litigation (PIL), filed for ensuring interest of public, cannot be held to be an adversarial system of adjudication. Similarly, the Apex Court in **Rural Litigation Entitlement Kendra vs. State of U.P.** **1989 SUPP (1) SSC 504**, declined to Rule of 'Constructive Res judicata' to a PIL raising issues of public importance on the grounds that a PIL, the disputes raised were not of interested parties and that 'Constructive Res judicata' is a technical defence which could not preclude determination of said matter. The Apex Court further observed that

"even though, an earlier order could be treated as final one, then also in the dispute like PIL, it would be difficult to entertain 'plea of Res-judicata' "

(Emphasis supplied by us)

63. Considering the legal position discussed hereinabove, we are of the opinion that contentions of learned Additional Solicitor General Sh. Maninder Singh, are unacceptable. We do not accept the objections raised by the Respondent Nos.1 and 2 that the Application is barred by the principles of 'Constructive Res judicata' as envisaged under Section 11, Explanation IV and VI of the Code of Civil Procedure, 1908. The objection of such technical defence is, therefore, overruled.

64. In the result, the Misc. Application is allowed. We hold that the main Application No.10 of 2014, is barred by limitation. Hence, the Misc. Application is allowed and Application No.10 of 2014, is dismissed. No costs.

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

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

DATE: 1st SEPTEMBER, 2015.

PUNE.

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Final Document
on
Revised
Classification
of
Industrial Sectors
Under

Red, Orange, Green and White Categories
(February 29, 2016)



Central Pollution Control Board
Delhi

Executive Summary

Categorization of Industrial Sectors under Red, Orange, Green and White Category

The Ministry of Environment, Forest and Climate Change (MoEFCC) had brought out notifications in 1989, with the purpose of prohibition/ restriction of operations of certain industries to protect ecologically sensitive Doon Valley. The notification introduced the concept of categorization of industries as " Red", "Orange "and "Green" with the purpose of facilitating decisions related to location of these industries. Subsequently, the application of this concept was extended in other parts of the country not only for the purpose of location of industries, but also for the purpose of Consent management and formulation of norms related to surveillance / inspection of industries.

The concept of categorization of industries continued to evolve and as different State Pollution Control Boards interpreted it differently, a need arose to bring about necessary uniformity in its application across the country. In order to harmonize the 'Criteria of categorization', Directions were issued by CPCB under Section 18(1)(b) of the Water (Prevention & Control of Pollution) , Act, 1974 to all SPCBs/PCCs to maintain uniformity in categorization of industries as red, green and orange as per list finalized by CPCB, which identified 85 types of industrial sectors as 'Red', 73 industrial sectors as 'Orange' and 86 sectors as 'Green'.

The process of categorization thus far was primarily based on the size of the industries and consumption of resources. The pollution due to discharge of emissions & effluents and its likely impact on health was not considered as primary criteria. There was demand from the SPCBs / PCCs and industrial associations for categorization of the industrial sectors in a more transparent manner. Accordingly, the issue was discussed thoroughly during the national level conference of the Environment Ministers of the States, held in New Delhi during April 06-07, 2015 and a 'Working Group' comprising of the members from CPCB, APPCB, TNPCB, WBPCB, PPCB, MPPCB and Maharashtra PCB is constituted to revisit the criteria of categorization of industries and recommend measures for making the system transparent and rational.

The Working Group has developed the criteria of categorization of industrial sectors based on the Pollution Index which is a function of the emissions (air pollutants), effluents (water pollutants), hazardous wastes generated and consumption of resources. For this purpose the references are taken from the the Water (Prevention and Control of Pollution) Cess (Amendment) Act, 2003, Standards so far prescribed for various pollutants under Environment (Protection) Act , 1986 and Doon Valley Notification, 1989 issued by MoEFCC. The Pollution Index PI of any industrial sector is a number from 0 to 100 and the increasing value of PI denotes the increasing degree of pollution load from the industrial sector. Based on the series of brain storming sessions among CPCB, SPCBs and MoEFCC , the following criteria on 'Range of Pollution Index 'for the purpose of categorization of industrial sectors is finalized.

- Industrial Sectors having Pollution Index score of 60 and above – Red category
- Industrial Sectors having Pollution Index score of 41 to 59 –Orange category
- Industrial Sectors having Pollution Index score of 21 to 40 –Green category
- Industrial Sectors having Pollution Index score incl.&upto 20 –White category

The newly introduced White category of industries pertains to those industrial sectors which are practically non-polluting such as Biscuit trays etc. from rolled PVC sheet (using automatic vacuum forming machines), Cotton and woolen hosiers making (Dry process only without any dying/washing operation), Electric lamp (bulb) and CFL manufacturing by assembling only, Scientific and mathematical instrument manufacturing, Solar power generation through photovoltaic cell, wind power and mini hydel power (less than 25 MW).

The salient features of the ‘Re-categorization’ Exercise are as follows :

- Due importance has been given to relative pollution potential of the industrial sectors based on scientific criteria . Further, wherever possible, splitting of the industrial sectors is also considered based on the use of raw materials, manufacturing process adopted and in-turn pollutants expected to be generated.
- The Red category of industrial sectors would be 60.
- The Orange category of industrial sectors would be 83.
- The Green category of industrial sectors would be 63.
- Newly introduced White category contains 36 industrial sectors which are practically non-polluting.
- There shall be no necessity of obtaining the Consent to Operate” for White category of industries. An intimation to concerned SPCB / PCC shall suffice.
- No Red category of industries shall normally be permitted in the ecologically fragile area / protected area.

The purpose of categorization is to ensure that the industry is established in a manner which is consistent with the environmental objectives. The new criteria will prompt industrial sectors willing to adopt cleaner technologies, ultimately resulting in generation of fewer pollutants. Another feature of the new categorization system lies in facilitating self-assessment by industries as the subjectivity of earlier assessment has been eliminated. This ‘Re-categorization’ is a part of the efforts, policies and objective of present government to create a clean & transparent working environment in the country and promote the Ease of Doing Business.

Other similar efforts include installation of Continuous Online Emissions/ Effluent Monitoring Systems in the polluting industries, Revisiting of the CEPI (Comprehensive Environment Pollution Index) concept for assessment of polluted industrial clusters, Revision of existing industrial Emission/Effluent discharge standards, initiation of special drive on pollution control activities in Ganga River basin and many more in coming future.

Revised Criteria of Categorization of Industries

“Securing industrial pollution control in accordance with the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 by linking with categorization of industries, consent management and vigilance – ‘In context of Red, Orange, Green and White categories of industries”

A: Genesis of Categorization:

- The Ministry of Environment, Forest and Climate Change (MoEFCC) had brought out notifications, which inter-alia refers to Prohibition/ Restriction on operation of industries to protect ecologically sensitive areas or areas of specific importance. This has for the first time brought the concept of categorization of industries to “Red”, “Orange” and “Green” and restrict their operation in certain areas of importance. Therefore, it is at-once interpreted that Red, Orange and Green categorization is linked with location specific needs.
- The notification of MoEF was first brought on 2nd February, 1989 in case of “Restriction on location of industries, mining operations and other developmental activities in Doon Valley in “Uttarakhand” and thereafter another notification on 24th February 1999 regarding restriction on the setting up of industries in Dahanu Taluka in Maharashtra. The categorization had been made mainly on the basis of size of the industries, man power and consumption of resources.
- However, in other parts of the country, there have been variations in context to the classification of industries under Red, Orange and Green categories. SPCBs / PCCs were following their own criteria in different States thereby creating confusion.
- In order to harmonize the ‘Criteria of categorization’, a ‘Working Group’ was formed as per resolution passed during the 57th Conference of the Chairmen & Member Secretaries of CPCB and SPCBs. Based on the recommendations of the Working Group, Directions dated 4/6/2012 under Section 18(1)(b) of the Water

(Prevention & Control of Pollution), Act, 1974 were issued to all SPCBs/PCCs with the effects to maintain uniformity in categorization of industries as red, green and orange as per list finalized by the Working Group. This indicative list included 85 types of industrial sectors as 'Red', 73 industrial sectors as 'Orange' and 86 sectors as 'Green'. However, these identified categories have not been assigned with scores as per existing criteria/ or any new criteria

B: Categorization criteria used by SPCBs/PCCs:

SPCBs and PCCs use the criteria of Red, Orange and Green categories for consent management and vigilance purposes for carrying out inspections to verify compliance to the stipulated standards. However the above categorization do not emphasize on sector-specific plan for control of pollution in accordance with priority based on pollution index.

C: Gap in the process:

1. The categorization has been made mainly on the basis of size of the industries and consumption of resources. The pollution due to discharge of emissions & effluents and its impact on health was not considered as primary criteria.
2. Categorization was on random basis, no scoring system was adopted.

D: Resolutions made during National Level Conferences

The issue was discussed thoroughly during the following national level conferences held in New Delhi:

- Conference of the Environment Ministers of Central Government and State Governments during April 06-07, 2015
- 59th Conference of Chairmen & Member Secretaries of Pollution Control Boards / Pollution Control Committees held on April 08, 2015

Accordingly following resolutions were made during the Conferences:

1. A 'Working Group' comprising of the members from CPCB, APPCB, TNPCB, WBPCB, PPCB, MPPCB and Maharashtra PCB is constituted.
2. This WG shall revisit the categorization of industries that is based on pollution index criteria & environmental issues such as generation of emission, effluent and hazardous wastes.
3. The categorization will be done on the basis of composite score (0-100 marks) of Pollution Index given in accordance with the following weightage.

Air Pollution Score based on parameters namely PM, CO, NO _x , SO _x , HMs, Benzene, Ammonia and other toxic parameters relevant to the industry.	40 Marks
Water Pollution Score based on parameters namely pH, TSS, NH ₃ -N, BOD, Phenol and other toxic pollutants relevant to the industry.	40 Marks
Hazardous wastes (land fillable, incinerable, recyclable) as generated by the industry.	20 Marks
<p>Note :</p> <ul style="list-style-type: none"> • Parameters to be decided on the basis of the nature of the wastes generating from the industrial sector. • Industries having only either water pollution or air pollution, the score will be normalized wrt 100. 	

4. Based on the score of the Pollution Index, following categorization be made :
 - Type of industries, if scores 60 and above be categorized as Red
 - Type of industries, if scores from 30 to 59 be categorized as Orange
 - Type of industries, if scores from 15 to 29 be categorized as Green
 - Type of industries, if less than 15 be categorized as White or non-polluting industry.
5. SPCBs/PCCs may issue consent to the industries
 - Red category of industries for 5 years.
 - Orange category of industries for 10 years.
 - Green category of industries for 15 years.
 - No necessity of consent for non-polluting industries.
6. No red categories of industries will be permitted to establish in eco-sensitive areas and protected areas.

E: Follow-up Actions made on the Resolutions :-

- Accordingly, a Committee comprising the Chairmen of CPCB, APPCB, TNPCB, MPPCB, MPCB, PPCB, WBPCB and MS, CPCB was constituted vide CPCB OM dated

23.04.2015 to review & classify industrial sectors into different categories based on criteria of respective pollution potential.

- The categorization is made on the basis of following:
 - Quality of emissions (air pollutants) generated
 - Quality of effluents (water pollutants) generated
 - Types of hazardous wastes generated
 - Consumption of resources

- Reference is taken from the following :
 - The Water (Prevention and Control of Pollution) Cess Act, 1977
 - Standards so far prescribed for various pollutants under the Environment (Protection) Act , 1986
 - Doon Valley Notification, 1989 issued by MoEF.

F : Scoring Methodology :

The details on the scoring methodology in respect of the aforesaid 3 components is presented in the following tables F-1 to F-4 .

Table F-1 : Water Pollution Scoring Methodology

Sl. No.	Activity / Types of Discharges	Score
Part A : Score W1 : Score based on types of expected criteria water-pollutants present in industrial processes waste waters. Maximum of the following seven categories is to be taken.		
W11	Waste-water which is polluted and the pollutants are - <ul style="list-style-type: none"> • not easily biodegradable (very high strength waste waters having BOD > 5000 mg/l); or • toxic; or • both toxic and not easily biodegradable. (Presence of criteria water pollutants having prescribed standard limits up-to 10 mg/l or having BOD > 5000 mg/l). For details appendix 1 may be referred)	30
W12	Non-toxic high strength polluted waste-water having BOD in the range of 1000-5000 mg/l and the pollutants are biodegradable. <p>(Presence of criteria water pollutants having prescribed standard limits from 11 mg/l to 250 mg/l and having BOD strength in the range of 1000-5000 mg/l) . For details appendix 1 may be referred)</p>	25
W13	Non toxic- polluted waste-water having BOD below 1000 mg/l and the pollutants are easily biodegradable. <p>(Presence of criteria water pollutants having prescribed standard limits from 11mg/l to 250 mg/l and having BOD strength below 1000 mg/l) . For details appendix 1 may be referred)</p>	20
W14	Waste-water generated from the chemical processes and which is polluted due to presence of high TDS (total dissolved solids) of inorganic nature. <p>(Presence of criteria water pollutants having prescribed standard limits more than 250 mg/l. For details appendix 1 may be referred)</p>	15
W15	Waste-water generated from the physical unit operations / processes and which is polluted due to presence of TDS (total dissolved solids) of inorganic nature and of natural origin like fresh-water RO rejects, boiler blow-downs, brine solution rejects etc. <p>(Presence of criteria water pollutants having prescribed standard limits more than 250 mg/l. For details appendix 1 may be referred)</p>	12
W16	Non-toxic polluted waste-water from those units which are: <ul style="list-style-type: none"> • Having the overall waste-water generation less than 10 KLD and • The pollutants are easily bio-degradable having BOD below 200 mg/l which can be easily treated in a single stage ASP (activated 	12

	sludge process) based Effluent Treatment Plant. Note : This is a special category and is applicable to only those units having over-all liquid waste generation less than 10 KLD with low strength organic load.	
W17	Waste-water from cooling towers and cooling-re-circulation processes	10
Part B : Score W2 : Score based on huge discharges of any kind (Penalty Clause)		
W2	Industry having overall liquid waste generation of 100 KLD or more including industrial & domestic waste-water.	10
Overall Water Pollution Score $W = W1+W2$		

- **Water Pollutants covered under Group W11:**

- ✓ Free available Chlorine , Total residual chlorine, Fluoride (as F), Sulphide (as S), Free Ammonical Nitrogen, Dissolved phosphates (as P), Free ammonia (as NH₃), Nitrate Nitrogen, Mercury (As Hg), Selenium (as Se), Hexa-valent chromium (as Cr + 6), Lead (as Pb), Tin , Vanadium (as V), Cadmium (as Cd), Manganese (as Mn), Total chromium (as Cr), Copper (as Cu), Iron (as Fe), Nickel (as Ni), Zinc (as Zn), Benzene, Arsenic (as As), Benzo-a-pyrene, Cyanide (as CN), Phenolic compounds (as C₆H₅OH) , Adsorbable Organic Halogens (AOX), Boron and /or
- ✓ BOD strength of waste water > 5000 mg/l

- **Water Pollutants covered under Group W12:**

- ✓ Sodium Absorption Ratio (SAR) , Biochemical oxygen demand (3 days at 27°C), Total Kjeldahl nitrogen (TKN), Ammonical nitrogen (as N), Suspended solids, Total nitrogen (as N), Chemical oxygen demand, Oils & grease and
- ✓ BOD strength of waste water is in the range of 1000-5000 mg/l

- **Water Pollutants covered under Group W13:**

- ✓ Sodium Absorption Ratio (SAR), Biochemical oxygen demand (3 days at 27°C), Total Kjeldahl nitrogen (TKN), Ammonical nitrogen (as N), Suspended solids, Total nitrogen (as N), Chemical oxygen demand and
- ✓ BOD strength of waste water is below 1000 mg/l

- **Water Pollutants covered under Group W14 and W15:**

Chlorides as Cl, Colour , Total dissolved solids (TDS - Inorganic)

- **Water Pollutants covered under Group W16**

- ✓ BOD strength of waste water is below 200 mg/l and overall discharge is less than 10 KLD.

Table F-2 : Air Pollution Score

Sl. No.	Air Pollutants Group	'Range of Prescribed Standard' of criteria pollutants	Marks
Part 1 : Score A1 = Score based on types of expected criteria Air Pollutants present in the emissions . Maximum of the following seven categories is to be taken. For details appendix 2 may be referred.			
1	Group A1A	Presence of criteria air pollutants having prescribed standard limits up - to 2 mg/Nm ³	30
2	Group A1B	Presence of criteria air pollutants having prescribed standard from 3 to 10 mg/Nm ³	25
3	Group A1C	Presence of criteria air pollutants having prescribed standard from 11 to 50 mg/Nm ³	20
4	Group A1D	Presence of criteria air pollutants having prescribed standard from 51 to 250 mg/Nm ³	15
5	Group A1E	Presence of criteria air pollutants having prescribed standard from 251 mg/Nm ³ & above.	10
6	Group A1F	<ul style="list-style-type: none"> • Generation of fugitive emissions of Particulate Matters which are: <ul style="list-style-type: none"> ○ Not generated as a result of combustion of any kind of fossil-fuel. ○ Generated due to handling / processing of materials without involving the use of any kind of chemicals. ○ Which can be easily contained /controlled with simple conventional methods 	10
7	Group A1G	<ul style="list-style-type: none"> • Generation of Odours which are : <ul style="list-style-type: none"> ○ Generated due to application of binding gums / cements /adhesives /enamels ○ Which can be easily contained /controlled with simple conventional methods 	10
Part 2 : Score A2 = Score based on consumption of fuels and technologies required for air pollution control :			
6	Group A2F1	<ul style="list-style-type: none"> • All such industries in which the daily consumption of coal/fuel is more than 24 MT/day and the particular (Particulate/gaseous/process) emissions from which can be controlled only with high level equipments / technology like ESPs, Bag House Filters, High Efficiency chemical wet scrubbers etc. 	10
7	Group A2F2	<ul style="list-style-type: none"> • All such industries in which the daily consumption of coal/fuel is from 12 MT/day to 24 MT/day and the particular (Particulate/gaseous/process) emissions from which can be controlled with suitable proven technology. 	5
Overall Air Pollution Score -A = A1 + A2			

- Air pollutants covered under Group A1A:
Cd+Th, Dioxins & Furans, Mercury, Asbestos
- Air Pollutants covered under Group A1B:
HF, Nickel+ Vanadium, HBr, Manganese, Lead, H₂S, P₂O₅ as H₃PO₄
- Air Pollutants covered under Group A1C:
Chlorine, Pesticide compounds, CH₃Cl, TOC, Total Fluoride, Hydrocarbons, NH₃, HCL vapour & Mist, H₂SO₄ Mist, SO₂
- Air Pollutants covered under Group A1D:
CO, PM, CO, NO_x
- Air Pollutants covered under Group A1E:
NO_x with liquid-fuel, SO₂ with liquid-fuel

Table F-3: Hazardous Waste Generation Score

Sl.No.	Types of Hazardous Waste Generated as per Schedule 1 / Schedule 2 of Hazardous Waste (Management, Handling & Trans-boundary Movement) Rules , 2008 . Maximum of the following four categories is to be taken	Score
HW1	<ul style="list-style-type: none"> • Land disposable HW which require special care & treatment for stabilization before disposal. 	20
HW2	<ul style="list-style-type: none"> • Incinerable HW 	15
HW3	<ul style="list-style-type: none"> • Land disposable HW which doesn't require treatment & stabilization before disposal. • High volume low effect wastes such as fly-ash, phspho-gypsum, red-mud, slags from pyro-metallurgical operations, mine tailings and ore beneficiation rejects) 	10
HW4	<ul style="list-style-type: none"> • Recyclable HW, which are easily recyclable with proven technologies. 	10

Table F-4 : Calculation Sheet
Industrial Sector -

1. Water Pollution Score (W)			
Scores	Waste Water Category	Value	
Score on W1			
Score on W2			
Water Pollution Score = W1+W2			
2. Air Pollution Score (A)			
Scores	Air Pollutant Category	Value	
Score on A1			
Score on A2	-	-	
Air Pollution Score = A1+A2			
3. Hazardous Waste Score (HW)			
Score	HW Category	Value	
HW			
Grand Total = W + A + HW			

Note :

- Any of the industrial sector having only either air pollution (A) or water pollution (W) , the score will be normalized to 100 as per the following formula -

$$\text{Normalized Score} = \{100 \times W \text{ (or A)}\} / 40$$

- Any of the industrial sector having air pollution (A) and water pollution (W) both but no hazardous waste generation (H) , the joint score of air & water pollution will be normalized to 100 as per the following formula -

$$\text{Normalized Score} = \{100 \times (W+A)\} / 80$$

- Any of the industrial sector having air pollution (A) & hazardous waste generation (H) but no water pollution (W), the joint score of air pollution & hazardous waste generation will be normalized to 100 as per the following formula -

$$\text{Normalized Score} = \{100 \times (A+H)\} / 60$$

- Any of the industrial sector having water pollution (W) and hazardous waste generation (H) but no air pollution (A), the joint score of water pollution & hazardous waste generation will be normalized to 100 as per the following formula -

$$\text{Normalized Score} = \{100 \times (W+H)\} / 60$$

G : Developments :

- i. The existing Red (85 sectors) , Orange (73 sectors) and Green (86 sectors) i.e a total of 244 industrial sectors have been assessed as per the proposed formula by the Working Group. For this purpose, concerned Engineers / Scientists from the Member SPCBs were also involved & consulted during May 28-29, 2015.
- ii. After careful examination and consideration of the suggestions of concerned stake-holders the “Draft Document on Revised Concept of Categorization of Industrial Sectors “ was prepared by the Committee and circulated to all the SPCBs, PCCs and concerned Ministries for their information & comments. The ‘ Draft Document ’ was uploaded on the website of CPCB also for information & comments of one & all.
- iii. The matter was discussed during the 170th Board Meeting also and issues raised by the Board Members pertaining to some of the industrial sectors were clarified.
- iv. Responses were received from various concerned Ministries, SPCBs, Industrial Associations including individuals.
- v. Based on the above, final meeting was convened by the Secretary , MoEFCC with CPCB and senior officers of MoEFCC on January 06, 2016 to resolve the issues appropriately and finalize the ‘Re-categorization’. Accordingly , following modifications in the ‘Range of Pollution Index ‘for the purpose of categorization of industrial sectors were suggested :
 - Industrial Sectors having Pollution Index score of 60 and above – Red category
 - Industrial Sectors having Pollution Index score of 41 to 59 –Orange category
 - Industrial Sectors having Pollution Index score of 21 to 40 –Green category
 - Industrial Sectors having Pollution Index score incl.& upto 20 –White category
- vi. Based on the final criteria as described in v above , the final categorization is as follows :

Category of Industrial Sector	Existing Categorization	Proposed (New) categorization
Red	85	60
Orange	73	83
Green	86	63
White	---	36
Total	244	242

- vii. In the proposed categorization, some of the industrial sectors have been either deleted due to duplication or merged with similar type of sectors on account of same

characteristics of pollution generation. In a similar way, some of the industrial sectors are split into more sectors on account of variation in the raw materials / manufacturing process. As a result final totals of the existing and proposed categorization are different.

- viii. The industrial sector which doesn't fall under any of the above four categories (Red, Orange, Green and White) , decision with regard to its categorization will be taken at the level of concerned SPCB/PCC by a committee headed by the Member Secretary , SPCB/PCC and comprising of two senior cadre Engineers / Scientists of the SPCB / PCC in accordance with the scoring-criteria specified in this document.
- ix. The summary is presented in the following Table G-1 and final lists of Red, Orange, Green and White categories of industries are presented in Tables G-2, G-3, G-4 and G-5 respectively, which are self explanatory.

Table G-1: Final Summary Table Red , Orange, Green and White Categories of Industries (16-01-16)

Sl No.	Original Categorization	Initial Nos.	Addition by Splitting into further classes	Deletion/ Shifting to foot-note due to vague term / Merger / other reasons	Re-categorization to Red	Re-categorization to Orange	Re-categorization to Green	Re-categorization to White	Check
1	Red	85	11	7	60	26	3	Nil	96=96
2	Orange	73	2	3	Nil	51	19	2	75=75
3	Green	86	Nil	3+2=5	Nil	6	41	34	86=86
	Final Categorization	244	13	15	60 (Red)	83 (Orange)	63 (Green)	36 (White)	257 =257 (Total categories including in foot-note)

Table G-2 : Final List of Red Category of Industrial Sectors

Sl No.	Orgnl Sl.No	Industry Sector	W1	W2	W	A1	A2	A	H	W+A+H	Revised Category	REMARKS
1.	38	Isolated storage of hazardous chemicals (as per schedule of manufacturing, storage of hazardous chemicals rules ,1989 as amended)									R-R	As per provisions of Rules, to be kept under Red category especially for safety purposes.
2.	4	Automobile Manufacturing (integrated facilities)	30	-	30	20	-	20	10	60	R-R	i. Such types of plants are having either one or combinations of polluting activities viz. washing, metal surface finishing operations, pickling, plating, electro-plating, phosphating, painting, heat treatment etc. ii. Some of such plants may outsource some /all of the polluting activities. In such cases, after thorough inspection of such units by concerned SPCB, re-categorization of the industry shall be made accordingly.
3.	34	Industries engaged in recycling / reprocessing/ recovery/reuse of Hazardous Waste under schedule iv of HW(M, H& TBM) rules, 2008 - Items namely - Spent cleared metal catalyst containing copper,, Spent cleared metal catalyst containing zinc,,	30	-	30	20	-	20	10	60	R-R	All the three types of pollutants are expected.
4.	44	Manufacturing of lubricating oils ,grease and petroleum based products	20	-	20	20	-	20	20	60	R-R	Generates all sorts of pollution.
5.	66 E	DG Set of capacity > 5 MVA	-	-	-	20	5	25	-	62.5	R-R	i. Mainly air polluting. ii. DG sets consume the diesel @ 0.21 litres/hr/KVA at full load. iii. Average running is taken @ 12 hrs / day although many of the DG sets run for more than this period.
6.	31	Industrial carbon including electrodes and graphite blocks, activated carbon, carbon black	10	-	-	20	5	25	10	62.5	R-R	Mainly air polluting. Air pollution score is normalized to 100.

7.	39	Lead acid battery manufacturing(excluding assembling and charging of lead-acid battery in micro scale)	10	-	10	25	-	25	10	62.5	R-R	<p>i. Mainly air polluting. Air pollution scores are normalized to 100.</p> <p>ii. Lead Acid Battery manufacturing consists of various stages which broadly involve (after producing or receiving lead oxide): Paste Mixing , Grid Casting , Grid Pasting & Curing , Hydro-setting, parting & enveloping , Stacking, grouping & inter-cell welding, Formation.</p> <p>iii. Exposure of workmen to lead during all or any of the processes outlined above exceeds the prescribed standards if appropriate equipment in this respect is not installed at any Battery Manufacturing Unit.</p> <p>iv. All of the above processes, some more than others, involve release of lead particles or fumes into the environment. Pollution from the above processes can be grouped into two possible types, viz: (a) Lead Oxide becomes airborne and there is Particulate Pollution (b) Fumes are generated and there is Gaseous Pollution</p>
8.	62	Phosphate rock processing plant	30	-	30	20	-	20	-	62.5	R-R	<p>i. The separation of phosphate rock from impurities and non-phosphate materials for use in fertilizer manufacture consists of beneficiation, drying or calcining at some operations, and grinding. Phosphate rock from the mines is first sent to beneficiation units to separate sand and clay and to remove impurities. Steps used in beneficiation depend on the type of rock.</p> <p>ii. The water & air pollution scores are normalized to 100.</p>

9.	66	Power generation plant [except Wind and Solar renewable power plants of all capacities and Mini Hydel power plant of capacity <25MW]	10	-	10	15	10	25	10	62.5	R-R	1. Mainly air polluting. It uses a mixture of biomass (agro based) and coal (< 10 %) as a fuel. Almost, round the year operation. 2. In case of DG sets of 5 MVA & more and emissions of SO ₂ will take place due to use of liquid fuel. Air pollution score will be =20 + 10 = 30, Normalized score will be 75. 3. In case of 'Waste to Energy Plants', water will be used for cooling and air score will be - 30+10 = 40.
10.	34	Industries engaged in recycling / reprocessing/ recovery/reuse of Hazardous Waste under schedule iv of HW(M, H& TBM) rules, 2008 - Items namely - Spent catalyst containing nickel, cadmium, Zinc, copper, arsenic, vanadium and cobalt,	30	-	30	25	-	25	10	65	R-R	All the three types of pollutants are expected.
11.	67	Processes involving chlorinated hydrocarbons	30	-	30	20	-	20	15	65	R-R	Chlorinated hydrocarbons are used in the manufacture of insecticides, pesticides and organo chloro pesticides. Effluents & emissions are toxic in nature.
12.	74	Sugar (excluding Khandsari)	20	10	30	15	10	25	10	65	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. Sugar mills generate all sorts of pollution problems.
13.	22	Fibre glass production and processing (excluding moulding)	-	-	-	20	-	20	20	67	R-R	i. The use of styrene in most methods of fibreglass production causes hazardous air pollution that is harmful to breathe at excessive levels. ii. It is mainly air polluting & HW generating industry. The air pollution & HW scores are normalized to 100. iii. In case of lead containing glass, the score of A1 will be 25 and final normalized score will be 75 and shall be categorized as Red.
14.	23	Fire crackers manufacturing and bulk storage facilities	-	-	-	20	-	20	20	67	R-R	i. This is the normalized score based on air pollution & HW generation. ii. Various hazardous chemicals are used in the manufacturing process. iii. These chemicals are namely Potassium Nitrate, Potassium per-chlorate, Barium Nitrate, Aluminium compounds, Copper Chloride etc.

15.	34	Industries engaged in recycling / reprocessing/ recovery/reuse of Hazardous Waste under schedule iv of HW(M, H& TBM) rules, 2008 - Items namely - Dismantlers Recycling Plants -- Components of waste electrical and electronic assemblies comprising accumulators and other batteries included on list A, mercury-switches, activated glass cullets from cathode-ray tubes and other activated glass and PCB-capacitors, or any other component contaminated with Schedule 2 constituents (e.g. cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they exhibit hazard characteristics indicated in part C of this Schedule.	-	-	-	30	0	30	10	67	R-R	iv. These chemicals are highly hazardous and cause serious diseases among the workers. especially ability of blood to carry oxygen leading to headaches, methemoglobinemia and kidney problems , skin problems, thyroid metal fume etc. Mainly air polluting and hazardous waste generating. Air & HW pollution scores are jointly normalized to 100.
16.	47	Milk processes and dairy products(integrated project)	20	10	30	20	5	25	-	68.75	R-R	i. Water as well as air polluting due to use of boilers. ii. Water & air pollution scores are normalized to 100.
17.	63	Phosphorous and its compounds	30	-	30	25	-	25	-	68.75	R-R	Water pollution & air pollution containing compounds of phosphorous are expected
18.	61	Pulp & Paper (waste paper based without bleaching process to manufacture Kraft paper)	20	10	30	15	10	25	0	68.75	R-R	Mainly water & air polluting . Water & air pollution scores are normalized to 100.
19.	13	Coke making , liquefaction, coal tar distillation or fuel gas making	30	-	30	20	-	20	20	70	R-R	It is a kind of petrochemical industry.

20.	41	Manufacturing of explosives, detonators, fuses including management and handling activities	30	-	30	20	-	20	20	70	R-R	<p>i. Explosives manufacture and use contribute some measure of hazardous waste to the environment.</p> <p>ii. Nitroglycerin produces several toxic byproducts such as acids, caustics, and oils contaminated with heavy metals. These must be disposed of properly by neutralization or stabilization and transported to a hazardous waste landfill.</p> <p>iii. The use of explosives creates large amounts of dust and particulate from the explosion, and, in some cases, releases asbestos, lead, and other hazardous materials into the atmosphere.</p>
21.	45	Manufacturing of paints, varnishes, pigments and intermediate (excluding blending/mixing)	30	-	30	25	-	25	15	70	R-R	<p>i. The process may cause considerable emissions of volatile organic compounds (VOC). VOC contribute to the creation of ozone in the lower layers of the atmosphere (photochemical air pollution) and can present danger to health.</p> <p>ii. Dust and odour may also be a problem.</p> <p>iii. Washing of vessels will contribute waste-waters.</p> <p>iv. Large quantity of HWs are also produced.</p>
22.	56	Organic Chemicals manufacturing	30	-	30	20	-	50	20	70	R-R	Such types of industrial sectors generate all sorts of pollution.
23.	1	Airports and Commercial Air Strips	20	10	30	-	-	-	10	75	R-R	<p>i. The Airports are generating mainly the waste-waters.</p> <p>ii. This is the water pollution normalized score for airports having discharge more than 100 KLD.</p> <p>iii. The airports / strips having discharge less than 100 KLD will have score of 50 and hence orange category.</p> <p>iv. If the score is normalized wrt water + HW both, then all the airports will come under Orange category (score - 58.33).</p>
24.	3	Asbestos and asbestos based industries	-	-	-	30	-	30	10	75	R-R	<p>i. This is mainly air polluting industry.</p> <p>ii. Final score is based on air pollution score only.</p> <p>iii. Asbestos is carcinogenic and banned in many countries.</p>
25.	5	Basic chemicals and electro chemicals and its derivatives including manufacturing of acid	30	-	30	-	-	-	10	75	R-R	<p>i. Standards prescribed for Inorganic Chemicals are adopted.</p> <p>ii. It is mainly water polluting industry having effluents which are toxic and not easily biodegradable.</p>

32.	34	Industries engaged in recycling / reprocessing/ recovery/reuse of Hazardous Waste under schedule iv of HW (M, H& TBM) rules, 2008 - Items namely - Lead acid battery plates and other lead scrap/ashes/residues not covered under Batteries (Management and Handling) Rules, 2001. [* Battery scrap, namely: Lead battery plates covered by ISRI, Code word "Rails" Battery lugs covered by ISRI, Code word "Rakes". Scrap drained/dry while intact, lead batteries covered by ISRI, Code word "rains".	30	-	30	25	-	25	20	75	R-R	All the three types of pollutants are generated.	having no-boiler & no hazardous waste generation, the pollution score will be 20 & are categorized as Green.
33.	34	Industries engaged in recycling / reprocessing/ recovery/reuse of Hazardous Waste under schedule iv of HW (M, H& TBM) rules, 2008 - Items namely - Integrated Recycling Plants -- Components of waste electrical and electronic assemblies comprising accumulators and other batteries included on list A, mercury switches, activated glass cullets from cathode-ray tubes and other activated glass and PCB-capacitors, or any other component contaminated with Schedule 2 constituents (e.g. cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they exhibit hazard characteristics indicated in part C of this Schedule.	30	-	30	25	-	25	20	75	R-R	All the three types of pollutants are expected.	
34.	43	Manufacturing of glue and gelatin	30	10	40	20	-	20	-	75	R-R	Highly water polluting & obnoxious air polluting.	
35.	49	Mining and ore beneficiation	30	10	40	15	5	20	-	75	R-R	Both air and water polluting. Score is normalized with air & water pollution.	

36.	52	Nuclear power plant	10	-	10	30	-	30	15	75	R-R	i. Mainly air polluting due to indinerator. Others - cooling water. ii. Air pollution score is normalized to 100.
37.	58	Pesticides (technical) (excluding formulation)	30	-	30	25	-	25	20	75	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. Such types of industrial sectors generate all sorts of pollution.
38.	64	Photographic film and its chemicals	30	-	30	-	-	-	-	75	R-R	i. Silver salts and other chemicals are used in preparation. Slight quantity of effluents is generated. ii. Water pollution scores are normalized to 100.
39.	68	Railway locomotive work shop/Integrated road transport workshop/Authorized service centers	20	10	30	-	-	-	10	75	R-R	i. Mainly water polluting industry. Water is used in the washing of locomotives, road transport vehicles during servicing. ii. This score is valid for those Centers having discharge more than 100 KLD. iii. Service Centers having waste-water generation < 100 KLD, the normalized score will be $= (100*20)/40= 50$.
40.	84	Yarn / Textile processing involving any effluent/emission generating processes including bleaching, dyeing, printing and colouring	30	10	40	15	-	15	20	75	R-R	In this sector all sorts of pollution are generated.
41.	8	Chlor Alkali	30	10	40	20	10	30	10	80	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. Chlor-alkali units are having different section like NaOH, Cl ₂ , SBP etc which are having toxic effluents. Additionally, fuel consumption is also on higher-side.
42.	70	Ship Breaking Industries	30	-	30	30	-	30	20	80	R-R	i. The ship-breaking industry creates numerous hazards for the coastal and marine environment. ii. Ship-breaking releases a large number of dangerous pollutants, including toxic waste, oil, poly-chlorinated biphenyls, and heavy metals, into the waters and sea bed. iii. While most of the oil is removed before a ship is scrapped, sand used to mop up the remaining oil is thrown into the sea. High concentrations of oil and grease are then found in the coastal waters, choking marine life.

43.	53	Oil and gas extraction including CBM (offshore & on-shore extraction through drilling wells)	30	-	30	-	-	-	-	20	83	R-R	iv. Solid waste strewn on the shore, 45 tonnes on any given day according to a study by the Central Pollution Control Board, also finds its way into the sea. v. Adding to the stress on coastal waters, the organic load from the thousands of workers living in cramped conditions with little or no sanitary facilities results in unacceptably high levels of BOD. i. Mainly water polluting & hazardous waste generating. ii. The water pollution & HW generation scores are normalized to 100.
44.	36	Industry or process involving metal surface treatment or process such as pickling/ electroplating/paint stripping/ heat treatment using cyanide bath/ phosphating or finishing and anodizing / enamellings/ galvanizing	30	-	30	-	-	-	-	20	83	R-R	Mainly water polluting & toxic hazardous waste generating industry. Scores are normalized to 100.
45.	80	Tanneries	30	-	30	-	-	-	-	20	83	R-R	Mainly water polluting & hazardous waste generating industry. Scores are normalized to 100.
46.	65	Ports and harbour, jetties and dredging operations	30	10	40	15	10	25	20	20	85	R-R	This category contain all sorts of pollution.
47.	77	Synthetic fibers including rayon tyre cord, polyester filament yarn	30	10	40	25	10	35	10	10	85	R-R	This sector generates all sorts of pollution problems.
48.	81	Thermal Power Plants	30	10	40	20	10	30	15	15	85	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. TPP generate all sorts of pollution problems.
49.	71	Slaughter house (as per notification S.O.270(E)dated 26.03.2001)and meat processing industries, bone mill, processing of animal horn, hoofs and other body parts	25	10	35	-	-	-	-	-	87.5	R-R	Mainly water polluting and obnoxious odour generating industry. The water pollution score is normalized to 100
50.	2	Aluminium Smelter	30	10	40	20	10	30	20	20	90	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. This sector is generating all sorts of pollution i.e. air, water and HW.
51.	12	Copper Smelter	30	10	40	20	10	30	20	20	90	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. Integrated Copper Smelters contain all sorts of

52.	20	Fertilizer (basic) (excluding formulation)	30	10	40	20	10	30	20	90	R-R	pollution. i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. Generates all sorts of pollution.
53.	37	Iron & Steel (involving processing from ore/ integrated steel plants) and or Sponge Iron units	30	10	40	20	10	30	20	90	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. Such types of industrial sectors generate all sorts of pollution.
54.	61	Pulp & Paper (waste paper based units with bleaching process to manufacture writing & printing paper)	25	10	35	25	10	35	20	90	R-R	Waste paper based Pulp & Paper mills with bleaching process generate all sorts of pollution.
55.	85	Zinc Smelter	30	10	40	20	10	30	20	90	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. Integrated Zinc smelter generates all sorts of pollution problems.
56.	55	Oil Refinery (mineral Oil or Petro Refineries)	30	10	40	25	10	35	20	95	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. Such types of industrial sectors generate all sorts of pollution.
57.	59	Petrochemicals Manufacturing (including processing of Emulsions of oil and water)	30	10	40	25	10	35	20	95	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. Such types of industrial sectors generate all sorts of pollution. iii. The earlier red category industrial sector namely 'Processing of Emulsions of Oil & Water " is merged with this industrial sector.
58.	60	Pharmaceuticals	30	10	40	30	5	35	20	95	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. Such types of industrial sectors generate all sorts of pollution.
59.	61	Pulp & Paper (Large-Agro + wood) , Small Pulp & Paper (agro based-wheat straw/ rice husk)	30	10	40	25	10	35	20	95	R-R	i. This industrial sector is the one among the '17 categories of Highly Polluting Industries'. ii. Large /Small Agro based Pulp & Paper mills contribute all sorts of pollution problems.
60.	15	Distillery (molasses / grain / yeast based)	30	10	40	-	-	-	-	100	R-R	Mainly water polluting industry. Final score is the normalized water pollution score.

Note :

i. Under the column Revised Category, the full forms of the abbreviations are as follows :

- a. R-R means original category was Red and revised category is also Red
- b. R-O means original category was Red and revised category is Orange
- c. O-O means original category was Orange and revised category is also Orange
- d. O-G means original category was Orange and revised category is Green
- e. O-W means original category was Orange and revised category is White
- f. G-O means original category was Green and revised category is Orange
- g. G-G means original category was Green and revised category is also Green
- h. G-W means original category was Green and revised category is White

ii. There are specific remarks in respect of some of the industrial sectors. These sectors are either merged with other relevant sectors or deleted due to duplication. The overall details are as follows :

Sl No.	Original Sl No.	Industry Sector	Original Category	Remarks
1	14	Common treatment and disposal facilities (CETP, TSDF, E-waste recycling, CBMWTF, effluent conveyance project, incinerator, solvent/acid recovery plant, MSW sanitary land fill site)	R	i. All such facilities are classified as Red but special category projects as these are parts of pollution control facilities. ii. In case of CETP, the categorization will depend upon the category of member industries being served.
2	18	Processing of Emulsions of Oil & Water		It is a part of Petrochemical industries. Transferred and merged with the industrial sector namely 'Petrochemicals' at Sl. No. 54.
3	27	Heavy engineering including ship building (with investment on Plant & Machineries more than Rs 10 crores)	R	Most of the pollution generating processes / operations under this category are similar to the industry category namely "Automobile Manufacturing (integrated facilities)" at Sl. No. 1 and may be referred accordingly.
4	30	Hydrocyanic acid and its derivatives	R	Have been merged with the red category industrial sector namely "Basic chemicals and electro chemicals and its derivatives including manufacturing of acid" at Sl. No. 24
5	32	Industrial estates/parks / complexes/ areas/export processing zones/ SEZs/ Biotech parks/ leather complex	R	The classification will depend upon the category(ies) of the industries operating / proposed to be permitted in the area. In this context, guidelines prescribed in EIA Notification, 2006 shall be followed.
6	33	Industrial inorganic gases namely- a) Chemical gas- Acetylene, hydrogen, chlorine, fluorine, ammonia, sulphur dioxide, ethylene, hydrogen-sulphide, phosphine b) Hydrocarbon gases- Methane, ethane, propane	R	These gases are generally secondary products and produced alongwith other main products. To be classified as per the main parent plant.
7	69	Reprocessing of used oils & waste oils	R	i. The industry generates mainly the air pollution and oil bearing hazardous wastes. The normalized (air pollution & HW generation score is 58.33. ii. To be deleted as already covered under HW Recyclers / Re-processors (Used oils / Waste Oils) under Orange Category

Table G-3 : Final List of Orange Category of Industrial Sectors

Final Sl. No.	Orgnl S.No	Industry Sector	W1	W2	W	A1	A2	A	H	W+A+H	Revised category	Remarks
1.	20	Dismantling of rolling stocks (wagons/ coaches)	--	--	--	15	--	15	10	41.67	O-O	Emissions of dust and generation of waste oils take place during dismantling. Air pollution & HW generation scores (15+10=25) are normalized to 100.
2.	5	Bakery and confectionery units with production capacity > 1 TPD. (With ovens / furnaces)	20	--	20	15	--	15	--	43.75	O-O	
3.	10	Chanachur and laddoo from puffed and beaten rice(muri and shira) using husk fired oven	20	--	20	15	--	15	--	43.75	O-O	Normal water and air polluting.
4.	23	Coated electrode manufacturing	15	0	15	20	0	20	0	43.75	G-O	Preparation of core wire / rod, preparation of dry mix, preparation of wet mix, application of coating by extrusion, baking of coated electrodes
5.	24	Compact disc computer floppy and cassette manufacturing / Reel manufacturing	15	0	15	20	0	20	0	43.75	G-O	Generates waste-water and process emissions.
6.	24	Flakes from rejected PET bottle	20	-	20	15	-	15	-	43.75	R-O	Normal water & air pollutions are generated.
7.	30	Food and food processing including fruits and vegetable processing	20	--	20	15	--	15	--	43.75	O-O	Normal water and air polluting.
8.	40	Jute processing without dyeing	20	--	20	15	--	15	--	43.75	O-O	CPCB has notified standards for this category. Both air and water pollutions are generated.
9.	56	Manufacturing of silica gel	15	0	15	20	0	20	0	43.75	G-O	Waste-waters containing TDS and emissions of H ₂ SO ₄ are generated.

10.	45	Manufacturing of tooth powder, toothpaste, talcum powder and other cosmetic items	20	--	20	15	--	15	--	15	--	43.75	O-O	Both air and water pollution are generated.
11.	55	Printing or etching of glass sheet using hydrofluoric acid	15	--	15	20	--	20	--	20	--	43.75	O-O	Both air and water pollution are generated.
12.	65	Silk screen printing, sari printing by wooden blocks	20	--	20	15	--	15	--	15	--	43.75	O-O	Wash-water and PM emissions from boilers .
13.	76	Synthetic detergents and soaps(excluding formulation)	20	-	20	15	-	15	-	15	-	43.75	R-O	i. This is the score for units having generation of waste-waters less than 100 KLD. ii. The units having waste-water generation more than 100 KLD will become mainly water polluting and accordingly normalized water pollution score will be 75 and be categorized as Red.
14.	71	Thermometer manufacturing	15	--	15	20	--	20	--	20	--	43.75	O-O	Process - making glass bulb, forming reservoir in the glass tube for fluid, inserting fluid, scale marking. Use of fuel to heat the glass tubes and hydrofluoric acid to seal the scaling. Small quantities of spent acids are generated.
15.	14	Cotton spinning and weaving (medium and large scale)	--	--	--	15	--	37.5	10	47.5	10	47.5	O-O	Mainly air polluting industry. Sources of air pollution (PM) are the fine particles of cotton from spinning process. Air pollution score is normalized to 100.
16.	1	Almirah, Grill Manufacturing (Dry Mechanical Process)	--	--	--	20	--	20	--	50	--	50	O-O	Air pollution due to spray painting (emissions of VOCs). Units without painting operations shall be categorized as White.

17.	2	Aluminium & copper extraction from scrap using oil fired furnace (dry process only)	--	--	--	20	--	20	--	20	10	50	O-O	i. Normalized Air pollution score. ii. Significant air pollution due to melting (emissions of SO ₂ , PM).
18.	3	Automobile servicing, repairing and painting (excluding only fuel dispensing)	20	--	20	20	--	20	--	20	10	50	O-O	Normal water & air polluting and recyclable waste oil generating. If the waste water generation is more than 100 KLD, it will become mainly water polluting and Red category unit.
19.	4	Ayurvedic and homeopathic medicine	20	--	20	15	--	15	15	50	O-O			
20.	7	Brickfields (excluding fly ash brick manufacturing using lime process)	--	--	20	20	--	20	20	50	O-O			Significantly air polluting.
21.	8	Building and construction project more than 20,000 sq. m built up area	20	--	20	20	--	20	20	50	O-O			1. In the pre-construction stage, it is mainly air polluting due to generation of dust (PM) emissions. 2. After construction, it is mainly water polluting. If the discharge is more than 100 KLD, it will be having the normalized score of 75 and be categorized as Red.
22.	6	Ceramics and Refractories	-	-	20	20	-	20	-	50	R-O			i. Mainly air polluting industry. ii. This score is for the units having coal consumption < than 12 MT/day. iii. For the units having coal consumption > 12 MT /day, the normalized air pollution score will be 62.5 and shall be categorized as Red.

23.	11	Coal washeries	15	10	25	15	15	-	15	-	50	R-O	i. Wet washeries are mainly water polluting industry generating effluents which are having inorganic SS & TDS. Additionally, air pollution due to PM emissions is also generated. ii. Water & air pollution scores are jointly normalized to 100.
24.	16	Dairy and dairy products (small scale)	20	--	20	20	20	--	20	--	50	O-O	Water and air polluting both.
25.	18	DG set of capacity >1MVA but < 5MVA	--	--	--	20	20	--	20	--	50	O-O	Mainly air polluting . air pollution score is normalized to 100.
26.	17	Dry coal processing, mineral processing, industries involving ore sintering, pelletising, grinding & pulverization	-	-	-	20	20	-	20	-	50	R-O	Mainly air polluting industry. Final score is the normalized air pollution score.
27.	19	Fermentation industry including manufacture of yeast, beer, distillation of alcohol (Extra Neutral Alcohol)	20	-	20	-	-	-	-	-	50	R-O	i. Mainly water polluting industry. This is the normalized water pollution score for units having discharge < 100 KLD. ii. For the units having discharge > 100 KLD, the normalized water pollution score will be 75 and shall be accordingly categorized as Red.
28.	21	Ferrous and Non-ferrous metal extraction involving different furnaces through melting, refining, re-processing, casting and alloy-making	-	-	-	15	5	20	10	50	R-O	i. Mainly air polluting. ii. This score is applicable to secondary production of ferrous & non-ferrous metals (excluding lead) up-to 1 MT/hour production.	

												<p>iii. For lead, the normalized air pollution score will be $= (100*25)/40= 62.5$ and is categorized as Red.</p> <p>iv. For Induction Furnace clubbed with AOD furnace - separate calculation shall be made based on the capacity of the furnaces. In such industries, the molten metal from induction furnace is transferred to AOD furnace where other metals like manganese and nickel are added to get the metal of desired constituents. The lime and silicon are also added for reduction of the metal oxides to the base metal. the normalized air pollution score will be $= (100*25)/40= 62.5$ and is categorized as Red.</p>
29.	26	Fertilizer (granulation / formulation / blending only)	--	--	20	--	20	--	50	O-O		Air polluting.
30.	27	Fish feed, poultry feed and cattle feed	--	--	20	--	20	--	50	O-O		Obnoxious odour, H2S etc. AP score is normalized to 100
31.	28	Fish processing and packing (excluding chilling of fishes)	20	--	--	20	--	--	50	O-O		Mainly water polluting. W/P score is normalized to 100.

32.	31	Forging of ferrous and non-ferrous metals (using oil and gas fired furnaces)	--	--	--	20	--	20	--	20	--	50	O-O	Heating furnace. Mainly air polluting.
33.	32	Formulation/pelletization of camphor tablets, naphthalene balls from camphor/ naphthalene powders.	--	--	--	20	--	20	--	20	--	50	O-O	Mainly air polluting. Emissions of Benzene, HC are expected.
34.	33	Glass ceramics, earthen potteries and tile manufacturing using oil and gas fired kilns, coating on glasses using cerium fluorides and magnesium fluoride etc.	--	--	--	20	--	20	--	20	--	50	O-O	Mainly air polluting. Emissions of SO2 are expected.
35.	35	Gravure printing, digital printing on flex, vinyl	20	--	20	20	--	20	10	20	10	50	O-O	Waste waters , emissions of VOCs
36.	36	Heat treatment using oil fired furnace (without cyaniding)	--	--	--	20	--	20	--	20	--	50	O-O	Mainly air polluting and noise generating. AP Score is normalized to 100.
37.	28	Hot mix plants	-	-	-	20	-	20	-	20	-	50	R-O	Mainly air polluting. Air pollution scores are normalized to 100.
38.	37	Hotels (< 3 star) or hotels having > 20 rooms and less than 100 rooms.	20	--	20	20	--	20	--	20	--	50	O-O	Mainly water polluting. WP score is normalized to 100.
39.	38	Ice cream	20	--	20	20	--	20	--	20	--	50	O-O	Wash-water and boilers / oven for pasteurization.
40.	34	Industries engaged in recycling / reprocessing/ recovery/reuse of Hazardous Waste under schedule iv of HW(M, H& TBM) rules, 2008 - Items namely - Paint and ink Sludge/residues	-	-	-	20	0	20	0	20	0	50	R-O	Mainly air polluting. Air pollution score is normalized to 100
41.	34	Industries engaged in recycling / reprocessing/ recovery/reuse of Hazardous Waste under schedule iv of HW(M, H& TBM) rules, 2008 - Items namely - Brass Dross ,, Copper Dross,, Copper Oxide Mill Scale,, Copper Reverts, Cake & Residues,, Waste Copper and copper alloys in	10	-	10	20	-	20	10	20	10	50	R-O	Mainly air polluting.

45.	42	Manufacturing of glass	10	-	-	20	-	20	-	20	-	50	R-O	i. Mainly air polluting (melting at 1500°C and refining . ii. In case of lead glass , the score of A1 will be 25 and accordingly the normalized scores will be 62.5 i.e. Red
46.	43	Manufacturing of iodized salt from crude/ raw salt	12	--	12	20	--	20	20	20	--	50	O-O	Boiling in Evaporators (multiple effect evaporators), centrifuging, iodization with KIO3 mixing . Mainly air polluting. Air pollution score is normalized to 100.
47.	42	Manufacturing of mirror from sheet glass	--	--	--	20	--	20	20	20	--	50	O-O	Evaporator & furnace for heating the metal to be applied as reflector on mirror. Mainly air polluting.
48.	44	Manufacturing of mosquito repellent coil	--	--	--	20	--	20	20	20	--	50	O-O	Mainly air polluting. Toxic fumes are expected.
49.	46	Manufacturing of Starch/Sago	25	-	25	15	-	15	15	15	-	50	R-O	i. Water and air polluting industry. Boiler is used for steam generation. ii. Water & air pollution scores are normalized to 100
50.	46	Mechanized laundry using oil fired boiler	20	--	20	20	--	20	20	20	--	50	O-O	Both air and water pollution are generated.
51.	47	Modular wooden furniture from particle board, MDF< swan timber etc, Ceiling tiles/ partition board from saw dust, wood chips etc., and other agricultural waste using synthetic adhesive resin, wooden box making (With boiler)	--	--	--	20	--	20	20	20	--	50	O-O	1. Mainly air polluting. Boiler as well as VOCs from use of adhesives. 2. Without boiler, it will be a Green category industry.
52.	50	New highway construction project	-	-	-	20	-	20	20	20	-	50	R-O	Mainly air polluting project.

53.	51	Non-alcoholic beverages(soft drink) & bottling of alcohol/non alcoholic products	20	-	20	15	5	20	-	50	R-O	i. Both air and water polluting. Score is normalized with air & water pollution. This score is valid for industries having waste-water generation <100 KLD. ii. For the units having waste-water generation > 100 KLD the , normalized score would be 62.5 and categorized as Red.
54.	49	Paint blending and mixing (Ball mill)	20	--	20	20	--	20	10	50	O-O	Both air and water pollution are generated.
55.	62	Paints and varnishes (mixing and blending)	20	0	0	20	0	20	0	50	G-O	Waste-waters as well as fumes of VOCs due to solvents, pigments, varnishes.
56.	51	Ply-board manufacturing(including Veneer and laminate) with oil fired boiler/ thermic fluid heater(without resin plant)	0	--	0	20	--	20	--	50	O-O	Mainly air polluting because of use of boiler. AP score is normalized to 100
57.	52	Potable alcohol (IMFL) by blending, bottling of alcohol products	20	--	20	--	--	--	--	50	O-O	Mainly water polluting. WP score is normalized to 100.
58.	54	Printing ink manufacturing	20	--	20	20	--	20	--	50	O-O	1. Pigments, binders and solvents are used. 2. Boiler is also used. 3. Emissions of VOCs take place.
59.	70	Printing press	20	0	20	20	0	20	0	50	G-O	Colored waste-waters containing dyes and VOC emissions are generated.
60.	59	Reprocessing of waste plastic including PVC	20	--	20	20	--	20	--	50	O-O	Large quantities of wash-water and fugitive emissions are generated.
61.	61	Rolling mill (oil or coal fired) and cold rolling mill	10	--	10	20	--	20	--	50	O-O	Mainly air polluting. Air pollution score is normalized to 100. Others - cooling water and recyclable waste oils etc. are generated.
62.	67	Spray painting, paint baking, paint shipping	--	--	--	20	--	20	10	50	O-O	Mainly air polluting. Emissions of VOCs and HC are generated.

63.	72	Steel and steel products using various furnaces like blast furnace /open hearth furnace/induction furnace/arc furnace/submerged arc furnace /basic oxygen furnace /hot rolling reheated furnace	10	-	10	20	-	20	0	20	0	20	10	50	R-O	i. Mainly air polluting. In the emissions, oxides of manganese, nickel etc. are also present. ii. Air pollution score is normalized to 100.
64.	73	Stone crushers	-	-	20	20	-	20	-	20	-	20	-	50	R-O	Mainly air polluting. Air pollution score is normalized to 100.
65.	75	Surgical and medical products including prophylactics and latex	20	-	20	20	-	20	20	20	20	20	-	50	R-O	Both air as well as water polluting. Air and water pollution scores are normalized to 100.
66.	85	Tephlon based products	0	0	0	20	0	20	0	20	0	20	0	50	G-O	Due to spraying applications, emissions (HC) are generated
67.	70	Thermocol manufacturing (with boiler)	--	--	20	20	--	20	--	20	--	20	--	50	O-O	Polystyrene is heated. Mainly air polluting with boiler.
68.	82	Tobacco products including cigarettes and tobacco/opium processes	20	-	20	20	-	20	-	20	-	20	-	50	R-O	Such industries generate both air as well as water pollution. These scores are normalized to 100.
69.	72	Transformer repairing/ manufacturing (dry process only)	--	--	20	20	--	20	--	20	--	20	10	50	O-O	Mainly air polluting because of ovens, shot-blasting etc.
70.	73	Tyres and tubes vulcanization/ hot retreating	10	--	10	20	--	20	--	20	--	20	--	50	O-O	Mainly air polluting. Emissions of PM, VOCs and obnoxious odour are generated.
71.	83	Vegetable oil manufacturing including solvent extraction and refinery /hydrogenated oils	20	-	20	15	5	20	10	20	10	20	10	50	R-O	i. All sorts of pollution are generated. ii. This score is valid for plants having waste-water generation < 100 KLD. iii. If the waste-water generation is more than 100 KLD, the unit shall be classified as Red.
72.	74	Wire drawing and wire netting	20	--	20	--	--	--	--	--	--	--	--	50	O-O	Mainly water polluting. WP scores normalized to 100.

73.	21	Dry cell battery (excluding manufacturing of electrodes) and assembling & charging of acid lead battery on micro scale	30	--	30	15	--	15	10	55	O-O	Water and air polluting both.
74.	50	Pharmaceutical formulation and for R & D purpose (For sustained release/ extended release of drugs only and not for commercial purpose)	20	--	20	20	--	20	15	55	O-O	i. All sorts of pollution are generated. ii. R&D activities are to be shifted to Red category.
75.	78	Synthetic resins	20	-	20	20	-	20	15	55	R-O	All sorts of pollution are generated.
76.	79	Synthetic rubber excluding molding	20	-	20	20	-	20	15	55	R-O	i. Most synthetic rubber is created from two materials, styrene and butadiene. Both are currently obtained from petroleum. ii. Process is similar to a part of Petrochemical plants.
77.	9	Cashew nut processing	25	--	25	20	--	20	--	56	O-O	Normal water and air polluting.
78.	12	Coffee seed processing	25	--	25	20	--	20	--	56	O-O	Normal water & air polluting industry.
79.	57	Parboiled Rice Mills	25	-	25	20	-	20	-	56	R-O	i. Rice Mills are generating both air and water pollution. Waste-waters are having high strength in respect of BOD. ii. This is the normalized air & water pollution score for units having waste-water generation < 100 KLD and fuel consumption less than 12 MTD. iii. For units having waste-water generation > 100 KLD or fuel consumption > 12 MTD or both , the unit shall be classified as Red.

80.	29	Foam manufacturing	--	--	--	20	--	20	15	58	O-O	i. Raw material is polyurethane, latex etc. ii. Emissions of VOCs and HAPs. CH3Cl2 and similar compounds as blowing agents. iii. Outdated raw materials and spoiled slots are discarded as HW.
81.	34	Industries engaged in recycling / reprocessing/ recovery/reuse of Hazardous Waste under schedule iv of HW(M, H& TBM) rules, 2008 - Items namely - Used Oil - As per specifications prescribed from time to time.	10	0	10	20	0	20	15	58.33	R-O	Mainly air polluting and hazardous waste generating industry. Air pollution & HW scores are normalized to 100
82.	34	Industries engaged in recycling / reprocessing/ recovery/reuse of Hazardous Waste under schedule iv of HW(M, H& TBM) rules, 2008 - Items namely - Waste Oil ---As per specifications prescribed from time to time.	-	-	-	20	0	20	15	58.33	R-O	Mainly air polluting and hazardous waste generating industry. Air pollution & HW scores are normalized to 100.
83.	56	Producer gas plant using conventional up drift coal gasification (linked to rolling mills glass and ceramic industry refectories for dedicated fuel supply)	--	--	--	20	--	20	15	58.33	O-O	Mainly air polluting & tar (HW) generating. SO2, CO, NOx are generated. Tar is the by-product and utilized by other industries in co-processing.

Note :

i. Under the column Revised Category, the full forms of the abbreviations are as follows :

- R-R means original category was Red and revised category is also Red
- R-O means original category was Red and revised category is Orange
- O-O means original category was Orange and revised category is also Orange
- O-G means original category was Orange and revised category is Green
- O-W means original category was Orange and revised category is White
- G-O means original category was Green and revised category is Orange
- G-G means original category was Green and revised category is also Green
- G-W means original category was Green and revised category is White

- ii. There are specific remarks in respect of some of the industrial sectors. These sectors are either merged with other relevant sectors or deleted due to duplication / vague category. The overall details are as follows:

Sl No.	Original SI No.	Industry Sector	Original Category	Remarks
1	24	Excavation of sand from the river bed (excluding manual excavation)	0	Since such types of activities cause ecological disturbances, the instructions issued by the government from time to time be followed. To be categorized by MoEF&CC.
2	39	Infrastructure Development Project	0	Vast variety of such projects come under such category. This is to be decided by the concerned SPCB in line of EIA Notification , 2006.
3	53	Power press	0	Very vague term hence deleted. Such types of general engineering units have already been covered.

Table G-4 : Final List of Green Category of Industrial Sectors

Sl. No.	Orgnl Sl.No.	Industry Sector	W1	W2	W	A1	A2	A	H	W+A+H	Revised Category	Remarks
1.	2	Aluminium utensils from aluminium circles by pressing only (dry mechanical operation)	--	--	--	10	--	10	--	25	G-G	Minor air pollution due to some fugitive PM emissions from buffing operations.
2.	6	Ayurvedic and homeopathic medicines (without boiler)	10	--	10	--	--	--	--	25	G-G	Small quantities of waste-waters are generated from washing operations.
3.	8	Bakery /confectionery /sweets products (with production capacity <1tpd (with gas or electrical oven)	10	--	10	--	--	--	--	25	G-G	Small quantities of waste-waters are generated from washing operations.
4.	6	Bi-axially oriented PP film along with metalizing operations	10	--	10	--	--	--	--	25	O-G	Mainly extrusion process involving water recirculation
5.	10	Biomass briquettes (sun drying) without using toxic hazardous wastes	--	--	--	10	--	10	--	25	G-G	Minor air pollution due to some fugitive PM emissions from pulverization / mixing operations.
6.	13	Blending of melamine resins & different powder, additives by physical mixing	--	--	--	10	--	10	--	25	G-G	Minor air pollution due to some fugitive PM emissions from pulverization / mixing operations.
7.	15	Brass and bell metal utensils from mechanical operation without re-rolling facility)	--	--	--	10	--	10	--	25	G-G	Minor air pollution due to some fugitive PM emissions from buffing operations.
8.	16	Candy	10	--	10	10	--	10	--	25	G-G	Small quantities of waste-water and minor

9.	17	Cardboard or corrugated box and paper products (excluding paper or pulp manufacturing and without using boilers)	--	--	10	--	10	--	10	--	25	G-G	PM emissions are generated. This score is valid with Small gas / electricity operated oven / furnace for making glue.
10.	18	Carpentry & wooden furniture manufacturing (excluding saw mill) with the help of electrical (motorized) machines such as electrical wood planner, steel saw cutting circular blade, etc.	--	--	10	--	10	--	10	--	25	G-G	Minor air pollution due to some fugitive PM emissions from cutting operations.
11.	19	Cement products (without using asbestos / boiler / steam curing) like pipe ,pillar, jafri, well ring, block/tiles etc.(should be done in closed covered shed to control fugitive emissions)	--	--	10	--	10	--	10	--	25	G-G	Minor air pollution due to some fugitive PM emissions from mixing operations.
12.	20	Ceramic colour manufacturing by mixing & blending only (not using boiler and wastewater recycling process)	--	--	10	--	10	--	10	--	25	G-G	Minor air pollution due to some fugitive PM emissions.
13.	11	Chilling plant, cold storage and ice making	10	--	10	--	10	--	10	--	25	O-G	Cooling water recirculation only.
14.	13	Coke briquetting (sun drying)	--	--	10	--	10	--	10	--	25	O-G	Mainly air polluting industry. Sources of air pollution (PM) are pulverizes and mixers. Air pollution score is normalized to 100.
15.	28	Cotton spinning and weaving (small scale)	--	--	10	--	10	--	10	--	25	G-G	Minor PM emissions from spinning process.
16.	17	Dal Mills	--	--	10	--	10	--	10	--	25	O-G	Some fugitive emissions of PM.

17.	29	Decoration of ceramic cups and plates by electric furnace	--	--	--	10	--	10	--	10	--	25	G-G	Fumes of enamels. Minor air pollution.
18.	19	Digital printing on PVC clothes	--	--	--	10	--	10	--	10	--	25	O-G	Minor emissions / odour generations are expected.
19.	25	Facility of handling, storage and transportation of food grains in bulk	--	--	--	10	--	10	--	10	--	25	O-G	Some fugitive emissions of PM during handling of grains.
20.	36	Flour mills (dry process)	--	--	--	10	--	10	--	10	--	25	G-G	Fugitive dust emissions.
21.	41	Glass , ceramic, earthen potteries, tile and tile manufacturing using electrical kiln or not involving fossil fuel kiln	--	--	--	10	--	10	--	10	--	25	G-G	Minor fugitive emissions only.
22.	34	Glue from starch (physical mixing) with gas / electrically operated oven /boiler.	--	--	--	10	--	10	--	10	--	25	O-G	Some fugitive emissions of PM during mixing of raw materials.
23.	42	Gold and silver smithy (purification with acid smelting operation and sulphuric acid polishing operation) (using less or equal to 1 litre of sulphuric acid/ nitric acid per month)	--	--	--	10	--	10	--	10	--	25	G-G	Minor fumes from cleaning process.
24.	36	Heat treatment with any of the new technology like ultrasound probe , induction hardening , ionization beam, gas carburizing etc.	10	--	10	10	--	10	--	10	--	25	O-G	<ul style="list-style-type: none"> Cooling waters and minor heat fumes. Finalization of categorization subject to field verification.
25.	46	Insulation and other coated papers (excluding paper or pipe manufacturing)	--	--	--	10	--	10	--	10	--	25	G-G	Minor fumes due to application of polyurethane
26.	49	Leather foot wear and leather products (excluding tanning and hide processing except cottage scale)	--	--	--	10	--	10	--	10	--	25	G-G	Minor fumes due to use of adhesives / gums.

27.	50	Lubricating oil, greases or petroleum based products (only blending at normal temperature)	--	--	--	10	--	10	--	10	--	25	G-G	Minor fumes at the time of transfers from one container to other.
28.	54	Manufacturing of pasted veneers using gas fired boiler or thermic fluid heater and by sun drying	--	--	--	10	--	10	--	10	--	25	G-G	1. Minor fumes due to application of gums / adhesives / pastes etc. 2. This score is valid only for gas fired boiler.3. The units having coal fired boilers shall be categorized as Orange.
29.	59	Oil mill Ghani and extraction (no hydrogenation / refining)	10	--	--	10	--	--	--	--	--	25	G-G	Small quantities of floor washings & equipments washings are generated.
30.	48	Packing materials manufacturing from non asbestos fibre, vegetable fibre yarn	--	--	--	--	--	10	--	10	--	25	O-G	Some fugitive emissions of PM are expected.
31.	65	Phenyl/toilet cleaner formulation and bottling	--	--	--	--	--	10	--	10	--	25	G-G	Minor fumes of VOCs in the work zone
32.	67	Polythene and plastic processed products (virgin plastic)	10	--	--	10	--	10	--	10	--	25	G-G	Cooling water & emissions due to mixing of raw materials.
33.	68	Poultry, Hatchery and Piggery	--	--	--	--	--	10	--	10	--	25	G-G	Obnoxious odour containing H ₂ S, CH ₄ etc. and fugitive PM emissions
34.	69	Power looms (without dye and bleaching)	--	--	--	--	--	10	--	10	--	25	G-G	Minor emissions of PM.
35.	71	Puffed rice (muri) (using gas or electrical heating system)	--	--	--	--	--	10	--	10	--	25	G-G	Minor emissions of PM.
36.	57	Pulverization of bamboo and scrap wood	--	--	--	--	--	10	--	10	--	25	O-G	Some fugitive emissions of PM are expected.
37.	72	Ready mix cement concrete	--	--	--	--	--	10	--	10	--	25	G-G	PM emissions.
38.	73	Reprocessing of waste cotton	--	--	--	--	--	10	--	10	--	25	G-G	PM emissions.
39.	60	Rice mill (Rice hullers only)	--	--	--	--	--	10	--	10	--	25	O-G	PM emissions are generated. Mainly air

52.	45	Hotels (up to 20 rooms and without boilers)	12	--	12	--	--	--	--	30	G-G	This score is valid for hotels having overall waste-water generation less than 10 KLD.
53.	53	Manufacturing of optical lenses (using electrical furnace)	12	--	12	--	--	--	--	30	G-G	Small quantities of waste-waters containing TDS, SS are generated.
54.	58	Mineralized water	12	--	12	--	--	--	--	30	G-G	RO Rejects.
55.	68	Tamarind powder manufacturing	12	--	12	15	--	15	15	33.75	O-G	<ul style="list-style-type: none"> Dried tamarind fruits - cleaned and after soaking them in water they are boiled in steam jacketed kettle for about 40-45 minutes. Then pulp is extracted in pulper and dried in drum type drier and on cooling, the final product is packed. Generates small quantities of waste waters and air emissions. Joint score is normalized to 100.
56.	15	Cutting, sizing and polishing of marble stone	15	--	15	--	--	--	--	37.5	O-G	Mainly water polluting . Water pollution score is normalized to 100.
57.	22	Emery powder (fine dust of sand) manufacturing	--	--	--	15	--	15	15	37.5	O-G	Air polluting. PM emissions take place during various stages of grindings of naturally occurring minerals.
58.	25	Flyash export, transport & disposal facilities	-	-	-	15	-	15	15	37.5	R-G	<ul style="list-style-type: none"> This is mainly air polluting activity. This is the normalized score based on air pollution.
59.	48	Mineral stack yard / Railway sidings	15	-	15	15	-	15	15	37.5	R-G	Mainly air pollution due to loading, unloading, storage and transportation of the minerals.

60.	54	Oil and gas transportation pipeline	-	-	-	10	5	15	-	37.5	R-G	<ul style="list-style-type: none"> Waste-water generation mainly during rains only. Contains small gas based power plants up-to 5 MWs. Air pollution score is normalized to 100. In case , if these power plants are bigger / liquid fuel / oil based, scores will be calculated accordingly.
61.	64	Seasoning of wood in steam heated chamber	--	--	15	15	--	15	--	37.5	O-G	<ul style="list-style-type: none"> Air pollution due to use boiler for supply of steam. Air pollution score is normalized to 100.
62.	84	Synthetic detergent formulation	--	--	15	15	--	15	--	37.5	G-G	<ul style="list-style-type: none"> This score is valid for the industries which are not manufacturing LABSA. It is procured from outside. Small quantities of emissions are generated from mini boiler. Air pollution score is normalized to 100.
63.	69	Tea processing (with boiler)	--	--	15	15	--	15	--	37.5	O-G	<ul style="list-style-type: none"> With boiler, it is an orange category industry. Without boiler, it will be green category industry.

Note :

- i. Under the column Revised Category, the full forms of the abbreviations are as follows :
- R-R means original category was Red and revised category is also Red
 - R-O means original category was Red and revised category is Orange
 - O-O means original category was Orange and revised category is also Orange
 - O-G means original category was Orange and revised category is Green
 - O-W means original category was Orange and revised category is White
 - G-O means original category was Green and revised category is Orange
 - G-G means original category was Green and revised category is also Green
 - G-W means original category was Green and revised category is White
- ii. There are specific remarks in respect of some of the industrial sectors. These sectors are either merged with other relevant sectors or deleted due to duplication. The overall details are as follows :

Sl No.	Original Sl No.	Industry Sector	Original Category	Remarks
1	47	Jobbing and Machining	G	Vague category to be deleted, as such activities have already been covered in other categories.
2	66	Reel manufacturing	G	Already covered in other categories. Hence, deleted
3	1	Assembling of acid lead batteries (up to 10 batteries per day excluding lead plate casting)	G	Already covered in Orange category. Hence, deleted
4	5	Automobile fuel outlets (only dispensing)	G	Minor air pollution due to some fugitive emissions during fuel filling operations. May be exempted from the purview of Consent management.
5	30	Diesel generator sets (15 KVA to 1 MVA)	G	<ul style="list-style-type: none"> • Normal operation – 12 hrs a day. • Consumption of diesel = 1680 litres for 1 MVA DG set at full load @ 0.21 litres / KVA / hr. • Stand-alone DG Sets having total capacity 1 MVA or less and equipped with acoustic enclosures along with adequate stack height may be exempted from the purview of Consent management. Higher capacity DG sets have already been covered under Red / Orange categories .

Table G-5: Final List of White Category of Industries

Sl. No.	Orgnl Sl. No.	Industry Sector	W1	W2	W	A1	A2	A	H	W+A+H	Revised Category
1.	3	Assembly of air coolers / conditioners ,repairing and servicing	--	--	--	--	--	--	--	--	G-W
2.	4	Assembly of bicycles ,baby carriages and other small non motorizing vehicles	--	--	--	--	--	--	--	--	G-W
3.	7	Bailing (hydraulic press)of waste papers	--	--	--	--	--	--	--	--	G-W
4.	9	Bio fertilizer and bio-pesticides without using inorganic chemicals	--	--	--	--	--	--	--	--	G-W
5.	11	Biscuits trays etc from rolled PVC sheet (using automatic vacuum forming machines)	--	--	--	--	--	--	--	--	G-W
6.	12	Blending and packing of tea	--	--	--	--	--	--	--	--	G-W
7.	14	Block making of printing without foundry (excluding wooden block making)	--	--	--	--	--	--	--	--	G-W
8.	21	Chalk making from plaster of Paris (only casting without boilers etc. (sun drying / electrical oven)	--	--	--	--	--	--	--	--	G-W
9.	25	Compressed oxygen gas from crude liquid oxygen (without use of any solvents and by maintaining pressure & temperature only for separation of other gases)	--	--	--	--	--	--	--	--	G-W
10.	27	Cotton and woolen hosiers making (Dry process only without any dyeing / washing operation)	--	--	--	--	--	--	--	--	G-W
11.	31	Diesel pump repairing and servicing (complete mechanical dry process)	--	--	--	--	--	--	--	--	G-W
12.	33	Electric lamp (bulb) and CFL manufacturing by assembling only	--	--	--	--	--	--	--	--	G-W

13.	34	Electrical and electronic item assembling (completely dry process)	--	--	--	--	--	--	--	--	--	--	G-W
14.	23	Engineering and fabrication units (dry process without any heat treatment / metal surface finishing operations / painting)	--	--	--	--	--	--	--	--	--	--	O-W
15.	35	Flavoured betel nuts production/ grinding (completely dry mechanical operations)	--	--	--	--	--	--	--	--	--	--	G-W
16.	37	Fly ash bricks/ block manufacturing	--	--	--	--	--	--	--	--	--	--	G-W
17.	38	Fountain pen manufacturing by assembling only	--	--	--	--	--	--	--	--	--	--	G-W
18.	39	Glass ampules and vials making from glass tubes	--	--	--	--	--	--	--	--	--	--	G-W
19.	40	Glass putty and sealant (by mixing with machine only)	--	--	--	--	--	--	--	--	--	--	G-W
20.	43	Ground nut decortating	--	--	--	--	--	--	--	--	--	--	G-W
21.	44	Handloom/ carpet weaving (without dyeing and bleaching operation)	--	--	--	--	--	--	--	--	--	--	G-W
22.	48	Leather cutting and stitching (more than 10 machine and using motor)	--	--	--	--	--	--	--	--	--	--	G-W
23.	51	Manufacturing of coir items from coconut husks	--	--	--	--	--	--	--	--	--	--	G-W
24.	52	Manufacturing of metal caps containers etc	--	--	--	--	--	--	--	--	--	--	G-W
25.	55	Manufacturing of shoe brush and wire brush	--	--	--	--	--	--	--	--	--	--	G-W
26.	57	Medical oxygen	--	--	--	--	--	--	--	--	--	--	G-W
27.	60	Organic and inorganic nutrients (by physical mixing)	--	--	--	--	--	--	--	--	--	--	G-W
28.	61	Organic manure (manual mixing)	--	--	--	--	--	--	--	--	--	--	G-W
29.	63	Packing of powdered milk	--	--	--	--	--	--	--	--	--	--	G-W
30.	64	Paper pins and u clips	--	--	--	--	--	--	--	--	--	--	G-W
31.	58	Repairing of electric motors and generators (dry mechanical process)	--	--	--	--	--	--	--	--	--	--	O-W
32.	74	Rope (plastic and cotton)	--	--	--	--	--	--	--	--	--	--	G-W

33.	76	Scientific and mathematical instrument manufacturing	--	--	--	--	--	--	--	--	--	G-W
34.	78	Solar module non conventional energy apparatus manufacturing unit	--	--	--	--	--	--	--	--	--	G-W
35.	79	Solar power generation through solar photovoltaic cell, wind power and mini hydel power (less than 25 MW)	--	--	--	--	--	--	--	--	--	G-W
36.	83	Surgical and medical products assembling only (not involving effluent / emission generating processes)	--	--	--	--	--	--	--	--	--	G-W

Note : Under the column Revised Category, the full forms of the abbreviations are as follows :

- a. R-R means original category was Red and revised category is also Red
- b. R-O means original category was Red and revised category is Orange
- c. O-O means original category was Orange and revised category is also Orange
- d. O-G means original category was Orange and revised category is Green
- e. O-W means original category was Orange and revised category is White
- f. G-O means original category was Green and revised category is Orange
- g. G-G means original category was Green and revised category is also Green
- h. G-W means original category was Green and revised category is White





केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD
(पर्यावरण एवं वन मंत्रालय, भारत सरकार)
(MINISTRY OF ENVIRONMENT & FORESTS, GOVT. OF INDIA)

No. B-29012/ESS/CPA/2015-16

19.08.2015

Sub: "Harmonization of Classification of industries under Red / Orange / Green / White Categories".

During the Conference of the Environment Ministers of States held in New Delhi during April 06-07, 2015, it was resolved to adopt pollution potential criteria for categorization of Red, Orange & Green categories of industries and that a Committee be constituted with State representatives. Further, in the 59th Conference of Chairmen & Member Secretaries of Pollution Control Boards/PCCs held in New Delhi on April 08, 2015, it was agreed to constitute a Committee to look into categorization system of industries based on their respective pollution potential index.

2. Accordingly, a Committee comprising the Chairmen of CPCB, APPCB, TNPCB, MPPCB, MPCB, PPCB, WBPCB and MS, CPCB was constituted vide CPCB OM dated 23.04.2015 to review & classify industrial sectors into different categories based on criteria of respective pollution potential indices.
3. The existing Red (85 sectors) , Orange (73 sectors) and Green (86 sectors) industrial sectors have been assessed as per the proposed formula by a group of Scientists from CPCB . For this purpose , concerned Engineers / Scientists from the Member SPCBs of the Committee were also involved & consulted during May28-29, 2015.
4. After careful examination and consideration of the suggestions of concerned stake-holders the "Draft Document on Revised Concept of Categorization of Industrial Sectors " is prepared by the Committee .

In this context, the Undersigned is directed to forward a copy of the " Draft Document on Revised Concept of Categorization of Industrial Sectors to all the SPCBs, PCCs and concerned Ministries for their comments. Accordingly, the same is enclosed herewith and all the SPCBs, PCCs and concerned Ministries are, hereby requested to provide their comments by 04.09.2015. The comments may kindly be sent through hard copy as well as soft copy at e-mail: nkgupta.cpcb@nic.in , nkgcpcb@hotmail.com .

Encl : As above

[N.K. Gupta]
Incharge - ESS

To:

1. All the State Pollution Control Boards / Pollution Control Committees
2. The Secretary, Ministry of Micro Small and Medium Enterprises, New Delhi
3. The Secretary, Ministry of Heavy Industries & Public Enterprises, New Delhi
4. The Advisor & Incharge , CP Division, MoEFCC, New Delhi
5. CPCB Website

'परिवेश भवन' पूर्वी अर्जुन नगर, दिल्ली-110032
'Parivesh Bhawan', East Arjun Nagar, Delhi - 110032
दूरभाष / Tel : 43102030, फैक्स / Fax : 22305793, 22307078, 22307079, 22301932, 22304948
ई-मेल / e-mail : cpcb@nic.in वेबसाइट / Website : www.cpcb.nic.in

MAHARASHTRA POLLUTION CONTROL BOARD

Phone : 022-25802272 /25829582

Fax : 022-25805398

Email : srothane2@mpcb.gov.in

Visit At : <http://mpcb.gov.in>



Sub-Regional Office, Thane-II
5th Floor, Office Complex Bldg.,
Near Mulund Check Naka,
Wagale Estate,
Thane-400 604

Green/S.S.I

Date: 04/12/2018

Consent No: MPCB/ SRO-THANE II/CONSENT/R/18/2000260

Consent to Operate under Section 26 of the Water (Prevention & Control of Pollution) Act, 1974 & under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 and Authorization / Renewal of Authorization under Rule 6 of the Hazardous & Other Wastes (Management & Transboundary Movement) Rules 2016

[To be referred as Water Act, Air Act and H & OW (M&T) Rules respectively].

CONSENT is hereby granted to

M/s. A.P.I. Readymix,
S. No. 47/5 and 52/1, Vill-Maljipada,
Tal-Vasai, Dist-Palghar.

located in the area declared under the provisions of the Water Act, Air act and Authorization under the provisions of H & OW (M&T) Rules and amendments thereto subject to the provisions of the Act and the Rules and the Orders that may be made further and subject to the following terms and conditions:

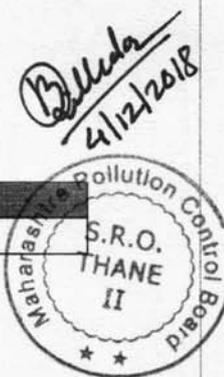
1. The Consent to Operate is granted for a period up to: 30/11/2021.
2. The Consent is valid for the manufacture of –

Sr. No.	Product Name	Maximum Quantity	UOM
1	Ready Mix Concrete	60,000	M ³ /A

(Only mixing activity)

3. CONDITIONS UNDER WATER ACT:

- (i) The daily quantity of trade effluent from the factory shall be Nil.
- (ii) The daily quantity of sewage effluent from the factory shall not exceed **0.60 M³**
- (iii) **Trade Effluent Treatment:** The waste water generated from the sources like Batching Plant washing, Transit Mixer washing, Vehicle tyre washing and floor washing area shall be collected through well designed drainage system in a collection tank and the same shall be treated by providing comprehensive treatment system as is warranted to meet the disposal standards mentioned below.



T.C.

Standards of the treated effluent Quality:

Sr. No.	Parameter	Concentration	Limits
1	pH	Between	5.5 to 9.0
2	Oil & Grease	Not to exceed	10 mg/l
3	Suspended Solids	Not to exceed	100 mg/l
4	BOD – 3 days	Not to exceed	30 mg/l
5	COD	Not to exceed	150 mg/l
6	TDS	Not to exceed	2100 mg/l

(iv) **Trade Effluent Disposal:** The treated effluent shall be reused in the process, water sprinkling system or gardening / plantation only. There should not any discharge of effluent from the plant.

(v) **Sewage Effluent Treatment:** The applicant shall provide comprehensive treatment system as is warranted with reference to influent quality and operate and maintain the same continuously so as to achieve the quality of treated effluent to the following standards.

- | | | | | |
|-----|-------------------|---------------|-----|-------|
| (1) | Suspended Solids | Not to exceed | 100 | mg/l. |
| (2) | BOD 3 days 27o C. | Not to exceed | 100 | mg/l. |

(vi) **Sewage Effluent Disposal:** The treated domestic effluent shall be soaked in a soak pit, which shall be got cleaned periodically. Overflow, if any, shall be used on land for gardening / plantation only.

(vii) **Non-Hazardous Solid Wastes treatment and disposal:**

Solid waste from transit mixture washing muck (debris/sludge) generated from RMC shall either be reused through recovery unit/Reclaiming system or disposed off a approved site by local body for debris / construction waste.

(viii) **Other Conditions:**

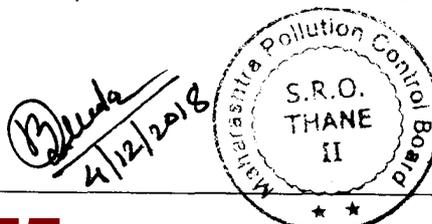
- Industry should monitor effluent quality regularly.
- The authority shall provide adequate water treatment and disposal facility for generated effluent from their activity. They shall comply with provisions under the Water (Prevention and control Pollution) Act, 1974.

4. The applicant shall comply with the provisions of the Water (Prevention & Control of Pollution) Cess Act, 1977 (to be referred as Cess Act) and amendment Rules, 2003 there under

The daily water consumption for the following categories is as under:

- | | | | |
|-------|---|-----|------------------------|
| (i) | Domestic purpose | ... | 1.00 CMD |
| (ii) | Water gets Polluted & Pollutants are Biodegradable | ... | 60.00 CMD (For Mixing) |
| (iii) | Water gets Polluted, Pollutants are not Biodegradable & Toxic | ... | 0.00 CMD |
| (iv) | Industrial Cooling, spraying in mine pits or boiler feed | ... | 0.00 CMD |

The applicant shall regularly submit to the Board the returns of water consumption in the prescribed form and pay the Cess as specified under Section 3 of the said Act.



5. CONDITIONS UNDER AIR ACT:

- (i) The applicant shall install a comprehensive control system consisting of control equipments as is warranted with reference to generation of emission and operate and maintain the same continuously so as to achieve the level of pollutants to the following standards:

a. Control Equipment:**(i) In-house measures:-**

1. All material transfer points should be covered
2. The dust containment system shall be provided incorporating either of the following:
 - Barricading all around the periphery of the plot boundary of height minimum 20 feet or 5 feet above free fall air emission area. Whichever is height with tin sheets same may extend above with netlon clothing whenever required.
 - Water sprinkling/Chemical dust stabilizing agent spraying system along the periphery inside the premises of RMC.
 - Tree plantation along the periphery inside boundary of the RMC premises having minimum width of 5 meters, on all sides. The foliage of the trees shall adequately cover area upto about 20m height.
3. Internal work area shall be, cement concreted/Asphalted.
4. Daily cleaning / Removal of dust accumulation inside the plant (dry/wet) shall be carry out with industrial vacuum cleaner.
5. Two level type washing facility shall be provided at entry and exit points, for transit mixture vehicle.

Raw material storage & handling:-

1. Storage silos of cement & fly-ash shall be adequate capacity of dust Collection system such as multi – cyclone followed by bag house assembly.
2. Handling of Cement, sand, fly ash and aggregates shall be carried out with mechanical closed system only.
3. Manual operations shall be permitted only in a closed shed, equipped with dust control system at the loading point as well as roof top secondary dust control system.
4. All Conveyor belts of Sand, aggregate shall be covered with tin sheets and at points dust collection system to be installed to avoid secondary fugitive emissions.
5. Mixing section of cement, aggregate & sand shall be equipped with adequate capacity dust collection system, such as multi-cyclone followed by bag houses, so as to limit dust emissions.
6. Storage area of sand & aggregates shall be equipped with roof top water sprinkler system.
7. The production plant shall be interlocked with air pollution control system.
8. Alternative power supply system should cover both the production and Air Pollution control system.

Ambient air quality as a distance of 10 mtr form source or the plant boundary whichever is nearer, shall meet the following standards

Particulate Matter PM 10	Not to Exceed	100	mg/m ³
Particulate Matter PM 2.5	Not to Exceed	60	mg/m ³

(Signature)
4/12/2018



- (a) Commercial plants shall install continuous ambient air quality monitoring station (CAAQMS) within the premises.
- (b) Captive plant shall carry out ambient air quality monitoring twice in a week for 24 hours.

b. Conditions for D.G. Set (165 KVA):-

- a. Noise from the D.G. Set should be controlled by providing an acoustic enclosure or by treating the room acoustically.
- b. Industry should provide acoustic enclosure for control of noise. The acoustic enclosure/ acoustic treatment of the room should be designed for minimum 25 dB (A) insertion loss or for meeting the ambient noise standards, whichever is on higher side. A suitable exhaust muffler with insertion loss of 25 dB (A) shall also be provided. The measurement of insertion loss will be done at different points at 0.5 meters from acoustic enclosure/room and then average.
- c. The industry shall take adequate measures for control of noise levels from its own sources within the premises in respect of noise to less than 55 dB(A) during day time and 45 dB(A) during the night time. Day time is reckoned between 6 a.m. to 10 p.m and night time is reckoned between 10 p.m to 6 a.m.
- d. Industry should make efforts to bring down noise level due to DG set, outside industrial premises, within ambient noise requirements by proper siting and control measures.
- e. Installation of DG Set must be strictly in compliance with recommendations of DG Set manufacturer.
- f. A proper routine and preventive maintenance procedure for DG set should be set and followed in consultation with the DG manufacturer which would help to prevent noise levels of DG set from deteriorating with use
- g. D.G. Set shall be operated only in case of power failure.
- h. The applicant should not cause any nuisance in the surrounding area due to operation of D.G. Set.

c. Standards for Stack Emissions:

- (i) The applicant shall observe the following fuel pattern:-

Sr. No.	Type Of Fuel	Quantity	UOM
1	Diesel	1000	Ltr/M

- (ii) The applicant shall erect the chimney(s) of the following specifications:-

Sr. No.	Chimney Attached To	Height in Mtrs.
1	D.G. Set (165 KVA)	3.0 mtrs. above roof of the building in which it is installed

- (iii) The industry shall take adequate measures for control of noise levels from its own sources within the premises so as to maintain ambient air quality standard in respect of noise to less than 75 dB(A) during day time and 70 dB(A) during night time. Day time is reckoned in between 6 a.m. and 10 p.m. and night time is reckoned between 10 p.m. and 6 a.m.

d. Noise pollution Control Measures :

- (i) Ready mix concrete industry shall comply with the provisions under the Noise pollution
- (ii) (Regulation and Control) Rule 2000, to control Noise Pollution.



Other Conditions:

- a. Industry should monitor air quality regularly.
- b. The authority shall provide adequate Air pollution control arraignment at the source. They shall comply with the provisions under the Air (Prevention and Control of Pollution) Act, 1981 and conditions prescribed as above.
- c. The industry should not cause any nuisance in surrounding area.

6. CONDITIONS UNDER HAZARDOUS & OTHER WASTE (MANAGEMENT & TRANSBOUNDARY MOVEMENT) RULES, 2016:

- (i) The Industry shall not generate any type of hazardous wastes.
- (ii) Treatment: - NIL

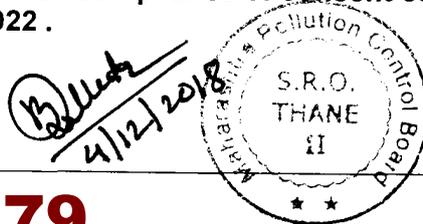
7. Whenever due to any accident or other unforeseen act or even, such emissions occur or is apprehended to occur in excess of standards laid down, such information shall be forthwith Reported to Collector, Directorate of Industry, Safety & Health, Police Satiation, Fire Brigade, Directorate of Health Services, Department of Explosives, Board & Local Body and the Production process should be stopped by taking all necessary safety measures. The industry shall also monitor the emission and ensure that the emissions do not cause any harm or nuisance in the surrounding. The industry should not restart the process without permission of the Board and other statutory organization as require under the law.

8. Industry shall comply with following additional conditions:

- i. The applicant shall maintain good housekeeping and take adequate measures for control of pollution from all sources so as not to cause nuisance to surrounding area / inhabitants.
- ii. The applicant shall bring minimum 33% of the available open land under green coverage/ tree plantation.
- iii. Solid waste – The non hazardous solid waste arising in the factory premises, sweepings, etc., be disposed of scientifically so as not to cause any nuisance / pollution. The applicant shall take necessary permissions from civic authorities for disposal to dumping ground.
- iv. The applicant shall provide for an alternate electric power source sufficient to operate all pollution control facilities installed by he applicant to maintain compliance with the terms and conditions of the consent. In the absence, the applicant shall stop, reduce or otherwise, control production to abide by terms & conditions of this consent regarding pollution levels.
- v. The applicant shall not change or alter quantity, quality, the rate of discharge, temperature or the mode of the effluent / emissions or hazardous wastes or control equipments provided for without previous written permission of the Board.
- vi. The applicant shall provide facility for collection of environmental samples and samples of trade and sewage effluents, air emissions and hazardous wastes to the Board staff at the terminal or designated points and shall pay to the Board for the services rendered in this behalf.
- vii. The applicant shall make an application for renewal of the consent at least 60 days before the date of the expiry of the consent.
- viii. The firm shall submit to this office, the 30th day of September every year, the Environmental Statement Report for the financial year ending 31st March in the prescribed Form-V as pre the provisions of rule 14 of the Environment (Protection) (Second Amendment) Rules, 1992.
- ix. As inspection book shall be opened and made available to the Board's officers during their visit to the applicant.
- x. The applicant shall install a separate electric meter showing the consumption of energy for operation of domestic and industrial effluent treatment plants and air pollution control system. A register showing consumption of chemicals used for treatment shall be maintained.



- xi. Separate drainage system shall be provided for collection of trade and sewage effluents. Terminal manholes shall be provided at the end of collection system with arrangement for measuring the flow. No effluent shall be admitted in the pipes / sewers down- stream of the terminal manholes. No effluent shall find its way other than in designed and provided collection system.
 - xii. Neither storm water nor discharge from other premises shall be allowed to mix with the effluents from the factory.
9. The applicant shall specify capacity of material handling and storage.
 10. The applicant shall carry out meteorological study specifically with directions & accordingly prepare plan to control of fugitive emissions / dust particles & suppression system.
 11. Operation of RMC plant shall be in day time only. The day time is reckoned in between 6 a.m. and 10 p.m.
 12. The remediation and restoration measure shall be taken by the project proponent in case of any environmental pollution in the surrounding area due to emission/effluent in excess of the standards being discharged/emitted in to the environment and violation of consent conditions and thereby causing environmental pollution.
 13. The project proponent should comply with other locational statutory requirements in force such as DC Rules etc.
 14. In case of failure of pollution control equipments, the production process connected to it shall be stopped, and shall not be restarted unless permission is obtained from Board.
 15. Consent is issued in regard to the Board's directions vide letter No. BO/AS(T)/TB/B-2182, dated, 03/06/2016.
 16. This consent should not be construed as exemption from obtaining necessary NOC from any other Government agencies as may deem fit necessary.
 17. The Board reserves the right to review, amend, suspend revoke etc., this consent and the same shall be binding to the applicant.
 18. Industry shall comply guidelines of the RMC Notification dtd. 07/11/2016.
 19. The applicant shall obtain NOC from Sanjay Gandhi National Park if applicable.
 20. The applicant shall obtain permission from Central Ground Water Board for the use of Ground Water.
 21. The applicant shall comply with the provision of E-Waste Management Rules, 2016.
 22. Industry shall submit Bank Guarantee of Rs. 25,000/- within 15 days to Regional Officer, Thane towards compliance of consent conditions which shall be valid up to 31/03/2022 .



23. The applicant shall make an application for renewal of the consent at least 60 days before the date of the expiry of the consent
24. The Capital investment of the industry is Rs. 375.15 Lacs.

For and on behalf of the
Maharashtra Pollution Control Board



B. K. K. K.
4/12/2018
(V. V. Killedar)
Sub-Regional Officer, Thane-II

To,
M/s. A.P.I. Readymix,
S. No. 47/5 and 52/1, Vill-Maljiipada,
Tal-Vasai, Dist-Palghar.

Received Consent fee of –

Sr. No.	Amount(Rs.)	Transaction No.	Date
1	15,000/-	TXN1811000758	13-11-2018
2	15,000/-	211814	19-11-2015

The consent fees of Rs. 15,000 /- vide DD No. 211814 dtd.19/11/2015, HDFC Bank which is remained with MPCB as per previous consent dtd.01/01/2016 is adjusted.

Copy submitted to:

- 1) Chief Account Officer, M. P. C. Board, Sion, Mumbai.
- 2) Regional Officer, M. P. C. Board, Thane

Copy to:

Master file- 2018

T.C.

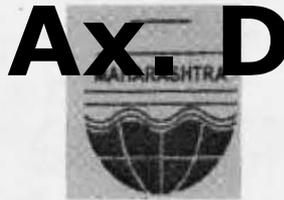
MAHARASHTRA POLLUTION CONTROL BOARD

Phone : 022-25802272 /25829582

Fax : 022-25805398

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Visit At : <http://mpcb.gov.in>



Sub-Regional Office, Thane-II
5th Floor, Office Complex Bldg.,
Near Mulund Check Naka,
Wagale Estate,
Thane-400 604

Green/S.S.I

Date: 19/07/2019

Consent No: MPCB/ SRO-THANE II/CONSENT/O/1907000714

Consent to Operate under Section 26 of the Water (Prevention & Control of Pollution) Act, 1974 & under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 and Authorization / Renewal of Authorization under Rule 6 of the Hazardous & Other Wastes (Management & Transboundary Movement) Rules 2016

[To be referred as Water Act, Air Act and H & OW (M&T) Rules respectively].

CONSENT is hereby granted to

M/s. Sardar Concrete,
S. No. 47/5 and 52/1, Vill-Maljipada,
Tal-Vasai, Dist-Palghar.

located in the area declared under the provisions of the Water Act, Air act and Authorization under the provisions of H & OW (M&T) Rules and amendments thereto subject to the provisions of the Act and the Rules and the Orders that may be made further and subject to the following terms and conditions:

1. The Consent to Operate is granted for a period up to: 31/07/2025.

2. The Consent is valid for the manufacture of –

Sr. No.	Product Name	Maximum Quantity	UOM
1	Ready Mix Concrete	60,000	M ³ /A

(Only mixing activity)

3. CONDITIONS UNDER WATER ACT:

- The daily quantity of trade effluent from the factory shall be Nil.
- The daily quantity of sewage effluent from the factory shall not exceed **0.60 M³**
- Trade Effluent Treatment:** The waste water generated from the sources like Batching Plant washing, Transit Mixer washing, Vehicle tyre washing and floor washing area shall be collected through well designed drainage system in a collection tank and the same shall be treated by providing comprehensive treatment system as is warranted to meet the disposal standards mentioned below.



T.C.

Standards of the treated effluent Quality:

Sr. No.	Parameter	Concentration	Limits
1	pH	Between	5.5 to 9.0
2	Oil & Grease	Not to exceed	10 mg/l
3	Suspended Solids	Not to exceed	100 mg/l
4	BOD – 3 days	Not to exceed	30 mg/l
5	COD	Not to exceed	150 mg/l
6	TDS	Not to exceed	2100 mg/l

(iv) **Trade Effluent Disposal:** The treated effluent shall be reused in the process, water sprinkling system or gardening / plantation only. There should not any discharge of effluent from the plant.

(v) **Sewage Effluent Treatment:** The applicant shall provide comprehensive treatment system as is warranted with reference to influent quality and operate and maintain the same continuously so as to achieve the quality of treated effluent to the following standards.

- | | | | | |
|-----|-------------------|---------------|-----|-------|
| (1) | Suspended Solids | Not to exceed | 100 | mg/l. |
| (2) | BOD 3 days 27o C. | Not to exceed | 100 | mg/l. |

(vi) **Sewage Effluent Disposal:** The treated domestic effluent shall be soaked in a soak pit, which shall be got cleaned periodically. Overflow, if any, shall be used on land for gardening / plantation only.

(vii) **Non-Hazardous Solid Wastes treatment and disposal:**

Solid waste from transit mixture washing muck (debris/sludge) generated from RMC shall either be reused through recovery unit/Reclaiming system or disposed off a approved site by local body for debris / construction waste.

(viii) **Other Conditions:**

- Industry should monitor effluent quality regularly.
- The authority shall provide adequate water treatment and disposal facility for generated effluent from their activity. They shall comply with provisions under the Water (Prevention and control Pollution) Act, 1974.

4. The applicant shall comply with the provisions of the Water (Prevention & Control of Pollution) Cess Act, 1977 (to be referred as Cess Act) and amendment Rules, 2003 there under

The daily water consumption for the following categories is as under:

- | | | | |
|-------|---|-----|------------------------|
| (i) | Domestic purpose | ... | 1.00 CMD |
| (ii) | Water gets Polluted & Pollutants are Biodegradable | ... | 60.00 CMD (For Mixing) |
| (iii) | Water gets Polluted, Pollutants are not Biodegradable & Toxic | ... | 0.00 CMD |
| (iv) | Industrial Cooling, spraying in mine pits or boiler feed | ... | 0.00 CMD |

The applicant shall regularly submit to the Board the returns of water consumption in the prescribed form and pay the Cess as specified under Section 3 of the said Act.



5. CONDITIONS UNDER AIR ACT:

- (i) The applicant shall install a comprehensive control system consisting of control equipments as is warranted with reference to generation of emission and operate and maintain the same continuously so as to achieve the level of pollutants to the following standards:

a. Control Equipment:**(i) In-house measures:-**

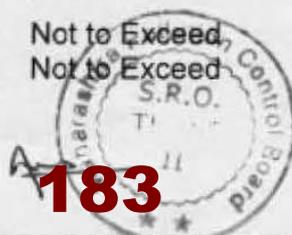
1. All material transfer points should be covered
2. The dust containment system shall be provided incorporating either of the following:
 - Barricading all around the periphery of the plot boundary of height minimum 20 feet or 5 feet above free fall air emission area. Whichever is height with tin sheets same may extend above with netlon clothing whenever required.
 - Water sprinkling/Chemical dust stabilizing agent spraying system along the periphery inside the premises of RMC.
 - Tree plantation along the periphery inside boundary of the RMC premises having minimum width of 5 meters, on all sides. The foliage of the trees shall adequately cover area upto about 20m height.
3. Internal work area shall be, cement concreted/Asphalted.
4. Daily cleaning / Removal of dust accumulation inside the plant (dry/wet) shall be carry out with industrial vacuum cleaner.
5. Two level type washing facility shall be provided at entry and exit points, for transit mixture vehicle.

Raw material storage & handling:-

1. Storage silos of cement & fly-ash shall be adequate capacity of dust Collection system such as multi – cyclone followed by bag house assembly.
2. Handling of Cement, sand, fly ash and aggregates shall be carried out with mechanical closed system only.
3. Manual operations shall be permitted only in a closed shed, equipped with dust control system at the loading point as well as roof top secondary dust control system.
4. All Conveyor belts of Sand, aggregate shall be covered with tin sheets and at points dust collection system to be installed to avoid secondary fugitive emissions.
5. Mixing section of cement, aggregate & sand shall be equipped with adequate capacity dust collection system, such as multi-cyclone followed by bag houses, so as to limit dust emissions.
6. Storage area of sand & aggregates shall be equipped with roof top water sprinkler system.
7. The production plant shall be interlocked with air pollution control system.
8. Alternative power supply system should cover both the production and Air Pollution control system.

Ambient air quality as a distance of 10 mtr form source or the plant boundary whichever is nearer, shall meet the following standards

Particulate Matter PM 10	Not to Exceed	100	mg/m ³
Particulate Matter PM 2.5	Not to Exceed	60	mg/m ³



- (a) Commercial plants shall install continuous ambient air quality monitoring station (CAAQMS) within the premises.
- (b) Captive plant shall carry out ambient air quality monitoring twice in a week for 24 hours.

b. Conditions for D.G. Set (165 KVA):-

- a. Noise from the D.G. Set should be controlled by providing an acoustic enclosure or by treating the room acoustically.
- b. Industry should provide acoustic enclosure for control of noise. The acoustic enclosure/ acoustic treatment of the room should be designed for minimum 25 dB (A) insertion loss or for meeting the ambient noise standards, whichever is on higher side. A suitable exhaust muffler with insertion loss of 25 dB (A) shall also be provided. The measurement of insertion loss will be done at different points at 0.5 meters from acoustic enclosure/room and then average.
- c. The industry shall take adequate measures for control of noise levels from its own sources within the premises in respect of noise to less than 55 dB(A) during day time and 45 dB(A) during the night time. Day time is reckoned between 6 a.m. to 10 p.m and night time is reckoned between 10 p.m to 6 a.m.
- d. Industry should make efforts to bring down noise level due to DG set, outside industrial premises, within ambient noise requirements by proper siting and control measures.
- e. Installation of DG Set must be strictly in compliance with recommendations of DG Set manufacturer.
- f. A proper routine and preventive maintenance procedure for DG set should be set and followed in consultation with the DG manufacturer which would help to prevent noise levels of DG set from deteriorating with use
- g. D.G. Set shall be operated only in case of power failure.
- h. The applicant should not cause any nuisance in the surrounding area due to operation of D.G. Set.

c. Standards for Stack Emissions:

- (i) The applicant shall observe the following fuel pattern:-

Sr. No.	Type Of Fuel	Quantity	UOM
1	Diesel	1000	Ltr/M

- (ii) The applicant shall erect the chimney(s) of the following specifications:-

Sr. No.	Chimney Attached To	Height in Mtrs.
1	D.G. Set (165 KVA)	3.0 mtrs. above roof of the building in which it is installed

- (iii) The industry shall take adequate measures for control of noise levels from its own sources within the premises so as to maintain ambient air quality standard in respect of noise to less than 75 dB(A) during day time and 70 dB(A) during night time. Day time is reckoned in between 6 a.m. and 10 p.m. and night time is reckoned between 10 p.m. and 6 a.m.

d. Noise pollution Control Measures :

- (i) Ready mix concrete industry shall comply with the provisions under the Noise pollution
- (ii) (Regulation and Control) Rule 2000 to control Noise Pollution.



Other Conditions:

- a. Industry should monitor air quality regularly.
- b. The authority shall provide adequate Air pollution control arraignment at the source. They shall comply with the provisions under the Air (Prevention and Control of Pollution) Act, 1981 and conditions prescribed as above.
- c. The industry should not cause any nuisance in surrounding area.

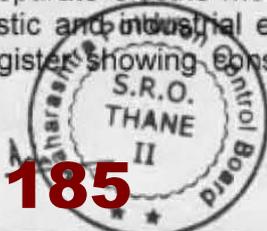
6. CONDITIONS UNDER HAZARDOUS & OTHER WASTE (MANAGEMENT & TRANSBOUNDRY MOVEMENT) RULES, 2016:

- (i) The Industry shall not generate any type of hazardous wastes.
- (ii) Treatment: - NIL

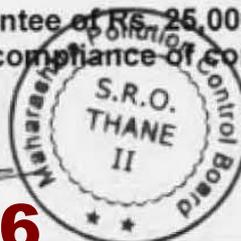
7. Whenever due to any accident or other unforeseen act or even, such emissions occur or is apprehended to occur in excess of standards laid down, such information shall be forthwith Reported to Collector, Directorate of Industry, Safety & Health, Police Satiation, Fire Brigade, Directorate of Health Services, Department of Explosives, Board & Local Body and the Production process should be stopped by taking all necessary safety measures. The industry shall also monitor the emission and ensure that the emissions do not cause any harm or nuisance in the surrounding. The industry should not restart the process without permission of the Board and other statutory organization as require under the law.

8. Industry shall comply with following additional conditions:

- i. The applicant shall maintain good housekeeping and take adequate measures for control of pollution from all sources so as not to cause nuisance to surrounding area / inhabitants.
- ii. The applicant shall bring minimum 33% of the available open land under green coverage/ tree plantation.
- iii. Solid waste – The non hazardous solid waste arising in the factory premises, sweepings, etc., be disposed of scientifically so as not to cause any nuisance / pollution. The applicant shall take necessary permissions from civic authorities for disposal to dumping ground.
- iv. The applicant shall provide for an alternate electric power source sufficient to operate all pollution control facilities installed by he applicant to maintain compliance with the terms and conditions of the consent. In the absence, the applicant shall stop, reduce or otherwise, control production to abide by terms & conditions of this consent regarding pollution levels.
- v. The applicant shall not change or alter quantity, quality, the rate of discharge, temperature or the mode of the effluent / emissions or hazardous wastes or control equipments provided for without previous written permission of the Board.
- vi. The applicant shall provide facility for collection of environmental samples and samples of trade and sewage effluents, air emissions and hazardous wastes to the Board staff at the terminal or designated points and shall pay to the Board for the services rendered in this behalf.
- vii. The applicant shall make an application for renewal of the consent at least 60 days before the date of the expiry of the consent.
- viii. The firm shall submit to this office, the 30th day of September every year, the Environmental Statement Report for the financial year ending 31st March in the prescribed Form-V as pre the provisions of rule 14 of the Environment (Protection) (Second Amendment) Rules, 1992.
- ix. As inspection book shall be opened and made available to the Board's officers during their visit to the applicant.
- x. The applicant shall install a separate electric meter showing the consumption of energy for operation of domestic and industrial effluent treatment plants and air pollution control system. A register showing consumption of chemicals used for treatment shall be maintained.



- xi. Separate drainage system shall be provided for collection of trade and sewage effluents. Terminal manholes shall be provided at the end of collection system with arrangement for measuring the flow. No effluent shall be admitted in the pipes / sewers down- stream of the terminal manholes. No effluent shall find its way other than in designed and provided collection system.
- xii. Neither storm water nor discharge from other premises shall be allowed to mix with the effluents from the factory.
9. The applicant shall specify capacity of material handling and storage.
 10. The applicant shall carry out meteorological study specifically with directions & accordingly prepare plan to control of fugitive emissions / dust particles & suppression system.
 11. Operation of RMC plant shall be in day time only. The day time is reckoned in between 6 a.m. and 10 p.m.
 12. The remediation and restoration measure shall be taken by the project proponent in case of any environmental pollution in the surrounding area due to emission/effluent in excess of the standards being discharged/emitted in to the environment and violation of consent conditions and thereby causing environmental pollution.
 13. The project proponent should comply with other locational statutory requirements in force such as DC Rules etc.
 14. In case of failure of pollution control equipments, the production process connected to it shall be stopped, and shall not be restarted unless permission is obtained from Board.
 15. Consent is issued in regard to the Board's directions vide letter No. BO/AS(T)/TB/B-2182, dated, 03/06/2016.
 16. This consent should not be construed as exemption from obtaining necessary NOC from any other Government agencies as may deem fit necessary.
 17. The Board reserves the right to review, amend, suspend revoke etc., this consent and the same shall be binding to the applicant.
 18. Industry shall comply guidelines of the RMC Notification dtd. 07/11/2016.
 19. The applicant shall obtain NOC from Sanjay Gandhi National Park if applicable.
 20. The applicant shall obtain permission from Central Ground Water Board for the use of Ground Water.
 21. The applicant shall comply with the provision of E-Waste Management Rules, 2016.
 22. Industry shall submit Bank Guarantee of RS. 25,000/- within 15 days to Regional Officer, Thane towards compliance of consent conditions which shall be valid up to 31/03/2022 .



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23. The applicant shall make an application for renewal of the consent at least 60 days before the date of the expiry of the consent.
24. This consent is issued with overriding effect to the consent granted earlier vide No- MPCB/SRO-THANE II/Consent/R/1812000260 dtd 04/12/2018 to M/s. A.P.I. Readymix which valid up to 30/11/2021.
25. The Capital investment of the industry is Rs. 406.66 Lacs.

For and on behalf of the
Maharashtra Pollution Control Board

(Amar B. Durgule)
Sub-Regional Officer, Thane-II*



To,
M/s. Sardar Concrete,
S. No. 47/5 and 52/1, Vill-Maljipada,
Tal-Vasai, Dist-Palghar.

Received Consent fee of –

Sr. No.	Amount(Rs.)	Transaction No.	Date
1	30,000/-	TXN1907001467	17-07-2019

Copy submitted to:

- 1) Chief Account Officer, M. P. C. Board, Sion, Mumbai.
- 2) Regional Officer, M. P. C. Board, Thane

Copy to:

Master file- 2018

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Item No. 02

(Pune Bench)

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

(By Video Conferencing)

Original Application No. 31/2020 (WZ)
(I.A. No. 136/2020)

Shashikant Kamble

Applicant

Versus

M/s Embassy Property Development Pvt. Ltd.

Respondent

Date of hearing: 10.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Brajesh Singh, Advocate

Respondent(s): Mr. S.K. Jain, Advocate for R.1
Mr. Aniruddha Kulkarni, Advocate for R3 & R4
Ms. Mansi Joshi, Advocate for R.6
Ms. Shyamli Gadre, Advocate for R.8 – MIDC
Mr. D.M. Gupte Advocate for R-9 (MoEF&CC)

ORDER

1. Grievance in this application is against construction of housing project by respondent No. 1 - M/s Embassy Property Development Pvt. Ltd., Pune, in violations of environmental norms.

2. According to the applicant, the building approval to the project was granted in the year 2005 which was revised in the year 2007. Environmental Clearance (EC) requirement became operative on 14.09.2006 but the project was completed without EC. Later, ex post facto EC was obtained from SEIAA, Maharashtra on 29.03.2011.

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3. Vide order dated 14.08.2020, the Tribunal issued notice to the Project Proponent (PP) and the statutory regulators including SEIAA, Maharashtra and State PCB. The Tribunal also constituted a joint Committee of District Collector, Pune, SEIAA, Maharashtra and State PCB to furnish a factual and action taken report in the matter.

4. Accordingly, report dated 06.12.2021 has been filed by the joint Committee to the effect that a criminal case has been filed before the CGM, Pune for construction of the project without requisite EC. However, the PP has filed a Writ Petition in the Bombay High Court against the initiation of criminal proceedings.

5. The PP has filed a reply inter alia raising the plea of limitation. It is submitted that no part of cause of action has arisen within five years prior to filing of the OA. No continued violation pointed out. Thus, the Tribunal cannot entertain the application beyond statutory limitation.

6. We have heard learned counsel for the parties.

7. We find that the petition was filed on 04.02.2020 and no cause of action in five years preceding the filing of OA has been pleaded.

In view of the above, we uphold the objection of limitation and dismiss the application.

I.A. No. 136/2020 also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. Nagin Nanda, EM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

Dr. Afroz Ahmad, EM

February 10, 2022
Original Application No. 31/2020 (WZ)
(I.A. No. 136/2020)
A

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A handwritten signature in black ink, appearing to be 'S. Senthil Vel', written over a horizontal line.

2022 LiveLaw (SC) 868

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
B.R. GAVAI; J., B.V. NAGARATHNA; J.
OCTOBER 21, 2022

THE STATE OF UTTAR PRADESH & ORS. ETC. ETC.

versus

UDAY EDUCATION AND WELFARE TRUST AND ANR. ETC. ETC.

National Green Tribunal Act, 2010 - Appeal against NGT order that directed the State of Uttar Pradesh to not proceed with the proposal for establishment of new wood-based industries till an assessment of the actual availability of timber was done - Allowed - The Courts should not enter into an area that is the domain of the experts. FSI, an expert body, had arrived at its estimation based on the scientific method - NGT could not have sat in appeal over the opinion of the expert - While protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck - NGT has also failed to take into consideration the stand taken by the MOEFCC, which supported the stand of the State which had emphasized many advantages of granting new licenses to WBIs - While setting aside NGT orders, the following directions are issued (1) while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. (2) The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years.

National Green Tribunal Act, 2010 - When the credentials and bonafides of a litigant approaching the NGT are seriously raised, the same cannot be ignored Before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bonafides of the applicants must be tested. (Para 98-99)

Environment - The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. (Para 101)

CIVIL APPEAL NOS.2407-2412 OF 2021 WITH CIVIL APPEAL NOS. 3144-3146 OF 2022 CIVIL APPEAL NOS.3132-3134 OF 2022 CIVIL APPEAL NOS.3135-3137 OF 2022 CIVIL APPEAL NO.3138 OF 2022 CIVIL APPEAL NOS.4061-4062 OF 2022 CIVIL APPEAL NO.3141 OF 2022 CIVIL APPEAL NOS.2547-2548 OF 2020 CIVIL APPEAL NOS.3142-3143 OF 2022 CIVIL APPEAL NOS.3147-3149 OF 2022

For the parties : 26 (Appellant(s)) Mr. Vikas Singh, Sr. Adv. Mr. P.S. Patwalia, Sr. Adv. Mr. Rana Mukherjee, Sr. Adv. Mr. Kamendra Mishra, AOR 26.1 Ms. Prerna Singh, Adv. Mr. Guntur Pramod Kumar, AOR 26.2 Mr. V. Giri, Sr. Adv. Appellant(s) Mr. Rajeev Kumar Dubey, Adv. Mr. Saurabh Singh Chauhan, Adv. Ms. Saroj Tripathi, AOR 26.7 Mr. Syed Waseem Qadri, Sr. Adv. Appellant(s) Mr. Md. Rashid Saeed, AOR Mr. Saeed Quadri, Adv. 26.8,26.9 Mr. V.K. Uniyal, Sr. Adv. 3 Mr. Dinesh Kumar Garg, AOR Mr. Abhishek Garg, Adv. Mr. Dhananjay Garg, Adv. Mr. Ishaan Tiwari, Adv. Mr. Satyajeet Kumar, AOR 26.3 Mr. Vinay Navare, Sr. Adv. Mr. Rajesh Srivastava, AOR Mr. Gaurav Verma, Adv Mr. Neeraj Datt Gaur, Adv Mr. Lokesh Kumar Choudhary, AOR Ms. Saroj Tripathi, AOR Mr. A. Lakshminarayanan, AOR Mr. Rudraksh Gupta, Adv. Mr. A. Velan, Adv. Mr. Akhil P. Philip, Adv. Mr. Vishwadeep Chauhan, Adv. Mr. Vikalp Sharma, Adv. Mr. Ankolekar Gurudatta, AOR 26.4 Mr. V.K. Shukla, Sr. Adv. Appellant(s) Mr. Ajay Singh, Adv. Mr. Ram Kumar, Adv. Mr.

Debasis Mukherjee, Adv. Mr. Lokesh Kumar Choudhary, AOR 26 to 26.9 Mr. Dhruv Mehta, Sr. Adv. R-1 Mr. Brijender Chahar, Sr. Adv. Mr. Vivek Gupta, AOR Mr. Mrinmay Bhattmewara, Adv. Mr. Rajvir Singh Bhati, Adv. Mr. Shyam R. Agarwal, Adv. Mr. Namit Saxena, AOR Ms. Aishwarya Bhati, Ld. ASG Ms. Suhashini Sen, Adv. Ms. Archana Pathak Dave, Adv. Ms. Chinmayee Chandra, Adv. Mr. Varun Chugh, Adv. Mr. Gurmeet Singh Makker, AOR Mr. Ansar Ahmad Chaudhary, AOR Mr. Rashid Hasan Adv. Ms. Shehla Chaudhary Adv. Mr. Md. Anas Chaudhary Adv. Dr. Vinod Kumar Tewari, AOR 4 Mr. Alok Kumar, AOR Mr. Nihal Ahmad, Adv. Mr. Arvind Kumar Shukla, Adv. Mr. Amit Kumar, Adv. Ms. Prachi Goyal, Adv. Ms. Anu Singla, Adv. Mr. Tushar Swahi, Adv. Mr. Vasu, Adv. Mr. Arvind Kumar Shukla, Adv. Mr. Vasu Chaudhar, Adv. Ms. Prachi, Adv. Mr. S. K. Verma, AOR Mr. Zulfiker Ali P. S, AOR Ms. Saroj Tripathi, AOR

J U D G M E N T

B.R. GAVAI, J.

1. For the reasons stated in the applications for impleadment/intervention, the same are allowed.
2. This bunch of appeals challenges the order dated 18th February 2020, passed by the learned National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the learned NGT") in Original Application Nos.313, 335 and 396 of 2019, thereby quashing and setting aside the notice dated 1st March 2019 issued by the State of Uttar Pradesh for establishing new wood based industries (hereinafter referred to as "WBIs") and also setting aside all the provisional licenses given in pursuance thereof.
3. The appeals also challenge the orders dated 18th March 2020, 2nd December 2020, and 21st December 2020 vide which the review applications filed by the State of Uttar Pradesh and the provisional license holders have been rejected.
4. Civil Appeal Nos.2407-2412 of 2021 are filed by the State of Uttar Pradesh. The rest of the Civil Appeals are filed by the provisional license holders, who were granted licenses in pursuance of the notice dated 1st March 2019, issued by the State of Uttar Pradesh.

FACTUAL BACKGROUND

5. For the sake of convenience, we will refer to the facts as found in Civil Appeal Nos. 2407-2412 of 2021 filed by the State of Uttar Pradesh.
6. There are series of orders passed by this Court and the Central Empowered Committee (hereinafter referred to as "CEC") appointed by this Court, issuing various directions for prohibiting/regulating the felling of trees as well as the establishment of WBIs. We will refer to them extensively in the subsequent paragraphs.
7. In pursuance of the order passed by this Court dated 5th October 2015 in Writ Petition (Civil) No.202 of 1995 (T.N. Godavarman Thirumalpad vs. Union of India), the Ministry of Environment and Forest and Climate Change ("MOEFCC" for short) issued Wood Based Industries (Establishment and Regulation) Guidelines 2016 (hereinafter referred to as "2016 Guidelines") vide Notification No. S.O. 3456 (E) dated 11th November 2016.
8. Subsequent to the 2016 Guidelines, timber assessment for Trees Outside Forest ("TOF" for short) in the State of Uttar Pradesh for WBIs was done for the period between February 2017 and December 2017 by the Forest Survey of India ("FSI" for short). The FSI thereafter submitted its report, which contains district wise, species wise and diameter class wise number of stems (trees), volume and annual potential production of timber from TOF in rural areas of all the districts of the State.
9. In pursuance of the 2016 Guidelines, the matter was placed before the State Level Committee ("SLC" for short) for grant of licenses to various WBIs. The SLC in its meeting held on 4th May 2018, considered the matter about the grant of licenses to various WBIs

after taking into consideration the availability of wood in the State of Uttar Pradesh for determining the amount of timber available for new WBIs. In the said meeting, it was also decided that, in order to determine the correct number of new licenses to be issued to WBIs under different categories against the timber available in the State, a reassessment may be done by the Indian Plywood Industries Research and Training Institute (“IPIRTI” for short).

10. In the meeting of the SLC, held on 7th September 2018, since it was found that the capacity of plywood units is taken as fixed by the 2016 Guidelines, which, in turn, was based on the assessment of IPIRTI, a decision was taken that there was no need for the fresh assessment of the capacity by IPIRTI.

11. In pursuance of the aforesaid decision, E-lottery was held on 12th December 2018 for grant of licenses to various WBIs for the establishment of WBIs in 8 categories. Between 12th December 2018 and 31st December 2018, online letters of offer were issued to 1348 successful applicants. Subsequently, in the months of February and March 2019, provisional licenses were issued to 1215 successful applicants in the 8 categories to set up their WBIs. Subsequent thereto, on 1st March 2019, a notice was issued by the Government of Uttar Pradesh communicating the grant of provisional licenses to the newly selected WBIs.

12. Being aggrieved thereby, Original Application No. 313 of 2019 came to be filed by Uday Education and Welfare Trust before the learned NGT in March 2019. Vide order dated 28th March 2019, the learned NGT directed the State Government to submit a report from the Joint Committee comprising of the representative of Principal Secretary (Forest), U.P. and the Principal Chief Conservator of Forest, U.P. to examine the issues.

13. Being aggrieved by the notice dated 1st March 2019 issued by the State Government, Original Application Nos. 335 and 396 of 2019 also came to be filed by Samvit Foundation and U.P. Timber Association respectively before the learned NGT.

14. In pursuance of the directions issued by the learned NGT, the Joint Committee Report came to be submitted on 3rd August 2019. Vide order dated 6th August 2019 passed in Original Application nos. 313, 335 and 396 of 2019, the learned NGT directed the State Government to review the notice dated 1st March 2019 with regard to the establishment of new WBIs by 1350 units strictly in terms of the judgment of this Court in the case of *Uday Education and Welfare Trust v. State of Uttar Pradesh*. Vide order dated 1st October 2019, the learned NGT directed the status quo to be maintained.

15. The State of Uttar Pradesh filed an Interlocutory Application No.732 of 2019 in O.A. Nos. 313, 335 and 396 of 2019, seeking modification of the order dated 6th August 2019 and the order dated 1st October 2019. Vide order dated 18th December 2019, the learned NGT issued directions to the State Government to provide certain data. Subsequently, vide the impugned order dated 18th February 2020, the learned NGT allowed the said Original Applications and quashed and set aside the notice dated 1st March 2019 issued by the State Government for establishing new WBIs and all the provisional licenses given.

16. Being aggrieved thereby, Civil Appeal (Diary) No.12004 of 2020 was filed before this Court. Vide order dated 26th October 2020, this Court dismissed the said appeals as withdrawn with a liberty to file review application before the learned NGT. Vide orders dated 18th March 2020, 2nd December 2020, and 21st December 2020, the learned NGT rejected the Review Applications.

17. The appellants, therefore, approached this Court being aggrieved by the orders passed by the learned NGT in the Original Applications as well as in the Review Petitions.

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18. We have heard Shri Vikas Singh, Shri P.S. Patwalia and Mr. Rana Mukherjee, learned Senior Counsel appearing on behalf of the State of Uttar Pradesh, Shri V. Giri, Shri Syed Waseem Qadri, Shri V.K. Uniyal, Shri Vinay Navare, Shri V.K. Shukla, learned Senior Counsels, Ms. Prerna Singh, and Mr. Rudraksh Gupta, learned counsels appearing on behalf of the appellants, who were granted provisional licenses. We have also heard Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsels appearing on behalf of the respondent No.1.

19. Shri Vikas Singh, learned Senior Counsel, submitted that the decision of the State Government to establish WBIs is in accordance with the 2016 Guidelines issued by the MOEFCC. He submits that the timber requirement by 1215 new WBIs, which were issued provisional licenses is only 12.35 lakh cubic meters per year, whereas the total timber available in the State is 80.30 lakh cubic meters per year. It is, therefore, submitted that, as such, the requirement is not even 20% of the total availability of timber. Learned Senior Counsel submitted that the only authorized agency in the country to conduct a survey of the forest as well as TOF is FSI. It is submitted that the object of IPIRTI is not to conduct a survey of either forest or TOF. It is submitted that, as a matter of fact, the learned NGT itself has directed such a study to be conducted by FSI, who has already undertaken similar studies for many States like Punjab, Maharashtra and others. It is submitted that when the survey with regard to availability of timber in the State of Uttar Pradesh was done by the very same agency, the learned NGT fell in gross error in again directing the State Government to conduct such a survey through the FSI.

20. It is submitted that even the MOEFCC had supported the stand taken by the State of Uttar Pradesh and, therefore, the learned NGT ought not to have interfered with the decision of the State Government.

21. Shri P.S. Patwalia, learned Senior Counsel also submitted that the decision of the State Government was in tune with the decision of this Court dated 18th May 2007 and 5th October 2015 passed in Writ Petition (Civil) No.202 of 1995 (

. It is submitted that when an expert body like the FSI had done an elaborate study, there was no reason for the learned NGT to have sat in appeal over the same. He further submits that though a detailed affidavit has been filed on behalf of the State of Uttar Pradesh in compliance with the order of the learned NGT dated 18th December 2019, regarding the availability of timber, the learned NGT has totally ignored the same.

22. Shri V. Giri, learned Senior Counsel, submits that the learned NGT erred in passing orders which have vitally affected the rights of the citizens who were granted provisional licenses. He submits that the order impugned is totally in breach of the principles of natural justice. It is submitted that, from the perusal of the record, it is clear that the State of Haryana while calculating its requirement for wood also takes into consideration the import from the State of Uttar Pradesh. It is submitted that when there is excess wood available in the State of Uttar Pradesh, there is no reason why the same should be permitted to be exported to the State of Haryana at the cost of entrepreneurs in the State of Uttar Pradesh.

23. Shri Vinay Navare, learned Senior Counsel, submitted that the timber used in the WBIs is from the trees which are agro-based. He submits that though the State of Uttar Pradesh had adopted an elaborate procedure right from June 2018 till the grant of licenses, the applicants before the learned NGT had taken no steps. Shri Navare submits that only after the provisional licenses were issued and 632 out of 1215 WBIs provisional license

holders had already been established and commenced operations, the applications were entertained and the orders were passed to the prejudice of the WBIs. It is submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as “the NGT Act”) mandates following of the principles of natural justice. It is submitted that though the applications for impleadment were made by the WBIs, the applicants were not granted an opportunity of being heard.

24. Shri V.K. Uniyal, learned Senior Counsel submitted that the learned NGT had erred in using the word “allotted”. It is submitted that there is no question of allotment of timber to the WBIs and they are required to purchase the same from the open market.

25. Shri V.K. Shukla, learned Senior Counsel submitted that the State Government decided to grant provisional licenses for 8 different categories of WBIs. The requirement of raw material for different categories of WBIs is different. It is submitted that the learned NGT has grossly erred in considering all categories of WBIs together and setting aside the licenses granted to all of them. It is submitted that the said industries are established in pursuance of the National Agro Forestry Policy of 2014 and as such the learned NGT ought not to have interfered.

26. Ms. Prerna Singh, learned counsel appears for the appellants, who have been granted provisional licenses for plywood (press only) category. She submits that for plywood (press only) industries, there is no requirement of consumption of timber directly. It is submitted that initially veneer is manufactured out of round/fresh timber. Veneer then so manufactured is glued and pressed together to manufacture plywood. It is submitted that the learned NGT has considered the requirement of timber as twice the actual requirement. She submits that in the State of Uttar Pradesh, veneer is manufactured in surplus, which is exported to the State of Haryana.

27. Shri Rudraksh Gupta, learned counsel, submits that the learned NGT has failed to take into consideration the report of the National Poplar Commission of India.

28. All the learned counsel appearing on behalf of the appellants, in unison, submit that the original applicants before the Court were not *bonafide* litigants. It is submitted that there are reasons to believe that the proceedings were initiated at the instance of either the existing WBIs in the State of Uttar Pradesh to prevent competition or they were filed at the instance of the WBIs in the State of Haryana who were importing timber from the State of Uttar Pradesh at cheaper rates.

29. Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of the respondent No.1, on the contrary, submits that this Court has repeatedly held that the principles of sustainable development, the precautionary principle and the polluter pays principle are to be followed consistently. He raised a preliminary objection on the ground that in view of Section 22 of the NGT Act, the scope of an appeal before this Court could be limited to that of Section 100 of the Code of Civil Procedure, 1908. It is, therefore, submitted that unless a substantial question of law is raised, the appeal could not be tenable.

30. Shri Dhruv Mehta submits that this Court vide order dated 12th December 1996 has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15th March 2005 to buttress his submission that WBIs can be permitted only if they exclusively use timber derived from poplar and eucalyptus species or agriculture waste products. It is submitted that the said guidelines also specifically provided that if the unit is found to have used any timber other than poplar and eucalyptus whether from a legal source or otherwise, the license granted to the unit shall be liable to be cancelled. He further relies on the report of CEC dated 12th October 2006. He submits that

an assessment has to be done on the basis of the district-wise survey about timber availability from the TOF category. He submits that the said report of CEC itself would reveal that the assessment of the State is much less than what was initially projected by the State Government. He submits that unless the timber availability for the new WBIs is assessed and the SLC examines and recommends its approval, it is not permissible to establish new WBIs.

31. Shri Mehta further submits that the report of CEC dated 18th April 2007, accepted by this Court vide its order dated 18th May 2007, would show that the availability of timber for WBIs in the State of Uttar Pradesh is only 45.70 lakh cubic meters per year. Learned Senior Counsel submits that taking into consideration the fact that presently many imported machines from China are being used, the capacity of the existing units has gone much higher and, therefore, the timber which is available in the State of Uttar Pradesh would not be sufficient to meet the demand of the existing industries.

32. Shri Mehta submits that when SLC in its meeting dated 4th May 2018 had decided to get a report from IPIRTI, there was no occasion for it to review its decision in its subsequent meeting dated 7th September 2018. He submits that the Senior Officer of the Forest Department of the rank of Chief Conservator of Forest, Kanpur Division, Kanpur recommended that the report from IPIRTI should be obtained before deciding to issue the new licenses. It is submitted that the letters of the said officer dated 11th September 2019 and 20th April 2018 have been ignored by the SLC.

33. Shri Dhruv Mehta further submits that Annexure-I to the 2016 Guidelines is in contravention of the recommendations of CEC, which takes the requirement of timber for plywood unit as “NIL”.

34. The learned Senior Counsel submits that vide Notification dated 20th July 2012, the State of Uttar Pradesh had notified 7 species of trees in the prohibited category. However, vide another Notification dated 31st October 2017, the said trees were taken out of the prohibited category. The learned NGT had set aside the said Notification of 2017 by order dated 11th September 2018. It is submitted that the said order of the learned NGT has been accepted by the State of Uttar Pradesh and a fresh notification has been issued on 7th January 2020, again bringing the said trees in the prohibited category. The learned Senior Counsel submits that while assessing the availability of timber, the trees under the said prohibited category have also been taken into consideration. He submits that if 20.75 lakh cubic meters is deducted from the availability of the timber, then the timber available in the State would be much less.

35. The learned Senior Counsel further submits that the survey has not been conducted for all the districts and has been conducted only for 30 districts and, therefore, the survey itself is erroneous.

36. The learned Senior Counsel further submits that FSI, while conducting the survey, has not taken into consideration the rotation period and, therefore, the survey is erroneous on the said count also. Learned Senior Counsel, in support of his submissions, relies on the judgment of this Court in the cases of

¹ (2017) 9 SCC 499

² (2019) 18 SCC 494

and

37. Shri Dhruv Mehta, relying on the judgment of this Court in the case of _____, submits that this Court itself has considered the learned NGT to be a special Tribunal and held that it will even have jurisdiction to take suo motu cognizance of the environmental issues. He, therefore, submits that the arguments made on behalf of the appellants with regard to locus are without substance.

38. Shri Vikas Singh, learned Senior Counsel, in rejoinder, submits that the only distinction between the prohibited trees and non-prohibited trees is that the non-prohibited trees can be felled without permission, whereas prohibited trees can be felled only in certain circumstances and only after the requisite permission is granted. He submits that the perusal of the FSI survey would reveal that even after the timber requirement for 1215 new units is taken into count, the State, still, will have 26.36 lakh cubic meters in reserve. He submits that if the new WBIs are permitted, it would result in more farmers going in for agro forestry in the State, which, in turn, will increase the forest cover. It is submitted that said 1215 units are likely to give employment to around 80000 people. Learned Senior Counsel, therefore, submits that the impugned orders deserve to be quashed and set aside.

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39. For appreciating the rival submissions, it will be apposite to refer to certain orders passed by this Court.

40. This Court in the case of _____ passed an order on 12th December 1996. The relevant part thereof is as under:

“6. Each State Government should within two months, file a report regarding –

- (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
- (ii) the licenced and actual capacity of these mills for stock and sawing;
- (iii) their proximity to the nearest forest;
- (iv) their source of timber.

7. Each State Government should constitute within one month, an Expert Committee to assess:

- (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;
- (ii) The number of existing saw mills which can safely be sustained in the State;
- (iii) The optimum distance from the forest, qua that State, at which the saw mill should be located.”

41. Vide subsequent order dated 4th March 1997⁵, this Court directed thus:

“ . All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief

³ 2021 SCC OnLine SC 897

⁴ 2022 SCC OnLine SC 79

⁵ (1997) 3 SCC 312

Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks.”

42. Vide order dated 9th May 2002, this Court constituted CEC for monitoring of the implementation of the orders passed by this Court and for placing non-compliances of the cases before it.

43. Vide order dated 29th October 2002⁶, this Court further directed thus:

“ . No State or Union Territory shall permit any unlicensed sawmills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any sawmills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance with this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.

. It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences.”

44. Vide order dated 1st September 2006, this Court allowed licenses to be issued to the closed sawmills, Veneer and Plywood units as per availability of timber and eligibility and seniority as per CEC recommendation.

45. In pursuance of the orders passed by this Court, SLC was constituted by the State of Uttar Pradesh for verification and compilation of information about closed WBIs.

46. The FSI conducted its assessment and assessed the annual availability of wood from TOF in the State of Uttar Pradesh at 55.61 lakh cubic meters vide report dated 3rd April 2007.

47. On the basis of the report of the FSI, the SLC assessed the annual availability of timber for WBIs from TOF at 53.01 lakh cubic meters. CEC further reduced the same to 43.70 lakh cubic meters. However, it added 2.00 lakh cubic meters per year as timber available from government forests, and, therefore, assessed the annual availability of timber at 45.70 lakh cubic meters.

48. It is to be seen that in its report itself, the CEC included 17.77 lakh cubic meters of timber from the prohibited species. This Court considered the report of CEC and passed the following order on 18th May 2007:

“The matters relate to Saw Mills, Plywood and Veneer Units.

The CEC has considered the availability of wood for the industries, which was assessed as 43.70 lakh cu. mt from trees outside forests and 02.00 lakh cu. mt from Government Forests.

It has also assessed the units into four categories.

We accept the CEC's recommendations. The Saw Mills, Plywood and Veneer Units may be permitted, on the basis of the recommendations made by the CEC.

Licences may be given by the State Level Committees.

If there are any objections regarding grant of licences, the parties would be at liberty to submit their applications before the CEC for consideration.”

49. It could thus be seen that in 2007 itself, this Court had accepted the recommendations of the CEC wherein the CEC had computed the total availability of timber and had also taken into consideration the availability of timber from the prohibited category.

⁶ (2008) 16 SCC 337

50. Vide order dated 29th February 2008, this court considered the issue regarding the manufacturing of Medium Density Fiber board (MDF) and Particle board in the States of Punjab, Uttarakhand and Karnataka. While considering the same, this Court passed the following order:

“The matter relates to the manufacturing of Medium Density Fiber board (MDF) and Particle Board in the States of Punjab, Uttarakhand and Karnataka. CEC has filed its report and stated that there is a growing trend to use more and more MDF / Particle Board in place of industrial timber. The MDF/Particle Board help in reducing the pressure on natural forests. The lops and tops and small wood available from the plantations of eucalyptus, poplar, etc. raised on the non-forest can be used by MDF/Particle Board plants.”

51. In view of the permissions granted by this Court, the licenses were granted to the unlicensed sawmills which were closed on account of the orders passed by this Court taking into consideration the availability of timber between 2007 and 2010. However, it is to be noted that the said licenses were granted only to the units which were closed and not to the new units.

52. The matter again came up for consideration before this Court on 30th April 2010, when this Court passed the following order:

“(II) after meeting the requirement of the licensed wood based industry, the units permitted by this Hon'ble Court and the units whose category is yet to be finalised, the plywood/veneer units falling in category IV may be considered for grant of license to the extent of timber availability and strictly in the order of seniority, subject to the one-time payment of Rs.9 lakhs per press in respect of the veneer units and compliance of the other conditions that have been stipulated. The one-time payment of penalty will be in addition to the normal licence fee and the other charges, if any, payable to the U.P. Forest Department. As decided earlier, the above said amount should be kept in a designated interest bearing bank account and should be utilized only after the scheme in this regard is approved by this Hon'ble Court;”

53. It could thus be seen that this Court permitted granting of additional licenses if additional timber was found to be available.

54. The CEC in its meeting held on 26th May 2010 with the SLC and representatives of WBIs Associations in the State of Uttar Pradesh, after taking into consideration the capacity of timber for Vertical Band Saw (VBS) sawmill, modified/reduced the value of capacity of timber for VBS sawmills upto 10 Horse Power from 540 to 270 cubic meters per year for the State of Uttar Pradesh in line with other States. As such, additional 9,58,230 cubic meters of timber became available for licenses from 3,549 such VBS units. In view of this position between 2010 and 2015, licenses came to be issued by the State of Uttar Pradesh to unlicensed WBIs, which were closed earlier by the order of this Court, as per the criteria recommended by the CEC and accepted by this Court.

55. The matter again came up for consideration before this Court on 5th October 2015 with regard to WBIs, when this Court passed the following order:

“ E M E E E E E ”

We have heard Shri Harish Salve, learned *amicus curiae*, Shri Ranjit Kumar, learned Solicitor General of India, Shri K.K. Venugopal, learned senior counsel and other learned senior counsel/counsels. Accordingly, we pass the following orders:

(i) The State Level Committees for Wood-Based Industries ("SLCs") are, subject to the compliance of the prescribed guidelines and procedure, authorized to take decisions regarding the grant of license/permission to the wood-based industries;

(ii) In each State/UT for which the SLC has so far not been constituted, the SLC under the Chairmanship of the Principal Chief Conservator of Forests with a representative of the Ministry of Environment and Forest and Climate Change ("MoEFCC") and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank will immediately be constituted;

(iii) The MoEF is authorized to issue appropriate guidelines in conformation with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to assessment of timber availability for wood-based industries and grant of license/permission to the wood-based industries including addition of new machineries and also utilization of amounts recovered from the wood-based industries and connected matters;

(iv) Any person aggrieved by the decision taken by the SLC may file an appeal before the MoEFCC seeking appropriate relief within 60 days' time. If, for any reason, any person is aggrieved by the orders so passed in the appeal, he may prefer an appropriate petition/application/appeal before the appropriate forum/Court for grant of appropriate relief(s).

We also permit the MoEFCC to condone the delay, if any, in filing an appeal, if sufficient cause is made out by the applicant(s)/appellant(s)"

56. It is thus seen that vide the said order, SLCs were authorized to take decisions regarding the grant of license/permission to the WBIs. Vide the said order, it was also directed to constitute SLC under the Chairmanship of the Principal Chief Conservator of Forest with a representative of MOEFCC and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank. This Court further directed the SLCs to be constituted in each State/Union Territory for which the SLC was not yet constituted. The MOEF was also authorized to issue appropriate guidelines in conformity with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to the assessment of timber availability for WBIs. Appeals could be filed before MOEFCC against the decision of the SLC.

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57. In accordance with the directions issued by this Court vide order dated 5th October 2015, the MOEFCC issued 2016 Guidelines on 11th November 2016. The 2016 Guidelines provided for the constitution of the SLC as well as the powers and functions of SLC. Under clause 4 of the 2016 Guidelines, the SLC was authorised to assess the availability of timber for wood based industrial units in the State/UT every five years. The SLC was also authorised to approve appropriate locations for setting up of wood based industrial units. It was also authorized to approve the name of wood based industrial units which may be considered for grant of fresh license or enhancement of the existing licensed capacity.

58. Clause 5 of the 2016 Guidelines provides for the assessment of the availability of timber for wood based industrial units. It requires that the quantity of timber would be assessed by commissioning the study, preferably in collaboration with institutes/universities of repute, once in five years. Under clause 6 of the 2016 Guidelines, the timber requirement for various units as assessed by IPIRTI was given in Annexure I. The said Annexure I reads thus:

"The Indian Plywood Industry Research and Training Institute (IPIRTI), Bangalore an autonomous body under the Ministry of Environment, Forest and Climate Change has assessed the timber requirement per unit for peeling length of 4 feet and 8 feet size in the plywood/veneer units as 5 cu.mt and 11 cu.mt. respectively per day on an average of 8 working hours per day. By assuming that the peeling units work for 8 hours per day on an

average for 300 days in a year the normal timber requirement of the peeling length of 4 feet size in veneer units is 1500 cu.mt. The total timber requirement for the stand alone veneer units may be assessed by calculating the equivalent number of 4 feet length machines and by taking its normal installed capacity as 1500 cu.mt. per annum.

The timber requirement of a plywood unit may be taken as 'nil' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as the raw material produced by the veneer units. The plywood units use presses of various sizes such as 8x4x6, 8x4x12, 8x4x15, 4x4x7, 4x4x10. A 8x4x10 capacity press can produce upto 10 plywood pieces of 8'x4' size per hour whereas a 8x4x15 capacity press can produce upto 15 plywood pieces of 8'x4' size per hour and so on. The normative installed capacity of the plywood units will accordingly depend upon the number and the type of presses. This number and type of presses installed in each of the plywood unit may be assessed and thereafter equivalent number or presses of 8x4x10 capacity may be calculated. The normative annual timber requirement for a integrated plywood unit having a 8x4x10 capacity press may be taken as 2000 cu.mt. per annum, and accordingly the total requirement of timber for the plywood units should be calculated.”

59. It could thus be seen that even as per the assessment of the IPIRTI, the timber requirement of a plywood unit is required to be taken as 'NIL' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as raw material. It could thus be seen that the plywood units use presses of various sizes.

60. In pursuance of the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh under the Chairmanship of Principal Chief Conservator of Forest/Head of Forest Department on 17th May 2017. Vide Notification dated 11th September 2017, the MOEFCC amended the 2016 Guidelines.

61. Subsequently, in accordance with the 2016 Guidelines, the SLC assessed the availability of timber for WBIs in the State of Uttar Pradesh, through the FSI. For assessing the availability of timber, the FSI conducted a survey and arrived at the annual potential production of timber from TOF in rural areas of all the districts of the State. FSI assessed the annual potential production from TOF at 77.74 lakh cubic meters. Subsequent to the survey and assessment, the SLC in its meeting dated 4th May 2018 considered the matter for grant of license to various WBIs. The SLC decided to get the reassessment done by IPIRTI to determine the correct number of new licenses to be issued to WBIs under different categories against the available timber. However, subsequently, the SLC, in its meeting dated 7th September 2018, found that IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was also found that the State of Haryana had adopted the timber consumption figures based on the CEC figures of 2007. It was therefore unanimously resolved by the SLC that there was no need for any fresh study/assessment for the consumption of timber by WBIs to be conducted by IPIRTI and to adopt the figures for WBIs as were referred to in the 2016 Guidelines. It further found that the CEC in its meeting dated 26th May 2010 had reduced the annual consumption of timber of sawmills upto 10 Horse Power or less HP to 270 cubic meters from 540 cubic meters.

62. On the basis of the decision of the SLC, e-lottery was held. After following the procedure, provisional licenses were issued to 1215 successful applicants in 8 categories of WBIs in February and March 2019. After the issuance of provisional licenses, on 1st March 2019, the State Government issued a Notice with regard to grant of provisional licenses to

the newly selected WBIs which came to be challenged before the learned NGT by way of filing the aforesaid Original Applications by the respondents. The learned NGT after passing various interlocutory directions finally passed the impugned order and quashed and set aside the notice dated 1st March 2019 issued by the State Government and provisional licenses given in pursuance thereof. As such we are required to examine the correctness of the decision of the learned NGT.

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63. The learned NGT while passing the impugned order has set aside the notice of the State of Uttar Pradesh on the following grounds:

- (1) that the WBIs can be allowed to operate only after ensuring timber and raw material availability to sustain such industries and this has to be determined in actual terms and not on mere assumptions;
- (2) that it is difficult to accept the stand of the State of Uttar Pradesh that there was availability of timber/raw material to sustain the new WBIs;
- (3) that it is the stand of the State of Uttar Pradesh that the total potential availability of timber per year in the State of Uttar Pradesh is 80.30 lakh cubic meters, which includes 2.56 lakh cubic meters from the Government forests and 77.74 lakh cubic meters from TOF. Out of 80.30 lakh cubic meters, 71.8 lakh cubic meters were stated to be available from 22 species and 8.50 lakh cubic meters from the other species. Out of 22 species, there are 10 species that are prohibited from felling and as such, 20.75 lakh cubic meters from these 10 species are liable to be excluded;
- (4) that the major contribution is from Eucalyptus (28 lakh cubic meters) and Poplar species (15 lakh cubic meters), a total of which is 43 lakh cubic meters. Thus, the figure is not actual but presumptive;
- (5) that the standard error percentage adopted by the FSI is not correct and is much higher;
- (6) that the total availability of timber for consumption including that from the government forests would not be more than 40-45 lakh cubic meters per year;
- (7) that the potential availability of 77.74 lakh cubic meters from TOF as given in the affidavit has been overestimated.

64. It is to be noted that after this Court allowed the licenses to be issued to the closed sawmills vide order dated 1st September 2006, the SLCs were constituted. The permissions were to be granted on the recommendations of the CEC. Vide order dated 18th May 2007, this Court had also accepted the recommendation of the CEC. Vide another order dated 30th April 2010, this Court permitted additional licenses to be granted if additional timber was available. Accordingly, licenses were granted between 2010 and 2015. Vide subsequent order dated 5th October 2015, this Court allowed the grant of license/permission to unlicensed WBIs in the country. This Court had directed the reconstitution of the SLCs for WBIs. In pursuance of the directions issued by this Court, the 2016 Guidelines were issued by the MOEFCC. As per the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh on 17th May 2017.

65. One of the duties which was cast upon the SLC was to assess the availability of timber for wood based industrial units in the State. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute,

once in five years. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. It will be relevant to refer to the relevant part of the Foreword of the said report of the FSI.

“In the recent past, a number of requests were received for establishment of wood based industries in the state for which the raw material would come from outside the forest areas. Since accurate assessment of TOF is needed for effective planning & management, Uttar Pradesh Forest Department requested FSI to make Agro-Climatic zone wise assessment on the basis of inventory already done during its regular course of inventory conducted in the State. As per the final report, the total stems as estimated from the study is 299.43 million with a volume of 79.40 m. cum. The total yield in the Uttar Pradesh is estimated 7.8 million cum.

The report gives an assessment of the growing stock existing outside state forest reserves. The report has also indicated district-wise, species-wise and girth class-wise number of stems and volume in each Agro-Climatic Zone wise of inventoried districts. I am confident that this report would provide useful data for arriving at informed policy and programme interventions to give a fillip to forestry sector in the state besides providing benchmark data for tree crop in non-forest area.”

66. After conducting the survey, the FSI has come to a finding that the State of Uttar Pradesh had an annual potential production of 77,74,521 cubic meters of timber. For conducting the survey, the FSI acquired satellite data for the inventoried districts of Uttar Pradesh State from National Remote Sensing Centre, Hyderabad. The entire gambit of scientific methodology was applied. The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. It will be relevant to refer to the following part of the report of the FSI:

“The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. Estimates of stems per ha and volume per ha were generated according to species and diameter class for block, linear and scattered stratum under each district. Estimated stems and their volumes were generated according to species and diameter class by aggregating stem per hectare and volume per hectare over the entire Rural CNF Area of each stratum for each district by combining the estimated stems and volumes under block, linear and scattered stratum. By aggregating the estimates of stems and volume of all the three strata, the estimates of stems and volumes according to species and diameter class has been prepared for Rural area separately.”

. The FSI had also divided the State of Uttar Pradesh into 9 Agro-climatic zones to generate the estimate of growing stock and annual potential production. Districtwise production was estimated before concluding that 77,74,521 cubic meters of timber was the annual potential production. The contention of the respondents that the rotation method was not applied is totally incorrect. It will be relevant to refer to paragraph 5.4 of the said report, which reads thus:

“ . **E** Yield of a forest depends on several factors such as its structure, growth, density, productive capacity of site etc. The estimate of yield been generated for rural area using growing stock estimates. The Uttar Pradesh Forest Department was supplied the complete list of tree species which were found in the survey. The Uttar Pradesh Forest Department was asked to indicate tree species being used as 'timber' and 'non timber' and rotation period of specified timber species.

The species are arranged into two groups; one containing the species having timber values and another containing rest by agro-climatic zone wise. The yield has been calculated using Von Mentel formula as given below:

Yield= 2GS/R

Where GS: Growing Stock

R: rotation period

Using the information of timber value, growing stock and rotation period in the above mentioned formulae species wise yield were calculated. The AgroClimatic Zone wise yield has been given in Annexure-11.”

[emphasis supplied]

68. The standard error was also determined by applying the appropriate scientific method.

69. The FSI, hence, considered various aspects before concluding and submitting its 101 page report.

70. It could thus be seen that the estimation as arrived at by the FSI was by applying a proper and adequate scientific method.

71. However, it is surprising that the learned NGT has brushed aside such a scientific exercise by merely observing that the figures arrived at were by estimation and not realistic.

72. The FSI has published a paper on “Trees Outside Forest Resources in India”. The contributors to the said paper are (1) Dr. Subhash Ashutosh, DG, FSI; (2) Prakash Lakhchaura, DDG, FI, (3) Kamal Pandey, DD, FI; (4) Dr. Sourav Ghose, Proj. Scientist D; (5) Sushila Tripathi; and (6) H.K. Tripathi. The paper shows that the timber and panel products of TOF origin have emerged as the major alternative to timber from forests and thus TOF have significantly obviated pressure from forests. The report shows that, the extent of TOF in the country has been assessed at 29.38 m hectare, which is around 8.94% of the total geographical area of the country. The report further shows that based on the recommendations of the National Commission on Agriculture (NCA, 1976), the Government of India launched a social forestry program in the late seventies on a large scale. The paper further shows that, these days satellite data in a wide range of spectral, spatial, radiometric and temporal resolutions are available from various Remote Sensing Agencies of several countries. It further shows that there has been a rapid advancement in the development of digital image processing software. It, therefore, observes that the desired mapping of natural resources with reasonable accuracy is possible. The report refers to the methodology of assessment of TOF in different countries of the world and refers to various authorities. It refers to different types of methodologies used for different periods; the first one being from 1991 to 2001; the second period being from 2001 to 2016; and the third period being from 2016 onwards. The report shows that the State of Maharashtra has the highest potential annual yield of timber in India followed by the States of Uttar Pradesh and Karnataka.

73. It will be relevant to refer to the conclusion of the said paper, which is as follows:

“ .

TOF play a significant role in the socioeconomic lives of people both in rural and urban areas of the country by enriching the people and society at large economically as well as ecologically. The management of TOF assumes high significance in the country for realizing much higher potential which it offers in generating wood based economy and ecosystem services including carbon sequestration. Periodic assessment of TOF resources including its spatial distribution is prerequisite for its scientific management in the country. FSI is mandated with this task however there is need for continuous improvement in the methodology and inclusion of more number of variables in the assessment. The organization will have to be further strengthened particularly in terms of man power, to address the emerging information needs on TOF. There has been regular refinement in methodologies in the last three decades to quantify TOF resources using various statistical designs

and estimates with better precision. The advancement of technologies in the field of remote sensing, satellite image processing and availability of high resolution satellite data made the methodology much precise and easier. The progression of science may further refine the existing method of TOF assessment in near future.

TOF also act as an important source for timber and fuel wood to meet the demands of fast growing population of the country. There is a need to put focus on increasing the growing stock per hectare or yield of TOF by better management and planning. There is also a need for a separate policy on TOF to ensure its expansion and sustainable management for multiple ecological benefits, timber production, carbon sequestration and for obviating pressure from the natural forests.

Occupying nearly 9% of the geographical area of the country, TOF are significant natural, renewable resource which make vital contribution to the agro-ecology, socio-economy of the rural areas, environmental amelioration in the urban areas and feed wood based industries with the raw material and thus generate significant employment. TOF form a nearly 38% of the carbon sink in forest & tree cover of the country. TOF offers the path for achieving the national policy goal of 33% of forest & tree cover in the country. Through expansion of TOF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030.”

74. It could thus be seen that the FSI has also emphasized the need of promoting TOF. It has been observed that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economy of the rural area, and environmental amelioration in the urban area and feed WBIs with raw material and thus generate significant employment.

75. It is our considered view that, when the estimation was done by the FSI by applying the scientific method and had arrived at the conclusion based on satellite data, such a report could not have been brushed aside by the learned NGT lightly.

76. Insofar as the finding of the learned NGT that the survey also takes into consideration the prohibited trees, the felling of which is not permissible, it will be relevant to note that the Notification dated 7th January 2020 issued by the Government of Uttar Pradesh provides that the prohibited trees shall not be felled till 31st December 2025 except under unavoidable circumstances, such as when a tree is dead or dying or it constitutes a danger to persons or property, or its felling is necessary for executing development work approved by the Government, or if the fruit bearing capacity of such tree has declined substantially. Such trees cannot be felled unless permission to fell such tree has been obtained in writing from the competent authority. The tree owners are also required to maintain 10 trees in place of each tree felled. It is thus clear that there is no absolute prohibition for felling the trees which are in the prohibited category. However, the same can be done only in exceptional circumstances.

77. It is to be noted that the prohibited trees also include trees like Mango, Jamun, etc. which are fruit bearing trees. After a particular number of years, the fruit bearing capacity of such trees drastically reduces and as such, the farmers normally fell such trees and go in for replantation of the orchard. Apart from that, it is to be noted that the CEC itself approved the availability of timber for the State of Uttar Pradesh in its report dated 19th April 2007, which included 17.77 lakh cubic meters of prohibited trees. The said report of the CEC was approved by this Court vide its order dated 18th May 2007.

78. It is further to be noted that in pursuance of the order of the learned NGT dated 28th March 2019, a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3rd August 2019. Not only this, but in pursuance of the directions

issued by the learned NGT on 18th December 2019, another detailed affidavit was filed on behalf of the State Government on 21st January 2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and 80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs.3000 crore in the State with the establishment of new WBIs. The same would employ more than 80000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the learned NGT.

79. As such, the learned NGT has grossly erred in deducting the availability of timber from the prohibited trees. By now, it is more than settled that the Courts should not enter into an area that is the domain of the experts. FSI, which is undisputedly an expert body, had arrived at its estimation based on the scientific method. The learned NGT could not have sat in appeal over the opinion of the expert.

80. It is relevant to note that MOEFCC, in pursuance of the directions issued by the learned NGT had filed its opinion on 18th December 2019. It will be relevant to refer to paragraph 8 of the said opinion.

“8. That based on the examination of available documents in light of the provisions of the Wood Based Industries (Establishment and Regulation) Rules, 2016, MoEFCC is of the opinion that the State of U.P. has followed the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 (as amended in 2017) issued by MoEFCC. The availability of wood in the State has also been assessed by the SLC through FSI. The Ministry is, therefore, of the view that the SLC may approve setting up of new industries in the State if it is satisfied that sufficient timber is available legally to run the new wood based industries.”

81. The learned NGT has failed to take into consideration the stand of the MOEFCC, which also supported the stand of the State that sufficient timber was available legally to run the new WBIs.

82. Insofar as the contention of the learned counsel for the respondents that, though in the meeting of the SLC dated 4th May 2018, it was decided to get the assessment done by IPIRTI, the SLC in its meeting dated 7th September 2018 did a volte-face and decided not to get the assessment done from IPIRTI, the perusal of the minutes of the meeting of the SLC dated 7th September 2018 would reveal that it was found that the IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was noticed that, as per the report of the FSI, the TOF available was 77,74,522 cubic meters. Adding the timber available in the forest area of 2,57,273 cubic meters, the total quantity of availability of timber was 80,31,795 cubic meters. It is to be noted that the SLC had taken note of the letter dated 29th August 2018 issued by the Director, IPIRTI, where he had communicated that no assessment pertaining to the annual consumption of timber by Veneer and Plywood Industries was undertaken by the IPIRTI during the last two years in any State of the country. It was found that the 2016 Guidelines itself provided for annual consumption of timber based on the report of IPIRTI. In this premise, it was found that there was no need to conduct a fresh study/assessment for the consumption of timber by WBIs by IPIRTI. It was decided to accept the figures as provided in the 2016 Guidelines.

83. It can thus be seen that the decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. The scope of judicial review has been succinctly

explained by this court in the case of _____, which has been consistently followed in a catena of cases. This Court, in the said case, observed thus:

“ . The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality : This means the decisionmaker must understand correctly the law that regulates his decisionmaking power and must give effect to it.
- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

84. Applying the aforesaid principle to the present case, it cannot be said that the decision-making process has been vitiated either on account of illegality, irrationality or procedural impropriety.

85. With regard to the contention of Shri Dhruv Mehta, learned Senior Counsel, that Annexure I to the 2016 Guidelines providing the timber requirement of a plywood unit to be taken as “NIL” is contrary to the CEC recommendations is concerned, we do not find any substance in the said submission. Firstly, 2016 Guidelines have been issued by the MOEFCC in pursuance of the directions issued by this Court dated 5th October 2015. In any case, the raw material for plywood industries is ‘Veneer’ and the raw material for veneer is ‘timber’. We find substance in the contention of the appellants that, if timber is to be considered again as a raw material for plywood, then it will amount to showing the consumption of the same timber more than once, which is, in fact, not consumed. It is not in dispute that veneer is a raw material for plywood, which is derived from timber. The same timber is used for deriving veneer and such veneer, which is used for manufacturing plywood, cannot be counted twice. In any case, as long as the 2016 Guidelines which are issued in pursuance of the directions issued by this Court are not set aside, the contention in that regard is without substance.

86. That leads us to consider the contention of the respondents that this Court has repeatedly emphasized the principles of sustainable development, the precautionary

⁷ (1994) 6 SCC 651

principle and the polluter pays principle. No doubt that the protection of the environment is of utmost importance. It is the duty of this generation to protect the environment for future generations.

87. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.

88. It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck.

89. A body having expertise in the field, i.e. the FSI, upon a scientific study, has concluded that there is sufficient timber available in the State of Uttar Pradesh. Not only that, but the respondents themselves have placed on record a project report on "Study to know the percentage and value of the raw material sourced through U.P. Forests by Plywood and Khair (Kattha) Industries in U.P.". The said report is prepared by RAK Management Consultants on the instructions of the Department of Planning, Economic and Statistics Division, Government of Uttar Pradesh. The said report itself shows that the consultants, during the field survey, observed resentment among the plywood manufacturers against the process of issuing new licenses to the WBIs by the State Government.

90. The report further goes on to show that on average 1500-1700 trucks/tractor trollies of the eucalyptus and popular wood from all over Haryana, Punjab, Himachal Pradesh and Uttar Pradesh go to Yamuna Nagar, Haryana daily. Out of the said trucks/trollies, approximately 300350 tractor trollies and some other small vehicles per day come from Uttar Pradesh. The report shows that approximately 5 to 6 lakh metric tons of timber per year is exported to Yamuna Nagar. The said material belongs to the western districts of Uttar Pradesh, i.e. Muzaffarnagar, Saharanpur, Shamli, Baghpat and Meerut. It is stated that there is no sufficient market for this produce in the said area. The report further finds that the western districts of Uttar Pradesh, i.e. Meerut, Muzaffarnagar, Saharanpur, Baghpat and Shamli, etc. do not have sufficient number of plywood and veneer units and as such, they are not sufficient for the entire farmers' produce available in the said area. The report itself shows that the western districts need around 80-85 plywood and veneer units. The report goes on further to show that there is dissatisfaction among the already existing industrialists about the assessment made by the FSI.

91. It is further to be noted that the State has specifically pointed out before the learned NGT that on the establishment of WBIs, an investment of about Rs.3000 crore was likely to be attracted in the State; employment opportunities to over 80000 people will be available and the farmers of the State would get a more remunerative price. This would result in more impetus for large-scale plantation and agro-forestry. The State also emphasized that this will reduce dependence on traditional/cash crops and also reduce migration of people to urban areas. It is also emphasized that if the new WBIs are permitted, it will reduce the import of WBIs produce. However, all these aspects have not been taken into consideration by the learned NGT.

92. It will be relevant to note that the Forest Research Institute, Dehradun, Uttarakhand has published 'Country Report of Poplars and Willows Period : 2012-2015'. The report states that the timber from poplar and willow is the backbone of vibrant plywood, board, match,

paper and sports goods industries. The report further states that in tune with Indian Agroforestry Policy 2014, the plantation of poplar has been promoted. It further states that the Planning Commission of India has given special grants to certain States for the diversification of agriculture where farmers are advised to move away from paddy cultivation to sustain agricultural production. Poplar and eucalyptus are among the few trees promoted under this diversification plan. The report states that Poplar plays a significant role in rural development by generating employment for many categories of skilled, semi-skilled and unskilled workers.

93. The paper on “Trees Outside Forest Resources in India” published by the FSI, cited supra, also emphasizes that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economic improvement of the rural areas, environmental amelioration in the urban areas and feed WBIs with raw material and thus generate significant employment. TOF form nearly 38% of the carbon sink in the forest and tree cover of the country. It states that TOF offers the path for achieving the national policy goal of 33% of forest and tree cover in the country. It states that through the expansion of TOF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030.

94. As already discussed herein above, the majority of TOF is from two species, i.e. Poplar and Eucalyptus. These trees are fast growing. If a market is available for the said trees, there will be impetus to the farmers for large scale plantations. The rotation in these species is quite fast. This will, in turn, increase the green coverage. We are of the considered view that the learned NGT has taken a lopsided view. It has failed to take into consideration the concerns expressed by the State. The learned NGT has committed patent error in ignoring the expert’s report and sitting in appeal over the same. The learned NGT has also failed to take into consideration the stand taken by the MOEFCC, which supported the stand of the State. As already discussed herein above, the State had emphasized many advantages of granting new licenses to WBIs. It was also emphasized that the timber from the State of Uttar Pradesh was being exported to the State of Haryana. However, none of these aspects have been considered by the learned NGT. We are, therefore, of the considered view that the impugned orders of the learned NGT are not sustainable in law.

95. There is another reason, in our view, why the order of the learned NGT would not be sustainable. Though, on the date on which the review applications were rejected, 1215 provisional licenses were already granted and 633 units had already been established and commenced production, the learned NGT has passed the impugned order which adversely affects their interest. Either some of such industries ought to have been impleaded in their representative capacity or a public notice should have been given so that such license holders could have represented their case. However, the said contention is lightly brushed aside by the learned NGT by holding that, since the issue is related to the general decision of the State which is applicable uniformly to all the proposed provisional licensees, it is not necessary to consider the issue raised in the impleadment applications. It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the learned NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow.

96. Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and *bonafides* of the original applicants.

97. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.

98. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in the case of _____ to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take *suo motu* cognizance. However, when the credentials and *bonafides* of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.

99. We find that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and *bonafides* of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. There is also scope to infer that it could be at the behest of the WBIs in the adjoining Yamuna Nagar district of Haryana where lakhs of tons of timber is exported from the State of Uttar Pradesh. There is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana. We would, therefore, only request the learned NGT that, when credentials and *bonafides* of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the *bonafides* and credentials of such litigants.

100. Though we are allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licenses, we would like to remind the State and its authorities that it is their duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases.

101. The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. In this regard, it will be apposite to refer to certain earlier pronouncements of this Court.

(a) In the case of _____, a three-Judge Bench of this Court after referring to the earlier judgment in the case of _____

observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

(b) In the case of _____, this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in the case of _____ were quoted as under:

“While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment.”

(c) In the case of _____ reference was made to _____ wherein it was observed as under:

“27. Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad v. Union of India* (Writ Petition No. 202 of 1995), it has been held that ‘intergenerational equity’ is part of Article 21 of the Constitution.

28. What is intergenerational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then intergenerational equity would stand violated.

29. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The ‘precautionary principle’ and the ‘polluter pays principle’ flow from the core value in Article 21.

⁸ AIR 1997 SC 3297 = (1997) 8 SCC 191

⁹ (1995) 6 SCC 363

¹⁰ (2004) 2 SCC 392

¹¹ (1996) 5 SCC 281

¹² (2011) 15 SCC 616

¹³ (2010) 10 SCC 96

30. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about intergenerational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle.”

(d) Of course, one cannot ignore one of the several dicta of this Court in
wherein this Court enunciated the definition
of “forest” in the following words:

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

102. Though we find that for the sustainable development of the State and on account of the availability of the timber, sanction of granting licenses can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. We, therefore, direct the State Government to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years.

103. In the result, the appeals are allowed. The impugned orders passed by the learned National Green Tribunal, Principal Bench, New Delhi in Original Application Nos.313, 335 and 396 of 2019 as well as in the Review Applications are quashed and set aside.

104. Pending applications, if any, shall stand disposed of.

No costs.

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T.C.



Item No. 4

(Pune Bench)

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

(By Video Conferencing)

Original Application No. 63/2019(WZ)
(I.A. No. 100/2019 & I.A. No. 86/2021)

Mr. Ajay Jayvantrao Bhosale

.....Applicant

Versus

Union of India through MoEF&CC & Ors.

....Respondent(s)

Date of hearing: 01.12.2022

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

Applicant : Mr. Nitin Lonkar, Advocate
Respondent(s) : Ms. Manasi Joshi, Advocate for R-1, 6 & 7
Mr. Aniruddha Kulkarni, Advocate for R-3 to 5
Mr. S. Swaminathan, Advocate for R-8 & 9/PCMC
Mr. Saket Mone along-with Mr. Abhishek Salian,
Advocates for R-11/PP

ORDER

1. Today this matter is listed on the issue of limitation against which objection has been filed by the learned Counsel for the Applicant.
2. Heard the arguments of learned Counsel for the Applicant Mr. Nitin Lonkar and learned Counsel for Respondent No. 11/Project Proponent- Mr. Saket Mone along-with learned Counsel Mr. Abhishek Salian.

I.A. No. 86/2021(WZ)

3. This I.A. has been filed by the Respondent No. 11/Project Proponent (PP), praying for dismissal of the Original Application No. 63/2019(WZ). The main ground which has been set up in this application is that Original Application is time barred, therefore, it requires to be dismissed at the threshold itself. The core issue raised by the Applicant is

that the Respondent No. 11 did not obtain prior Environmental Clearance (EC) with respect to the project in question.

4. As per the Project Proponent (PP), he commenced the construction and excavation in the year, 2012, therefore, the cause of action in respect of the alleged construction first arose in the year, 2012 which is well over 07 years from the date of the filing of the present Original Application.

5. The Sections 14 and 15 of the National Green Tribunal Act, 2010 provide for 06 months from the date when the cause of action first arose within which the Original Application ought to have filed. Therefore, if the 06 months period is calculated from the year 2012, it would expire in the year 2013 and as regards Section 15, it provides for 05 years period from the date of cause of action first arose, which too would expire in the year, 2017, while the Original Application has been filed on 14.08.2019.

6. The learned Counsel for the Respondent No. 11 has drawn our attention to para no. 40 of the main petition, where-in it is stated by the Applicant that the Project Proponent carried out illegal construction on 0 sq. mtrs. to 18500 sq. mtrs. vide sanction dated 24.11.2016.

7. As per the Applicant in O.A., the Project Proponent had intention to go on beyond 36,500 sq. mtrs. vide sanction dated 31.03.2018. The civil construction activity is recurring process. The Project Proponent/Respondent No. 11 has increased the project capacity from 0 sq. mtrs to 18500 sq. mtrs. from 2011 to 19.05.2018, therefore, it is nothing but a recurring cause of action for building construction activity.

8. The Applicant in Original Application had obtained information through online search and under RTI Act from 2017 to 18.05.2018 and thereafter had sent legal notice through Counsel to the Respondents inviting their attention towards the violations committed by the Project

Proponent. Therefore, the cause of action first arose on 15.06.2019 when SEIAA issued a Show Cause Notice to the Project Proponent.

9. Therefore, 06 months period from 15.06.2019 should be counted, which would end on 14.12.2019, while the present application has been filed on 14.08.2019, therefore, it is within time.

10. As per Respondent No. 11/Project Proponent (PP), the above contention of the Applicant in Original Application is absolutely false because the Applicant is trying to establish the date 19.05.2019 as the date, when the first cause of action arose on the basis of his having obtained information under RTI. It is further argued by the learned Counsel for the Respondent No. 11 that any person may move an RTI application on a particular date of his choice in order to create cause of action so as to bring it within the period of limitation in order to initiate legal proceedings, which cannot be allowed to happen because that is not the intent of law.

11. The learned Counsel for the Respondent No. 11 has placed reliance of the Judgment *Jai Javan Jai Kisan and ors. v. Vidarbha Cricket Association and Ors.* [MANU/GT/0006/2017], where-in relevant para no. 11 is as follows:-

“11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and

Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open spaces, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed.”

12. Thereafter, the learned Counsel for the Respondent No. 11 has placed reliance on *Graminee Environment Development Foundation v. Balaji Infrastructure Ltd. & Ors.* [(2017) SCC Online NGT 1098], where-in relevant para nos. 11 to 13 are as follows:-

“11. *Section 15 (3) of the NGT Act, 2010 in clear terms requires the Application for restitution of the property damaged to be made within the period of five (5) years from the date on which cause for such relief first arose, and provides for discretion to the Tribunal to condone delay for ‘sufficient cause’ if the application is filed within further period of sixty (60) days and no further. In the present case, the Applicant avers that the cause of action first arose on 24.2.2015, when the letter was addressed by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) to the Collector, Raigad to take action in respect of the grievance made by the Applicant and yet no action was taken by the authorities. The Applicant has further revealed in her Application that she has been making several complaints to the Authorities about the said grievance, first such complaint being made on 15.9.2014 to the Divisional Commissioner, Konkan Division, Navi Mumbai. Reading of the letter dated 24.2.2015, Annexure “I to the Application (Pg.81) reveals the nature of grievance made by the Applicant. In short, the Applicant was aggrieved by the alleged illegal blasting work, storage of minerals and reclamation by Dighi Port Ltd. Similarly, the grievance made with complaint dated 15.9.2014 is regarding alleged illegal work of reclamation of seashore and filling rocks at village Nanavali and intertidal land encroachment without EC by Dighi Port Ltd, and Balaji Infrastructure Ltd.*

12. *In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be constituted as ‘cause of action’ but the actual act or its consequence constitutes ‘cause of action’ in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd and its holding Company Balaji Infrastructure Ltd in the said land.*

13. *A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No.1 encroached upon 3km of seashore of village Nanavali and without permission of any Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No.1 has been doing illegal activities of levelling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos. 2 to 7- Govt. Authorities did nothing. The Applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd on 30th September, 2005 for construction of Port at village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No.1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No.4 of 2009 filed by the Applicant in the Court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i.e. Dighi Port Ltd came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008.”*

13. Based on the above provisions of law, it is vehemently argued by the learned Counsel for the Respondent No. 11/Project Proponent that the present application is time barred and needs to be dismissed on that ground alone.

14. During argument, the learned Counsel for the Applicant in Original Application has pointed out that he is relying on para no. 18.25 & 18.26 of the reply affidavit dated 26.10.2021, mentioned at page nos. 981 to 986 of the paper book, which are as follows:-

“18.25. *I state that, this Hon-ble Tribunal in the matter of "Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors. (OA No. 222/2014) Judgment dated*

7th May, 2015”, reported in 2015 SCC Online NGT 5 in dealing with the issue of limitation and cause of action has specifically held as follows-

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

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

18.26 Further I state that, the **Forward Foundation** Judgment was challenged before the Hon'ble Supreme Court in the matter of **Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016/2016 reported in (2019) 18 SCC 494** has specifically held vide judgment dated 5th March, 2019 and has confirmed the said judgment

of Forward Foundation and even the Review petition of the same has been dismissed vide order dated 06/08/2019 and has thus become final and binding.

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

The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishsore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment"

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

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

15. The Applicant in Original Application has also placed reliance upon the important dates and events, which have been quoted by him in para

14 of the reply affidavit, mentioned at page nos. 926 to 928 of the paper book, which are as follows:-

“14. IMPORTANT DATES AND EVENTS:

I state that, the following events and dates are very important to understand the collusion between the Government Authorities and Respondent No. 11-PP and tactics, favouring practices adopted by the Joint Committee Members and Respondent No. 11-PP;

Sr. No.	Events	Date
1.	<u>1st Application for EC</u>	<u>07.09.2013</u>
2.	<u>1st Show Cause Notice by SEIAA & PS- DoE</u>	<u>30.08.2014</u>
3.	<u>1st Withdrawal Communication for SCN</u>	<u>10.03.2015</u>
4.	<u>1st Consent to Establish</u>	<u>10.03.2015</u>
5.	<u>2nd Application for EC</u>	<u>30.06.2016</u>
6.	<u>2nd Consent to Establish</u>	<u>12.10.2017</u>
7.	<u>3rd Application for EC</u>	<u>06.10.2018</u>
8.	<u>Notice/Complaint of Original Applicant</u>	<u>19.05.2019</u>
9.	<u>MPCB 1st Site Visit by Field Officer</u>	<u>10.06.2019</u>
10.	<u>2nd Show Cause Notice by SEIAA & PS- DoE</u>	<u>15.06.2019</u>
11.	<u>MPCB 2nd Site Visit by SRO-2</u>	<u>27.06.2019</u>
12.	<u>Filing of OA</u>	<u>14.08.2019</u>
13.	<u>First Order of NGT</u>	<u>22.10.2019</u>
14.	<u>Service to Joint Committee of SEIAA & MPCB</u>	<u>02.11.2019</u>
15.	<u>Personal hearing given to PP by PS-DoE</u>	<u>11.11.2019</u>
16.	<u>2nd Withdrawal Communication for SCN</u>	<u>16.11.2019</u>
17.	<u>Second Order of NGT</u>	<u>10.12.2019</u>
18.	<u>Joint Committee Visit to project site</u>	<u>15.12.2019</u>
19.	<u>Architect Certificates prepared on</u>	<u>20.12.2019</u>
20.	<u>Joint Committee Report filed to NGT</u>	<u>07.01.2020</u>
21.	<u>Third Order of NGT issuing Notice 86 Show cause to PP</u>	<u>05.02.2020</u>
22.	<u>Service to the Respondent No. 11-PP</u>	<u>15.02.2020</u>
23.	<u>Grant of ex-post facto EC</u>	<u>18.02.2020</u>
24.	<u>Appeal No. 26/2020 filed on</u>	<u>19.03.2020</u>
25.	<u>Fourth Order of NGT</u>	<u>13.07.2020</u>
26.	<u>Respondent No. 11-PP Reply Affidavit Sworn on</u>	<u>24.09.2020</u>
27.	<u>Respondent No. 11-PP filed</u>	<u>24.09.2020</u>
28.	<u>Fifth Order of NGT</u>	<u>03.09.2021</u>
29.	<u>Respondent No. 11-PP filed 86/2020 filed on</u>	<u>06.10.2021</u>
30.	<u>Respondent No. 11-PP Corrected Reply Affidavit served on Original</u>	<u>09.10.2021</u>

	<i>Applicant</i>	
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16. He has argued that in this case, there is recurring cause of action and therefore, the date which has stated in his application i.e. 15.06.2019, when the SEIAA issued a Show Cause Notice to the Project Proponent, should be treated to be the date of cause of action.

17. We have heard the arguments of the parties and perused the record and also have gone through the Judgments, which have been relied upon by both the parties, we find that as far as legal position is concerned, Sections 14 & 15 of the National Green Tribunal Act, 2010 provide as follows:-

“Section 14:- Tribunal to settle disputes.-

(1)

(2)

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

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

Section 15:- Relief, compensation and restitution –

(1)

(2)

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

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

18. According to the Applicant in Original Application, as per his own pleadings which are stated in para no. 40, it is clear that construction of the project by the Project Proponent was started in the year 2011 and continued till 19.05.2018. He states that he had obtained information

through online search and under RTI from 2017 to 18.05.2018. Thereafter, he had sent legal notice through Counsel on 19.05.2019. According to him, the SEIAA had issued first Show Cause Notice on 15.06.2019. Therefore, that date should be taken to be the date of cause of action, which first arose.

19. We are not inclined to accept this argument because according to his pleading, he had full knowledge in the year 2011 itself when the construction had started. The pretext of having come to know about this project being constructed through RTI on a later date as stated above appears to be only in order to bring the present Original Application within limitation period. We agree with the learned Counsel for the Project Proponent (PP) that it is very easy for any person to use RTI to seek information for any project on any date chosen by him. We are of the considered opinion that such kind of practice cannot be allowed. We are not inclined to accept the argument made by the learned Counsel for the Applicant in Original Application and are convinced with the argument raised by the learned Counsel for the Respondent No. 11/Project Proponent. We find that this Original Application is time barred, hence this Original Application stands dismissed as time barred.

20. All connected I.A.s also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

December 01, 2022
Original Application No. 63/2019(WZ)
(I.A. No. 100/2019 & I.A. No. 86/2021)
P.Kr

T.C.

