BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SOUTHERN ZONE) AT CHENNAI

Appeal 46 of 2024

Praveena and Ors.

…Appellants

v.

State Environmental Impact Assessment Authority and Ors.

…Respondents

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Dated at Chennai on this the 16th day of August, 2024

(MS 1421/2011)

Counsel for Appellants

(2006) 6 Supreme Court Cases 371 : 2006 SCC OnLine SC 589

(BEFORE RUMA PAL AND DALVEER BHANDARI, JJ.)

KARNATAKA INDUSTRIAL AREAS DEVELOPMENT BOARD . . Appellant;

Versus

C. KENCHAPPA AND OTHERS . . Respondents.

Civil Appeal No. 7405 of 2000[†], decided on May 12, 2006

A. Environment Protection and Pollution Control — Sustainable development — Establishment/Development of industries — Allotment of land for — Prerequisite condition for — Obtaining clearance for the project from the State Pollution Control Board and the Department of Ecology and Environment before putting up any industry — Nature of — Held, has to be mandatory — Hence, appellant State Industrial Areas Development Board directed to convert the directory nature of the said condition in the letter of allotment to mandatory one — Environment (Protection) Act, 1986 — Ss. 3, 6 & 23 — Karnataka Industrial Areas Development Act, 1966 (18 of 1966), S. 28

(Paras 100 and 31)

B. Environment Protection and Pollution Control — Sustainable development — Acquisition of land for development — Directions by High Court to authority concerned to leave one km area from the village limits as a free zone or green area to maintain ecological equilibrium — Propriety of — Held, if directions in question are rigorously implemented, the authority concerned could not acquire any land for development — In this view of the matter, the said directions were liable to be set aside

(Para 97)

M.C. Mehta v. *Union of India*, (1997) 3 SCC 715, *distinguished on facts*

C. Environment Protection and Pollution Control — Sustainable development — Acquisition of land for development — Impact of development on environment — Consideration of — Necessity of — Held, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development such that ecology and environment is not gravely impaired — Constitution of India — Arts. 21, 48-A & 51-A(g) — Land Acquisition and Requisition — Town Planning — Environment (Protection) Act, 1986, Ss. 3, 6 & 23

(Paras 100 and 30)

The respondent agriculturists, who were affected by the acquisition of lands of

different villages, filed a writ petition under Article 226 of the Constitution with a prayer that the appellant Karnataka Industrial Areas Development Board (in short "KIADB") be directed to refrain from converting the lands of the respondents for any industrial or other purposes and to retain the lands for use by the respondents for grazing their cattle. According to the respondents, if the entire land was acquired and an industrial area was developed, the villagers would lose the gomal lands, causing grave hardship to them as well as their cattle. It was submitted that there would be an adverse impact on the environment of the villages as the industrial area increases.

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It was further alleged by the respondents that (*i*) deprivation of their land was violative of their fundamental rights guaranteed under Articles 14 and 21 of the Constitution, (*ii*) the appellant and the State of Karnataka violated the zonal regulations in allotting the lands to Gee India Technology Centre Pvt. Ltd., (*iii*) the allotment was made hurriedly without following the regular procedure and, therefore, the same was illegal and arbitrary, and (*iv*) notification under Section 3 (1) of the Karnataka Industrial Areas Development Board Act, 1966 (for short "the Act") was issued without hearing the affected parties.

The Division Bench specifically observed that having regard to the circumstances of the case and the nature of establishment of Gee India Technology Centre Pvt. Ltd. and its activities, which were essential for the growth of the computer industry and research and development in information technology, the Court did not wish to disturb the allotment of lands made to Gee India Technology Centre Pvt. Ltd. The Court in the impugned judgment directed that the notification under Section 3(1) of the Act and consequential proceedings or notification or orders issued in regard to the other disputed lands in the writ petition were quashed, to the extent of the lands which were reserved for grazing cattle, agricultural and residential purposes. The Division Bench held that for maintaining ecological equilibrium and pollution free atmosphere of the villages, KIADB be directed to leave a land of one kilometre as a buffer zone from the outer periphery of the village in order to maintain a "green area" towards preservation of land for grazing of cattle, agricultural operation and for development of social forestry and to develop the area into a green belt.

The appellant KIADB preferred a special leave petition before the Supreme Court on the ground that the directions given in the impugned judgment were contrary to the express statutory provisions, in particular Section 3(1) and Section 47 of the KIADB Act. It was submitted that under the scheme of the Act, at the time of issuance of the notice under Section 3(1), no notice was required to be given to the landowners at that stage. According to Section 47 of the said Act, the appellant could acquire "any land".

The appellant argued that the effect of the impugned judgment would be that, in future, it would not be able to acquire lands for the establishment and development of the industrial area in the State of Karnataka. The appellant further submitted that the High Court failed to appreciate that the lands in question had lost their agrarian character a few decades ago. The appellant also mentioned that the High Court failed to appreciate that the impugned notification was dated 24-11-1998 and thereafter, the industrial layout was formed, earthwork was done, roads were constructed, water supply lines had been laid and other infrastructural facilities were created spending substantial sums of money. The respondents had kept quiet all the while when civil construction in the area was going on.

The appellant contended that the entire compensation had been paid to the respondents and in view of the stay of the impugned judgment of the High Court granted by the Supreme Court, the entire developmental work had been completed and the respondents' writ petition had now become infructuous.

Since no one appeared for the respondents, an amicus curiae was appointed who submitted that a modification was required to be made in the relevant clause of the letter of allotment of land. It was pleaded that the condition requiring the allottee to obtain clearance for the Project from the Karnataka State Pollution Control Board and the Department of Ecology and Environment before execution of the agreement, should be made mandatory.

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Allowing the appeal, the Supreme Court decided as above.

D. Environment Protection and Pollution Control — Sustainable development — Concept of, and its need, explained — Contribution of the judiciary and others in this regard, taken note of — "Precautionary principle", "polluter-pays principle" and "public trust doctrine", the essential features of sustainable development, considered — Adherence thereto for preservation of ecology, emphasised — Constitution of India — Arts. 21, 48-A & 51-A(g) — Stockholm Declaration of the UN Conference on Human Environment, 1972 — Rio Declaration of the UN Conference on Environment and Development, 1992 — Bergen Ministerial Declaration on Sustainable Development in the ECE Region, 1990 — Brundtland Report of 1987 — Johannesburg Summit on Sustainable Development, 2002 — UN Water Conference, 1977 — Earth Summit, 1997 — Words and phrases — "Sustainable development"

(Paras 61, 62, 74, 90, 56, 103, 99, 102 and 77 to 89)

Essar Oil Ltd. v. *Halar Utkarsh Samiti*, (2004) 2 SCC 392; *Indian Council for Enviro -Legal Action* v. *Union of India*, (1996) 5 SCC 281; *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647; *Subhash Kumar* v. *State of Bihar*,

(1991) 1 SCC 598; *A.P. Pollution Control Board (II)* v. *Prof. M.V. Nayudu*, (2001) 2 SCC 62; *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664; *M.C. Mehta* v. *Union of India*, (1991) 2 SCC 137; *M.C. Mehta* v. *Union of India*, (1997) 2 SCC 353; *Indian Council for Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212; *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388; *National Audubon Society* v. *Superior Court of Alpine County*, 33 Cal 3d 419; *Intellectuals Forum* v. *State of A.P.*, (2006) 3 SCC 549; *Portugal* v. *F.C. Council*, (1997) 3 CMLR 331, *referred to*

Boer, Ben: "*Implementing Sustainability*"; Hauff, Michael Von: "*The Contribution of Environmental Management Systems to Sustainable Development: Relevance of the Environmental Management and Audit Scheme*"; *Caring for the Earth, A Strategy for Sustainable Living*; Shelbourn, Carolyn: "*Historic Pollution—Does the Polluter Pay?*", *Journal of Planning and Environmental Law*, August 1974; Sands, P.: *International Law in the Field of Sustainable Development*; L. Sax, Joseph: "*Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 (3) Mich. L. Rev. 471; Lee, John: "*The Underlying Legal Theory to support a well defined Human Rights to a healthy Environment as a principle of customary International Law*", 25 Columbia Journal of Environmental Law 283 (2000), *referred to*

Stockholm Declaration of the UN Conference on Human Environment, 1972; *Rio Declaration of the UN Conference on Environment and Development, 1992*; *Brundtland Report of 1987*; *Johannesburg Summit on Sustainable Development, 2002*; *UN Water Conference, 1977*; *Bergen Ministerial Declaration on Sustainable Development in the ECE Region, 1990*; *UN General Assembly Declaration on the Right to Development, 1986*; *Earth Summit, 1997*, *referred to*

E. Constitution of India — Arts. 21, 48-A & 51-A(g) — Ecological balance, maintenance of — Natural resources, conservation of — Environmental degradation and its consequences — Rising problems of global warming, depletion of ozone layers, acid rain, etc. and their ill-effects, taken note of — Environment Protection and Pollution Control — Environment (Protection) Act, 1986 — Ss. 2(b) & (c)

(Paras 41 to 44)

Hillary, Edmund: "*Learning about the Problems*" *Ecology 2000—The Changing Face of Earth*, *referred to*

F. Environment (Protection) Act, 1986 — S. 2(a) — "Environment" — Meaning of — Constitution of India — Arts. 21, 48-A and 51-A(g)

(Paras 58 and 59)

G. Land Acquisition and Requisition — Karnataka Industrial Areas Development Act, 1966 (18 of 1966) — S. 47 — Validity of — Considering that

respondents did not appear before Supreme Court and decision on S. 47 may have far-reaching impact and ramification, validity of the said section left to be decided in an appropriate case

(Para 33)

W-M/ATZJ/34274/C

Advocates who appeared in this case:

K.K. Venugopal, Senior Advocate (Ms Kiran Suri and Amit J.S., Advocates, with him) for the Appellant;

Manmohan, Senior Advocate (A.R. Madhav Rao, Alok Yadav, Ms Bina Gupta, Ms Inklee Barooah, Ms Simanti Chakrabarti, Ms Rakhi Ray and P.N. Ramalingam, Advocates, with him) for the Respondents.

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

1. (2006) 3 SCC 549, *Intellectuals Forum* v. *State of A.P.* 389*f-g*

2. (2004) 2 SCC 392, *Essar Oil Ltd.* v. *Halar Utkarsh Samiti* 381*d*, 381*e-f*

3. (2001) 2 SCC 62, *A.P. Pollution Control Board (II)* v. *Prof. M.V. Nayudu* 385*b*, 388*b-c*

4. (2000) 10 SCC 664, *Narmada Bachao Andolan* v. *Union of India* 385*d*

5. (1997) 3 SCC 715, *M.C. Mehta* v. *Union of India* 378*d-e*, 390*d*

6. (1997) 3 CMLR 331, *Portugal* v. *F.C. Council* 390*a-b*

7. (1997) 2 SCC 353, *M.C. Mehta* v. *Union of India* 386*d-e*, 390*b*

8. (1997) 1 SCC 388, *M.C. Mehta* v. *Kamal Nath* 388*c*

9. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum* v. *Union of India* 384*e-f*, 386*d-e*, 386*e*, 387*g*

10. (1996) 5 SCC 281, *Indian Council for Enviro-Legal Action* v. *Union of India* 381*h*

11. (1996) 3 SCC 212, *Indian Council for Enviro-Legal Action* v. *Union of India* 387*b-c*, 387*d*

12. (1991) 2 SCC 137, *M.C. Mehta* v. *Union of India* 385*d-e*

13. (1991) 1 SCC 598, *Subhash Kumar* v. *State of Bihar* 385*a-b*

14. 33 Cal 3d 419, *National Audubon Society* v. *Superior Court of Alpine County* 389*e*

The Judgment of the Court was delivered by

DALVEER BHANDARI, J.— In consonance with the principle of "sustainable development", a serious endeavour has been made in the impugned judgment to strike a golden balance between the industrial development and ecological preservation.

2. This appeal is directed against the judgment passed in Writ Petition No. 36638 of 1999 dated 26-11-1999 by the High Court of Karnataka at Bangalore.

3. The respondent agriculturists, who were affected by the acquisition of lands of different villages, filed a writ petition under Article 226 of the Constitution with a prayer that the appellant Karnataka Industrial Areas Development Board (in short "KIADB") be directed to refrain from converting the lands of the respondents for any industrial or other purposes and to retain the lands for use by the respondents for grazing their cattle. The respondents have filed a writ petition indicating that they are residents of villages and their lands bearing Surveys Nos. 79 and 80 of Nallurahalli village are gomal lands (grazing lands for cattle), Survey No. 81 is part of the green belt in the comprehensive development plan and Survey No. 34 is

reserved for the residential purposes. According to the respondents, if the entire land is acquired and an industrial area is developed, the villagers would lose the gomal lands, causing grave hardship to them

as well as their cattle. It was also submitted that there would be an adverse impact on the environment of the villages as the industrial area increases. Their prayer in the petition was that the gomal lands and the lands reserved for the residential purposes in the green belt should not be acquired and allotted for non-agricultural purposes, including industrial purposes.

4. It was submitted by the respondents that deprivation of their land is violative of their fundamental rights guaranteed under Articles 14 and 21 of the Constitution. The respondents have alleged that the appellant and the State of Karnataka have violated the zonal regulations in allotting the lands to Gee India Technology Centre Pvt. Ltd. (Respondent 3 in the writ petition). It was submitted that the allotment was made hurriedly without following the regular procedure and, therefore, the same was illegal and arbitrary.

5. The respondents also submitted that without hearing the affected parties, notification under Section 3(1) of the Karnataka Industrial Areas Development Board Act, 1966 (for short "the Act") has been issued.

6. The appellant and the State Government have denied the allegations levelled in the writ petition. It was submitted by them that the said lands were not used as gomal lands (as alleged) as urbanisation had spread in the area and a number of industries had come up.

7. The appellant submitted that the State has ample power to issue notification under Section 3(1) of the Act and acquire the land under Section 28 of the Act. It was submitted that the entire procedure of law was duly followed by the appellant.

8. It was submitted that Gee India Technology Centre Pvt. Ltd. was going to establish only a Research and Development Project and they were not acquiring the lands for manufacturing process which may emit any polluted air or create polluted atmosphere.

9. It was also stated in the counter-affidavit filed by the appellant and the State of Karnataka in the writ petition that the land allotted to Gee India Technology Centre Pvt. Ltd. was a government land to the extent of 20 acres and the remaining land was acquired by the appellant from private owners. In case the respondents have any objection, it was open for them to take appropriate steps in the proceedings when taken under Section 28 of the Act. It was submitted that there was no provision under Section 3(1) of the Act for issuing notice to the landowners before the declaration is published under Section 3(1) of the Act. It was submitted that the appellant has followed the entire procedure meticulously and there was no violation of procedure or any irregularity in the declaration and allotment of land to

Gee India Technology Centre Pvt. Ltd. It was submitted that Gee India Technology Centre Pvt. Ltd. was going to set up Research and Development Project built as per their world class environmental health and safety standards employing latest technology in handling waste disposal. Therefore, the apprehension of the

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respondents that the Project would cause environmental degradation is wholly misconceived. The environment, health and safety standards of the present Project, according to Gee India Technology Centre Pvt. Ltd., would exceed or be equal to their GE's international standards. It was stated in the High Court that Gee India Technology Centre Pvt. Ltd., recognising the intellectual talent, has established a world class research and development centre to conduct high value research and development activities to reverse the process of "brain drain" that is taking place in India. It was also submitted that they have paid a heavy price for allotment of the lands.

10. It was stated that Gee India Technology Centre Pvt. Ltd. was going to employ about 500 scientists and 150 staff members and another additional 250 technical people.

11. The Division Bench specifically observed that having regard to the circumstances of the case and the nature of establishment of Gee India Technology Centre Pvt. Ltd. and its activities, which is essential for the growth of the computer industry and research and development in information technology, the Court did not wish to disturb the allotment of lands made to Gee India Technology Centre Pvt. Ltd. The Court in the impugned judgment directed that the notification under Section 3(1) of the Act and consequential proceedings or notification or orders issued in regard to the other disputed lands in the writ petition are quashed, to the extent of the lands which were reserved for grazing cattle, agricultural and residential purposes.

12. The Division Bench in the impugned judgment held that for maintaining ecological equilibrium and pollution free atmosphere of the villages, KIADB be directed to leave a land of one kilometre (for short one km) as a buffer zone from the outer periphery of the village in order to maintain a "green area" towards preservation of land for grazing of cattle, agricultural operation and for development of social forestry and to develop the area into a green belt. This measure would preserve the ecology without hindering the much needed industrial growth, thus striking a balance between the industrial development and ecological preservation. The Court further directed that whenever there

was an acquisition of land for industrial, commercial or non-agricultural purposes, except for the residential purposes, the authorities must leave one km area from the village limits as a free zone or green area to maintain ecological equilibrium.

13. The appellant KIADB preferred a special leave petition before this Court on the ground that the directions given in the impugned judgment are contrary to the express statutory provisions, in particular Section 3(1) and Section 47 of the KIADB Act.

14. According to the appellant, the High Court has committed a serious error in issuing directions to leave one km area from the village limits as a free zone or for the green belt. According to the appellant, the effect of the impugned judgment will be that, in future, the appellant would not be able to acquire lands for the establishment and development of the industrial area in the State of Karnataka.

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15. The appellant also submitted that the High Court has exceeded its jurisdiction under Article 226 of the Constitution by issuing blanket directions which tantamount to judicial legislation.

16. The appellant further submitted that the High Court has failed to appreciate that the lands in question had lost their agrarian character a few decades ago. It was also submitted that the fact of the matter was that, because of rapid urbanisation, these villages have no longer remained villages, but have become part and parcel of the city of Bangalore.

17. The appellant also mentioned that the High Court has failed to appreciate that the impugned notification was dated 24-11-1998 and thereafter, the industrial layout was formed, earthwork was done, roads were constructed, water supply lines had been laid and other infrastructural facilities were created spending substantial sums of money.

18. The respondents had kept quiet all the while when civil construction in the area was going on. The appellant has prayed that the impugned judgment of the High Court be set aside and, during the pendency of this appeal, this Court may grant stay of the operation of the impugned judgment passed by the High Court. This Court, on 28-2-2000, while issuing notice to the respondents, directed stay of the operation of the impugned judgment of the High Court.

19. Mr K.K. Venugopal, learned Senior Counsel appearing for the appellant, submitted that the entire compensation has been paid to the

respondents and in view of the stay of the impugned judgment of the High Court granted by this Court, the entire developmental work has been completed and the respondents' writ petition has now become infructuous. He submitted that, perhaps, for this reason, the respondents had lost interest in this litigation and have not appeared before this Court. Since, at the time of hearing of this appeal, no one appeared on behalf of the respondents, therefore, this Court requested Mr A.R. Madhav Rao, Advocate, to assist the Court as an amicus curiae. The appeal was adjourned for a week to enable Mr Rao to prepare the case and when the case was taken up on 25-4-2006 again, no one appeared for the respondents.

20. Mr Venugopal, submitted that, at the time of issuance of the notice under Section 3(1) of the Act, no notice was required to be given to the landowners at that stage according to the scheme of the Act.

21. Mr Venugopal referred to the provisions of the Karnataka Industrial Areas Development Act, 1966 and drew our attention to Section 28 of the Act which armed the appellant to acquire any land for the development. The relevant Section 28(1) of the Act reads as under:

> "28. *Acquisition of land.*—(1) If at any time, in the opinion of the State Government, any land is required for the purpose of development by the Board, or for any other purpose in furtherance of the objects of this Act, the State Government may by notification, give notice of its intention to acquire such land."

22. Mr Venugopal submitted that KIADB can acquire "any land" for the purpose of development or for any other purpose in furtherance of the object of this Act. According to him, under this Act the appellant could acquire even the gomal lands. At the stage of issuance of notification under Section 28 of the Act, notices have to be issued to the landowners.

23. Mr Venugopal referred to Section 47 of the Act, which reads as under:

> "47. *Effect of provisions inconsistent with other laws.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law."

He submitted that according to Section 47 of the said Act, the appellant could acquire "any land". In other words, "any land" shown either in the "master plan" or "the Town Planning Act" as green belt can be acquired by the appellant according to the clear language, spirit and intention of

Section 47 of the Act.

24. He also submitted that the appellant can also acquire the land earmarked for the residential use under the "comprehensive area development plan".

25. Mr Venugopal further submitted that both the development and protection of environment were traceable to Article 21 of the Constitution.

26. Mr Venugopal contended that the High Court has erroneously applied the ratio of the judgment of *M.C. Mehta* v. *Union of India*[1]. The fact of that case has no application so far as this case is concerned. He also placed reliance on the other decided cases of this Court.

27. Mr A.R. Madhav Rao, learned amicus curiae, submitted that while acquiring the land by the appellant, the impact of industrialisation on the environment of the area concerned has to be taken into consideration in the larger public interest.

28. Mr Rao also submitted that there must be a proper assessment of the impact and implications on environment and ecology. He has also drawn our attention to clause 12 of the allotment letter which, according to him, requires modification. The relevant clause 12 reads as under:

> "You are requested to obtain necessary clearance for your Project from the Karnataka State Pollution Control Board and the Department of Ecology and Environment before execution of the agreement wherever applicable."

29. He submitted that the allottee cannot have discretion in the matter of obtaining necessary clearance for the Project from the Karnataka State Pollution Control Board and the Department of Ecology and Environment for execution of the agreement, but it has to be made a mandatory condition.

30. We have heard Mr Venugopal and Mr Rao, the learned amicus curiae. We are of the considered view that before acquisition of the land, the appellant must carry out necessary exercise regarding the impact of

development on ecology and environment. Development and environment have to go hand in hand.

31. We are also clearly of the considered view that it should be made mandatory for the allottee to obtain necessary clearance for the Project from the Karnataka State Pollution Control Board and the Department

of Ecology and Environment before execution of the agreement. Consequently, we direct the appellant to incorporate this condition in the letter of allotment requiring the allottee to obtain clearance before putting up any industry. The condition has to be mandatory.

32. It may be pertinent to mention that the High Court had an occasion to examine the impact of Section 47 of the Act. The Court observed that, by reading the said provision, it is evident that Section 47 has got an overriding effect.

33. In this case, since the respondents have not appeared before us, in our opinion, this Court's decision on Section 47 of the Act may have far-reaching impact and ramification, therefore, we are reserving our opinion on the validity of Section 47 of the Act to be decided in an appropriate case.

Environmental and constitutional provisions

34. Professor Michael Von Hauff of the Institute for Economics and Economic Policy, University of Kaiserlantern, Germany, in his article "The Contribution of Environmental Management Systems to Sustainable Development: Relevance of the Environmental Management and Audit Scheme" aptly observed that, "it is remarkable that India was the first country in the world to enshrine environmental protection as a State goal in its Constitution".

35. In the impugned judgment serious concern regarding degradation of ecology and environment has been seriously articulated.

36. According to the impugned judgment, preservation and protection of environment are part of Article 21 of the Constitution. Article 21 reads as under:

> "21. *Protection of life and personal liberty.*—No person shall be deprived of his life or personal liberty except according to procedure established by law."

37. In the impugned judgment, the High Court also gave reference to the directive principles of the State policy. In Articles 48-A and 51-A (*g*) of the Constitution, a strong foundation has been laid down pertaining to environment, preservation of forests, wildlife, rivers and lakes.

38. The constitutional philosophy enshrined in these constitutional provisions must be implemented. Article 48-A reads as under:

> "48-A. *Protection and improvement of environment and safeguarding of forests and wildlife.*—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

39. The framers of the Constitution expressed concern for and importance of protection and improvement of forests, lakes, rivers and

wildlife for preserving the environment. According to the spirit of the Constitution, it is the bounden duty of all to protect our natural environment. Reference to Article 51-A(*g*) is also very important.

40. Article 51-A(*g*) reads as under:

"51-A. (*g*) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;"

Environmental degradation and its consequences

41. Experience of the recent past has brought to us the realisation of the deadly effects of development on the ecosystem. The entire world is facing a serious problem of environmental degradation due to indiscriminate development. Industrialisation, burning of fossil fuels and massive deforestation are leading to degradation of environment. Today the atmospheric level of carbon dioxide, the principal source of global warming, is 26% higher than pre-industrial concentration.

42. The earth's surface reached its record level of warming in 1990. In fact, six of the seven warmest years on record have occurred since 1980, according to the World Watch Institute's 1992 Report. The rise in global temperature has also been confirmed by the Inter-Governmental Panel on Climate Change set up by the United Nations in its final report published in August 1990. The global warming has led to unprecedented rise in the sea level. Apart from melting of the polar ice it has led to inundation of low-lying coastal regions. Global warming is expected to profoundly affect species and ecosystem. Melting of polar ice and glaciers, thermal expansion of seas would cause worldwide flooding and unprecedented rise in the sea level if gas emissions continue at the present rate. Enormous amount of gases and chemicals emitted by the industrial plants and automobiles have led to depletion of ozone layers which serve as a shield to protect life on the earth from the ultraviolet rays of the sun.

43. The dumping of hazardous and toxic wastes, both solid and liquid, released by the industrial plants is also the result of environmental degradation in our country.

44. The problem of "acid rain" which is caused mainly by the emissions of sulphur dioxide and nitrogen oxides from power stations and industrial installations is a graphic example of it. The ill-effects of acid rain can be found on vegetation, soil, marine resources, monuments as well as on humans. Air pollutants and acids generated by the industrial activities are now entering forests at an unprecedented scale.

45. Sir Edmund Hillary (Tenzing and Edmund Hillary, who scaled Mount Everest for the first time in world history) in his article "Learning About the Problems" published in *Ecology 2000—The Changing Face of Earth*, has mentioned as under:

> "Thirty years ago conservation had not really been heard of. On our 1953 Everest expedition we just threw our empty tins and any trash into a heap on the rubble-covered ice at base camp. We cut huge quantities of

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the beautiful juniper shrub for our fires; and on the South Col at 26,000 feet we left a scattered pile of empty oxygen bottles, torn tents and the remnants of food containers.

> The expeditions of today are not much better in this respect, with only a few expectations (*sic* exceptions). Mount Everest is littered with junk from the bottom to the top."

He also mentioned that, "one thing that has deeply concerned me has been the severe destruction that is taking place in the natural environment".

46. The 1972 Stockholm Conference on "Human Environment" secured its place in the history of our times with the adoption of the first global action plan for the environment. Yet, as increasingly grim statistics indicate, over the past decades our global environment and the living conditions for most of the inhabitants of the planet continue to deteriorate. This process has meant significant setback for both rich and poor.

47. The Declaration of the 1972 Stockholm Conference referred obliquely to man's environment, adding that "both aspects of man's environment, the natural and the man-made, are essential for his well-being and enjoyment of basic human rights".

48. In *Essar Oil Ltd.* v. *Halar Utkarsh Samiti*[2] this Court aptly observed Stockholm Declaration as "magna carta of our environment". First time at the international level importance of environment has been articulated.

49. In the Stockholm Declaration, Principle 2 provides that the natural resources of the earth including air, water, land, flora and fauna should be protected. The fourth principle of the Stockholm Declaration reminds us about our responsibility to safeguard and wisely manage the heritage of wildlife and its habitat.

50. The Court in the said judgment also observed that: (*Essar Oil*

Ltd. case[2], SCC p. 406, para 27)

> "*27*. This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other."

51. In the said judgment, the passage has been quoted from *Indian Council for Enviro-Legal Action* v. *Union of India*[3]. We deem it appropriate

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to reproduce the same. Para 31 at SCC p. 296 in the said judgment reads 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 and vice versa, but there should be development while taking due care and ensuring the protection of environment."

52. The Stockholm Conference recognised the links between environment and development. But little was done to integrate this concept for international action until 1987 when the Brundtland Report, *Our Common Future* was presented to the United Nations General Assembly. The Brundtland Report stimulated debate on development policies and practices in developing and industrialised countries alike and called for an integration of our understanding of the environment and development into practical measures of action.

53. Armed with three years of testimony from people at hearings in five continents, the Commission came to one central conclusion:

(*i*) the present development trends leave increasing numbers of

people poor and vulnerable, while at the same time degrading the environment;

(*ii*) poverty is a major cause and effect of global environmental problems and, therefore, it is futile to attempt to deal with environmental problems without a broader perspective that encompasses the factors underlying world poverty and international inequality; and

(*iii*) a new development was required, one that sustained human progress for the entire planet into the distant future and that sustainable development becomes a goal not just for the developing nations but for the industrialised ones as well.

54. The Earth Summit held in Rio de Janeiro in 1992 altered the discourses of environmentalism in significant ways. Sustainability, introduced in the 1987 Brundtland Report—*Our Common Future* and enacted Rio agreements, became a new and accepted code word for development.

55. The United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, provided the fundamental principles and the programme of action for achieving sustainable development.

56. Peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as well as respect for cultural diversity, are essential for achieving sustainable development and ensuring that sustainable development benefits all.

57. The 1992 Rio Declaration on "Environment and Development" recognises the element of integration of environmental and developmental aspects, particularly in Principles 3 and 4, which are set as under:

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"*Principle 3*

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."

58. The 1992 Rio Declaration on Environment and Development

refers at many points to environmental needs, environmental protection, environmental degradation and so on, but nowhere identifies what these include. Interestingly, it eschews the term "entirely" in Principle 1, declaring instead that human beings "are entitled to a healthy and productive life in harmony with nature". One of the few bodies to proffer a definition is the European Commission. In developing an "Action Programme on the Environment", it defined "environment as the combination of elements whose complex interrelationships make up the settings, the surroundings and the conditions of life of the individual and of society as they are and as they are felt".

59. Some understanding of what "the environment" may encompass can be discerned from other treaty provisions. Those agreements which define "environmental effects", "environmental impacts" or "environmental damage" typically include harm to flora, fauna, soil, water, air, landscape, cultural heritage, and any interaction between these factors.

60. "The World Summit on Sustainable Development" was held in Johannesburg in 2002. The purpose of the same was to evaluate the obstacles to progress and the results achieved since the 1992 World Summit at Rio de Janeiro. The same was expected to present "an opportunity to build on the knowledge gained over the past decade, and provides a new impetus for commitments of resources and specific action towards global sustainability".

61. The priority of developing nations is urgent industrialisation and development. We have reached at a point where it is necessary to strike a golden balance between development and ecology.

62. The development should be such as it can be sustained by ecology. All this has given rise to the concept of sustainable development.

63. "The World Conservation Union" and "the Worldwide Fund for Nature" prepared jointly by UNEP described that "sustainable development, therefore, depends upon accepting a duty to seek harmony with other people and with nature" according to *Caring for the Earth*, *A Strategy for Sustainable Living*. The guiding rules are:

(*i*) people must share with each other and care for the earth;

(*ii*) humanity must take no more from nature than man can replenish; and

(*iii*) people must adopt lifestyles and development paths that respect and work within nature's limits.

64. The international community expressed its commitment to treat environment and development in an integrated manner and to cooperate "in the further development of international law in the field of sustainable development". This was part of the Rio Declaration on Environment and Development. (Principle 27; Report of the UN Conference on Environment and Development.)

65. P. Sands in his celebrated book *International Law in the Field of Sustainable Development* mentioned that the sustainable development requires the States to ensure that they develop and use their natural resources in a manner which is sustainable. According to him, sustainable development has four objectives:

> First, it refers to a commitment to preserve natural resources for the benefit of present and future generations.
>
> Second, sustainable development refers to appropriate standards for the exploitation of natural resources based upon harvests or use (examples include use which is "sustainable", "prudent", or "rational", or "wise" or "appropriate").
>
> Third, yet other agreements require an "equitable" use of natural resources, suggesting that the use by any State must take account of the needs of other States and people.
>
> And a fourth category of agreements require that environmental considerations be integrated into economic and other development plans, programmes, and projects, and that the development needs are taken into account in applying environmental objectives.

Sustainable development: Contribution of the judiciary and others

66. This Court, in *Vellore Citizens' Welfare Forum* v. *Union of India*[4], acknowledged that the traditional concept that development and ecology are opposed to each other, is no longer acceptable. Sustainable development is the answer. Some of the salient principles of "sustainable development" as culled out from Brundtland Report and other international documents are intergenerational equity. This Court observed that "the precautionary principle" and "the polluter-pays principle" are essential features of "sustainable development".

67. A nation's progress largely depends on development, therefore, the development cannot be stopped, but we need to control it rationally. No Government can cope with the problem of environmental repair by itself alone; people's voluntary participation in environmental management is a must for sustainable development. There is a need to create environmental awareness which may be propagated through

formal and informal education. We must scientifically assess the ecological impact of various developmental

schemes. To meet the challenge of current environmental issues, the entire globe should be considered the proper arena for environmental adjustment. Unity of mankind is not just a dream of the enlightenment but a biophysical fact.

68. In *Subhash Kumar* v. *State of Bihar*[5] this Court has given directions that under Article 21 of the Constitution, pollution free water and air are the fundamental rights of the people.

69. In *A.P. Pollution Control Board (II)* v. *Prof. M.V. Nayudu*[6] this Court observed that the right to have access to drinking water is fundamental to life and it is the duty of the State under Article 21 to provide clean drinking water to its citizens.

70. The United Nations Water Conference in 1977 observed as under:

> "All people, whatever their stage of development and their social and economic conditions, have the right to have access to *drinking water* in quantum and of a quality equal to their basic needs."
>
> (emphasis supplied)

71. Similarly, this Court in *Narmada Bachao Andolan* v. *Union of India*[7] observed as under: (SCC p. 767, para 248)

> "*248*. Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India…."

72. In *M.C. Mehta* v. *Union of India*[8] this Court gave a number of directions to reduce the pollution created by vehicles.

73. The need of the hour is inculcating a sense of urgency in implementing the rules relating to environmental protection which are not strictly followed. Its result would be disastrous for the health and welfare of the people.

74. The concept of sustainable development whose importance was the resolution of environmental problems is profound and undisputed.

75. Professor Ben Boer, Environmental Law, Faculty of Law, University of Sydney, New South Wales, Australia, in his article "*Implementing Sustainability*" observed as under:

> "Strategies for sustainable development have been formulated in many countries in the past several years. Their implementation

through legal and administrative mechanisms is underway on a national and regional basis. The impetus for these strategies has come from documents such as the Stockholm Declaration of 1972, the World Conservation Strategy, the World Charter for Nature of 1982 and the

report of the World Commission on Environment and Development, *Our Common Future*. The initiatives are part of a worldwide movement for the introduction of National Conservation Strategies based on the World Conservation Strategy. Over 50 National Conservation Strategies have been introduced over the past decade, all of which incorporate concepts of sustainable development. The document *Caring for the Earth* is the chief successor to the World Conservation Strategy."

76. In the same article, Professor Boer further observed in the said article as follows:

> " 'Sustainability' is defined in *Caring for the Earth* as 'a characteristic or state that can be maintained indefinitely', whilst 'development' is defined as 'increasing the capacity to meet human needs and improve the quality of human life'. What this seems to mean is 'to increase the efficiency of resource use in order to improve human living standards'.
>
> In *Caring for the Earth*, the term 'sustainable development' is derived from a rough combination of these two definitions:
>
> Improving the quality of human life while living within the carrying capacity of supporting ecosystems."

Adherence to the following principles is imperative for preserving ecology

(1) The precautionary principle

77. This Court in *Vellore Citizens' Welfare Forum*[4] has recognised the precautionary principle. Again, this principle has been reiterated in *M.C. Mehta* v. *Union of India*[9]. In the said case, the precautionary principle has been explained in the context of municipal law as under: (*Vellore Citizens' Welfare Forum case*[4], SCC p. 658, para 11)

> "*11*. (*i*) Environmental measures—by the State Government and the statutory authorities—must anticipate, prevent and attack the causes of environmental degradation.
>
> (*ii*) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(*iii*) The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign."

78. The precautionary principle was stated in Article 7 of the Bergen Ministerial Declaration on Sustainable Development in the ECE Region, May 1990, as incorporated in the said article of Professor Ben Boer. It reads as follows:

"Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of scientific certainty should not be used as reason for postponing measures to prevent environmental degradation."

79. The precautionary principle can be culled out from the following observations of the Australian Conservation Foundation: (This also has been incorporated in Professor Boer's said article.)

"The implementation of this duty is that developers must assume from the fact of development activity that harm to the environment may occur, and that they should take the necessary action to prevent that harm; the onus of proof is thus placed on developers to show that their actions are environmentally benign."

(2) Polluter pays

80. This Court had an occasion to deal with this main principle of sustainable development in *Indian Council for Enviro-Legal Action* v. *Union of India*[10]. Carolyn Shelbourn in his article "*Historic Pollution—Does the Polluter Pay?*" (published in the *Journal of Planning and Environmental Law*, August 1974 issue), mentioned that the question of liability of the respondents to defray the costs of remedial measures can be looked into from another angle, which has come to be accepted universally as a sound principle viz. the "polluter-pays" principle.

81. The Court in the said judgment observed as under: (*Indian Council for Enviro-Legal Action case*[10], SCC p. 247, para 67)

"The polluter-pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this

would be to shift the financial burden of the pollution incident to the taxpayer. The 'polluter-pays' principle was promoted by the Organisation for Economic Cooperation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialised society. Since then there has been considerable discussion of the nature of the polluter-pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed."

82. This principle has also been held to be a sound principle in *Vellore Citizens' Welfare Forum*[4]. The Court observed that the precautionary principle and the polluter-pays principle have been accepted as part of the law of the land. The Court in the said judgment, on the basis of the provisions of Articles 47, 48-A and 51-A(*g*) of the Constitution, observed that we have no hesitation in holding that the precautionary principle and the polluter-pays principle are part of the environmental laws of the country.

(3) The public trust doctrine

83. The concept of public trusteeship may be accepted as a basic principle for the protection of natural resources of the land and sea. The public trust doctrine (which found its way in the ancient Roman Empire) primarily rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the Government and its instrumentalities to protect the resources for the enjoyment of the general public.

84. This Court in *A.P. Pollution Control Board (II)*[6] mentioned that there is a need to take into account the right to a healthy environment along with the right to sustainable development and balance them.

85. In *M.C. Mehta* v. *Kamal Nath*[11] this Court dealt with the public trust doctrine in great detail. The Court observed as under: (SCC p. 413, para 35)

"*35*. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

86. Joseph L. Sax, Professor of Law, University of Michigan—proponent of the modern public trust doctrine—in an erudite article *Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*[11a], has given the historical background of the public trust doctrine as under:

"The source of modern public trust law is found in a concept that received much attention in Roman and English law—the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasised. First, certain

interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties—such as the seashore, highways and running water—'perpetual use was dedicated to the public', it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public

rights could be legally asserted against a recalcitrant government."

87. The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the public trust doctrine imposes the following restrictions on governmental authority:

> "Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses."

88. The Supreme Court of California in *National Audubon Society* v. *Superior Court of Alpine County*[12] observed as under:

> "Thus, the public trust is more than an affirmation of the State's power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust…."

89. In a recent case of *Intellectuals Forum* v. *State of A.P.*[13] this Court has reiterated the importance of the doctrine of public trust in maintaining sustainable development.

90. The right to sustainable development has been declared by the UN General Assembly to be an inalienable human right (Declaration on the Right to Development, 1986).

91. Similarly, in 1992 Rio Conference it was declared that human beings are at the centre of concerns for sustainable development. Human beings are entitled to a healthy and productive life in harmony with nature. In order to achieve sustainable development, environmental protection shall constitute

an integral part of development process and the same cannot be considered in isolation of it.

92. The same principle was articulated in the "1997 Earth Summit[††]".

93. The European Court of Justice emphasised in *Portugal* v. *F.C. Council*[14] the need to promote sustainable development while taking into account the environment[14a].

94. In *M.C. Mehta* v. *Union of India*[9] this Court gave a number of directions to 292 industries located nearby Taj Mahal. This Court, in this case, observed that the old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and ecosystem have to be protected. The pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystem. In any case, in view of the precautionary principle, the environmental measures must anticipate, prevent and attack the causes of environmental degradation.

95. The directions which have been given in the impugned judgment are perhaps on the lines of directions given by this Court in *M.C. Mehta* v. *Union of India*[1]. This Court observed that the preventive measures have to be taken keeping in view the carrying capacity of the ecosystem operating in the environmental surroundings under consideration. Badkhal and Surajkund lakes are popular tourist resorts almost next door to the capital city of Delhi. Two expert opinions on the record—by the Central Pollution Control Board and by NEERI make it clear that the large-scale construction activity in the close vicinity of the two lakes is bound to cause adverse impact on the local ecology. NEERI has recommended green belt at one km radius all around the two lakes.

96. The directions given in the said judgment based on NEERI's recommendations were capable of proper implementation.

97. If the directions given in the impugned judgment are properly implemented then perhaps, the appellant cannot acquire any land for development. This may not have been the underlying idea behind the judgment but it seems to be the obvious consequence of a direction given by the Division Bench in this case. In this view of the matter, the said directions given in the impugned judgment are set aside.

98. We see significant developments when we carefully evaluate the entire journey of judicial pilgrimage from the decade of 1960 till this date. In the decade of 1960s, hardly anyone expressed concern about ecology and environment. The statement of Sir Edmund Hillary quoted in the earlier part of the judgment indicates that Mount Everest was littered with junk from the bottom to the top and nobody hardly spoke

about it nor was any serious

concern shown about environmental degradation. In the decade of 1970s, a serious concern about the degradation of ecology and environment was articulated. The Stockholm Conference of 1972 was a major watershed in the history of the world. It was realised that for a civilised world both development and ecology are essential.

99. In the Rio Conference of 1992 great concern had been shown about sustainable development. "Sustainable development" means "a development which can be sustained by nature with or without mitigation". In other words, it is to maintain delicate balance between industrialisation and ecology. While development of industry is essential for the growth of economy, at the same time, the environment and the ecosystem are required to be protected. The pollution created as a consequence of development must not exceed the carrying capacity of the ecosystem. The courts in various judgments have developed the basic and essential features of sustainable development. In order to protect sustainable development, it is necessary to implement and enforce some of its main components and ingredients such as precautionary principle, polluter-pays and public trust doctrine. We can trace the foundation of these ingredients in a number of judgments delivered by this Court and the High Courts after the Rio Conference, 1992.

100. The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions emanating from the principle of "Sustainable Development":

(*1*) We direct that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment.

(*2*) We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future.

101. This has been an interesting judicial pilgrimage for the last four decades. In our opinion, this is a significant contribution of the judiciary in making serious endeavour to preserve and protect ecology and

environment, in consonance with the provisions of the Constitution.

102. Sustainable use of natural resources should essentially be based on maintaining a balance between development and the ecosystem. Coordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution. Unless we adopt an approach of sustainable use, the problem of environmental degradation cannot be solved.

103. The concept of sustainable development was propounded by the "World Commission on Environment and Development", which very aptly and comprehensively defined it as "*development that meets the needs of the*

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present without compromising the ability of future generations to meet their own needs". Survival of mankind depends on following the said definition in letter and spirit.

104. Before we part with this case, we would like to place on record our deep appreciation for the able assistance rendered by Mr A.R. Madhav Rao, the learned amicus curiae.

105. The appeal is allowed and disposed of in terms of the aforementioned directions. In the facts and circumstances of the case, we direct the parties to bear their own costs.

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† From the Final Order dated 26-11-1999 of the High Court of Karnataka at Bangalore in Writ Petition No. 36638 of 1999 : 2000 AIHC 2579

[1] (1997) 3 SCC 715

[2] (2004) 2 SCC 392

[3] (1996) 5 SCC 281

[4] (1996) 5 SCC 647

[5] (1991) 1 SCC 598 : AIR 1991 SC 420

[6] (2001) 2 SCC 62

[7] (2000) 10 SCC 664

[8] (1991) 2 SCC 137

[9] (1997) 2 SCC 353

[10] (1996) 3 SCC 212

[11] (1997) 1 SCC 388

[11a] 68(3) Mich. L. Rev. 471 at 473 (1970)

[12] 33 Cal 3d 419

[13] (2006) 3 SCC 549

[††] **Ed.**: Special Session of the General Assembly to review and appraise the Implementation of Agenda 21, held at New York, 23-27 June 1997.

[14] (1997) 3 CMLR 331

[14a] John Lee, "The underlying Legal Theory to support a well defined Human Rights to a healthy Environment as a Principle of Customary International Law", 25 Columbia Journal of Environmental Law 283 (2000).

(2019) 15 Supreme Court Cases 401 : 2019 SCC OnLine SC 441

In the Supreme Court of India

(BEFORE DR D.Y. CHANDRACHUD AND HEMANT GUPTA, JJ.)

Civil Appeal No. 12251 of 2018[†]

HANUMAN LAXMAN AROSKAR . . Appellant;

Versus

UNION OF INDIA . . Respondent.

With

Civil Appeal No. 1053 of 2019

FEDERATION OF RAINBOW WARRIORS . . Appellant;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

Civil Appeals No. 12251 of 2018 with No. 1053 of 2019, decided on March 29, 2019

A. **Environment Law — Development vis-à-vis Ecology : National, Urban and Rural Development — Development Projects — Prerequisites for/Environmental clearance/viability — Development of greenfield airport project in State of Goa — Environmental clearance (EC) — Flaws in environmental impact assessment (EIA) process — Suspension of environmental clearance (EC) and directions issued for proper EIA — Expert Appraisal Committee (EAC) constituted under EIA Notification, 2006 directed to revisit recommendations made by it for grant of EC having regard to specific concerns highlighted in this judgment**

— One month's time given for this — Till then EC granted by Ministry of Environment, Forests and Climate Change (MoEFCC) on 28-10-2015 shall remain suspended — No other court or tribunal shall entertain any challenge to report that is to be submitted before Court by EAC in compliance with the present order — MoEFCC and State Government given liberty to file report of EAC before Court to facilitate passing of appropriate orders thereon

(Paras 162 to 166)

— Concerns highlighted in judgment:

— (1) Flaws in EIA process — (a) Non-disclosure of vital information, suppression of material facts by project proponent, (b) non-application of mind by EAC as an expert body and its failure to give cogent reasons, while recommending for grant of EC, and (c) failure of NGT as an adjudicatory body to carry out a merits review

— (2) Airport operations — Collection of baseline data — Guidance Manual for Airports specifically requires collection of baseline data on (i) land environment, (ii) water environment, (iii) air environment, (iv) noise environment, (v) biological environment, (vi) socioeconomic environment, and (vii) solid waste — As airport operations might have possible impact on biological environment, collection of baseline data on sensitive habitats and wild or endangered species in project area is contemplated — Baseline data of environmental parameters aid in preparation of an environment management plan (EMP)

(Paras 63 to 69)

— (3) EAC shall have due regard to assurance furnished by concessionaire to Court that it is willing to adopt and implement necessary safeguards bearing in mind international best practices governing greenfield airports

(Para 163.5)

— (4) Duty and onus of project proponent — It is duty of project proponent to make full, complete and candid disclosure of all environmental aspects — Burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of environment — However, in present case project proponent failed to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1 of EIA Notification, 2006 — Duty to disclosure about forest does not mean only reserve forest as contemplated within S. 20(2) of Forest Act, 1927 or forest as understood in any statutory enactment — Expression "forest" must receive its ordinary and natural connotation — The effort must not be to overlook and destroy forests but to notice and protect them — A failure to disclose information in Form 1 impairs the functioning of EAC in preparation of ToR and in consequence, leads to preparation of a deficient EIA report — There has been a patent failure on part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law

(Paras 70 to 82)

— (5) EIA report defective — EIA report failed to notice existence of Ecologically Sensitive Zones (ESZs) within buffer distance of 10 km of project site — EIA report must encompass all aspects of environmental concern which render area ecologically sensitive i.e. wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests

(Paras 91 and 92)

— (6) Data collection incomplete — Allegedly, no primary data with regard to environmental parameters like air quality, water quality, noise quality and flora and fauna were collected from State of Maharashtra and related only to State of Goa

(Paras 93 to 101)

— (7) Incorrect information about trees — EIA report incorrectly stated that area required for proposed airport has only few trees but evidently permissions were granted for felling 54,676 trees — Issues pertaining to vegetational cover must be taken seriously in the EIA process

(Paras 102 to 109)

— (8) Issues raised in pubic consultation not included in EIA — Intrinsic and instrumental value of public consultation — Stages of public consultation — Project proponent's duty to address all material environmental concerns raised during public consultation and make appropriate changes in draft EIA and EMP — Though only seven out of sixty-eight issues dealt with issue of unemployment, project proponent observed that major issue was unemployment — Duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC, which it failed in doing

(Paras 110 to 117)

— (9) EAC as an expert body failed to apply mind — Duty to apply mind to documents like EIA report, outcome of public consultation and public hearing proceedings — EAC is under a mandate to conduct process of appraisal in "a transparent manner" — And make a categorical recommendation about grant of EC on stipulated terms and conditions or rejection of EC — Recommendations made by EAC to regulatory authority must be based on "reasons" — Said recommendations constitute substantive material which ultimately affects decision-making process and also might form subject-matter of challenge before Tribunal — However, minutes indicate non-application of mind by EAC with reference to 15 ESZs in study area — In absence of critical analysis EAC failed in discharging its duties under 2006 Notification

(Paras 118 to 129)

— (10) NGT as an expert adjudicatory body on environment failed in its duty to exercise the jurisdiction entrusted to it under S. 16(h) r/w S. 20, NGT Act, 2010 by merely deferring decision to recommend and grant an EC — Though several important submissions were urged before it, entire analysis by NGT is contained in one paragraph and next para only deals with requirement of data collection — This does not fulfil requirement of merits review by the expert adjudicatory body like NGT

(Paras 130 to 141)

— (11) In environmental governance, means are as significant as ends, process of decision is as crucial as ultimate decision — However, there has been a failure of due process commencing from non-disclosure of vital information by project proponent to non-application of mind by EAC and failure of merits review by NGT — Thus in present case neither decision-making process nor ultimate decision of granting EC can be said to be valid — Bearing in mind that there is an urgency for setting up a new airport to tackle with increasing volume of passengers and at the same time protect environment, time bound directions were issued

(Paras 142 to 167)

— Infrastructure Laws — Carriage of Goods and Persons by Air, Land and Sea — Carriage by Air/Aircraft and Airports — Airport Development — EIA Guidance Manual for Airports, 2010 — Forests, Wildlife and Zoos — Demarcation/Determination/Identification of Forest Land — Forest Act, 1927 — S. 20 — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 — Form 1 — Regulatory Framework, Bodies and Judicial Intervention — Expert Appraisal Committee (EAC) — Duties of and manner of exercise of power while conducting EIA in grant of EC — National Green Tribunal Act, 2010 — Ss. 16(h) and 20 — Duties of and proper

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exercise of power — Doctrine of proportionality must be applied to matters concerning the environment as part of judicial review — Words and Phrases — "Forest"

B. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court against orders of Tribunal — Maintainability — Locus standi, bona fides, plea of personal agenda — Approach of Court — Doctrine of proportionality must be applied to matters concerning the environment as part of judicial review**

— In cases concerning environmental governance, courts should decide case on merits — Such cases involve present and future generations, sustainable development for today and tomorrow — If a court comes to finding that appeal before it lacks bona fides, it may issue directions which it thinks appropriate in that case — Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment — Regulatory Framework, Bodies and Judicial Intervention —

Generally — Environmental adjudication — Approach to — Constitution of India, Arts. 21 and 19(1)(g) & (g)

(Para 164)

C. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 distinguished from 1994 Notification**

(Para 41)

D. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 — Procedure for grant of environmental clearance (EC) under — Four stages of obtaining EC, discussed, that is, screening, scoping, public consultation and appraisal by EAC — Importance and objectives of 2006 Notification**

— In laying down a detailed procedure for the grant of an EC, 2006 Notification attempts to bridge perceived gap between environment and development — Development vis-à-vis Ecology : National, Urban and Rural Development — Development Projects — Prerequisites for/Environmental clearance/viability

(Paras 45 to 62)

E. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 — Procedure for grant of environmental clearance (EC) under — Rejection of application for EC for missing and misleading information provided in Form 1 by project proponent**

— Information provided by project proponent in Form 1 serves as the base upon which EAC or the State Expert Appraisal Committees (SEAC) to prepare comprehensive Terms of Reference (ToR), which applicant is required to address during course of preparation of EIA — ToR so prepared addresses all possible environmental concerns — Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and process stipulated under the notification — For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately — Development vis-à-vis Ecology : National, Urban and Rural

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Development — Development Projects — Prerequisites for/Environmental clearance/viability

(Paras 45 to 62)

F. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — Objectives of EIA process**

— To ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available — This will determine what conditions be imposed for grant of EC — EC is required before any construction work, or preparation of land (except for securing the land) is started on the project or activity listed in the schedule to 2006 Notification — Development vis-à-vis Ecology : National, Urban and Rural Development — Development Projects — Prerequisites for/Environmental clearance/viability

(Paras 34 to 62)

The present appeal under Section 22 of the NGT Act, 2010 was filed to challenge the grant of environmental clearance (EC) for the development of a greenfield international airport at Mopa in Goa. The allegation was that project proponent (the State Government) did not disclose the material facts required by the 2006 Notification. And that the project proponent did not appraise the EAC about important issues raised during public consultation. And that the EAC as an expert body abdicated its duty to apply mind and give cogent reasons for grant of EC. And that NGT, an expert adjudicatory

body also failed to carry out a merits review of grant of EC. NGT approved EC granted with certain additional conditions. Hence, the present appeals.

Allowing the appeals and setting aside EC granted and remanding matter back to EAC for proper application of mind with other directions, the Supreme Court

Held :

C. *Scheme of the 2006 Notification and the Guidance Manual for Airports*

C.1. *EIA Process*

The objective of the EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available.

(Para 34)

The salient objective which underlies the 2006 Notification is the protection, preservation and continued sustenance of the environment when the execution of new projects or the expansion or modernisation of existing projects is envisaged. It imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless prior EC has been granted by the authority concerned. EC is required before any construction work, or preparation of land (except for securing the land) is started on the project or activity listed in the schedule to the notification.

(Para 42)

The 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. In laying down a detailed procedure for the grant of an EC, the 2006 Notification attempts to bridge the perceived gap between the environment and development.

(Para 56)

It is for this reason that EAC and SEAC comprise experts in the field of environmental law. Given that these bodies comprise experts in the field of environmental law, the recommendation of EAC or SEAC to grant EC to an applicant or reject the application is *normally* accepted by the regulatory authority.

(Paras 57 and 58)

Given the environmental consequences of a proposed project, no difference of opinion is provided for in the grant of an EC at the State level. It is further mandated that the project management submit half-yearly compliance reports to the regulatory authority in respect of EC and conditions.

(Para 59)

Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1-A. Crucial information regarding the particulars of the proposed project is sought to enable EAC or SEAC to prepare comprehensive Terms of Reference (ToR) which the applicant is required to address during the course of the preparation of the EIA. The ToR so prepared addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment.

(Paras 60 and 61)

The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 Notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project

and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately.

(Para 62)

C.2. *Guidance Manual for Airports*

In February 2010, MoEF brought out its Guidance Manual for Airports. The need for a sector-specific manual arose because the 2006 Notification "re-engineered the entire EC process" under its earlier avatar of 1994 and new sectors were incorporated into the ambit of EC process. The 2006 Notification noted that as many as 39 developmental sectors require prior ECs. Sector-specific manuals, it was hoped, would bring about standardisation in the quality of appraisal and obviate potential inconsistencies between the work performed by SEIAAs and SEACs.

(Para 63)

Baseline data of environmental parameters which may be affected by airport activities is collected through primary monitoring in the study area and through secondary sources. The baseline data facilitates the evaluation of the predicted impact on environmental attributes in the study area by using scientific analysis and EIA methodologies. The object is to also aid in the preparation of an EMP that would outline measures for improving environmental quality as well as retain the scope for future expansions in a sustainable manner. The Guidance Manual specifically requires collection of baseline data on the following : (*i*) land environment; (*ii*) water environment; (*iii*) air environment; (*iv*) noise environment;

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(*v*) biological environment; (*iv*) socioeconomic environment; and (*vii*) solid waste.

(Para 64)

The Guidance Manual brings into focus the biological environment. It acknowledges that airport operations may alter ecosystems, threaten endangered species and disturb the movement and breeding patterns of wildlife. In this context, the collection of baseline data on sensitive habitats and wild or endangered species in the project area is contemplated.

(Para 68)

It is in the backdrop of the 2006 Notification and the Guidance Manual that it becomes necessary to assess the process that was adopted in the present case and its outcome.

(Para 69)

D. *Forests*

The court cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1.

(Paras 70 to 73)

It cannot be accepted that the disclosure required was of reserved forests comprehended within a notification under Section 20(2) of the Forest Act, 1927. The expression "forests", means a forest as commonly understood, without reference to a notification under the Forest Act, 1927 or any other statutory enactment. Such an interpretation will subserve the purpose of an EIA. The purpose is to

ensure that all relevant facets of the environment are noticed, that baselines are documented, and that the potential impact of a project or activity on the environment is assessed. Forests are forests without reference to recognition in a statutory form devised for a specific purpose.

(Para 74)

In the context of the 2006 Notification and the underlying purpose of facilitating an EIA report, the expression "forests" must receive its ordinary and natural connotation. The effort must not be to overlook and destroy forests but to notice and protect them.

(Para 77)

T.N. Godavarman Thirumulpad v. *Union of India*, (1997) 2 SCC 267; *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744, *distinguished*

Federation of Rainbow Warriors v. *Union of India*, 2017 SCC OnLine NGT 1964; *Federation of Rainbow Warriors* v. *Union of India*, 2017 SCC OnLine NGT 1962; *Federation of Rainbow Warriors* v. *Conservator of Forests*, 2018 SCC OnLine Bom 329 : (2018) 3 Mah LJ 424; *Hanuman Laxman Aroskar* v. *Union of India*, 2019 SCC OnLine SC 500, *referred to*

Alternative submission that disclosure about forests was made not tenable

The alternate submission that the EIA report does, as a matter of fact, consider the prevalence of forested areas both in Goa and in Maharashtra within the study area is not tenable. Though the EIA report adverts to the presence of forests within the study area in Goa and Maharashtra, it has to be considered whether this by itself warrants the grant of an EC in spite of the fact that there has been a patent failure on part of the project proponent to make a transparent and candid disclosure of material facts in Form 1. A failure to disclose information in Form 1 impairs

the functioning of EAC in the preparation of ToR and in consequence, leads to preparation of a deficient EIA report.

(Paras 78 to 81)

The failure on the part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment : a "heads I win, tails you lose" approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law.

(Para 82)

E. *Ecologically Sensitive Zones (ESZs)*

The glaring deficiency which emerges from the EIA report is its failure to notice the existence of ESZs within a buffer distance of 10 km of the project site. The EIA report fails to meet a classical requirement of administrative law : to take into account a relevant consideration, namely, that within the study area which has to be considered, there is the presence of ESZs.

(Para 91)

The EIA report must factor in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests. The deficiency of the EIA report emanates from its failure to notice that the

purpose of the study was not only to determine whether the project site is ecologically sensitive. Confining itself to this aspect, the EIA report failed to consider a crucial and relevant consideration.

(Para 92)

F. *Sampling points*

The submission of the appellants is that the Guidance Manual requires the collection of primary data through measures and field studies in the study area within 10 km radius from the ARP. Secondary data has to be collected within a 15 km aerial distance for the parameters mentioned in Column 9(III) of Form 1 of the 2006 Notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra.

(Para 93)

The grievance is that no data has been collected from the State of Maharashtra and all secondary data collected by the project proponent related only to the State of Goa. There is substance in the submission which has been urged on behalf of the appellant. A reading of the counter-affidavit filed by the State of Goa would seem to support the appellant's submission.

(Paras 93 to 101)

F.5. *Felling of trees*

The Court expresses its serious displeasure with the manner in which the EIA report made an attempt to gloss over the existence of trees. The EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The State of Goa would have the court gloss over the felling of trees by submitting that 54,676 trees over a project area of 2133 ac averages out to 25 trees per acre or one tree over an area of 160 sq m. This is a fallacious approach to the issue. Mathematical averages cannot displace factual

data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinised the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented.

(Paras 102 to 108)

The purpose of prescribing an EIA report is precisely to undertake a baseline study on all aspects of the environment and to anticipate the impact of a projected activity on the environment. Ignoring *any* component of the environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance.

(Para 108)

Issues pertaining to vegetational cover must be taken seriously in the EIA process. The formula of planting a set number of trees for every existing tree felled must be alive to the fact that the survival of new plantations is replete with uncertainty. The survival of transplanted trees is equally a matter of uncertainty. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 Notification must be transparent, candid and robust. A regulatory regime for environmental governance is based on the hypothesis that all stakeholders will act with rectitude. Hiding significant components of the environment from scrutiny is not an acceptable modality to secure project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy.

(Para 109)

G. *Public consultation*

The importance of public consultation is underscored by the 2006 Notification. Public consultation, as it states, is "the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate". This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity.

(Paras 110 to 112)

Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA.

(Para 113)

(*i*) significant environmental concerns have not been taken into account;

(*ii*) there was an absence of a full disclosure when the EIA report was put up for consultation; and

(*iii*) concerns which have been expressed by persons affected by the project have not been adequately dealt with or analysed.

(para 113)

Crucial objections and environmental concerns which were raised during the consultative process were reduced to a single issue by the project proponent before EAC : the need for employment opportunities. The project proponent failed in its duty to inform EAC. The record does not indicate a critical appraisal or analysis by EAC. EAC was duty-bound to apply its mind to the environmental

concerns raised by stakeholders. The duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC. The minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 Notification in this regard.

(Paras 113 to 117)

Utkarsh Mandal v. *Union of India*, 2009 SCC OnLine Del 3836, *approved*

H. *Appraisal by EAC*

Appraisal by EAC is structured and defined by the 2006 Notification. The process of appraisal is defined to mean "a detailed scrutiny" by EAC of the application and other documents like EIA report and the outcome of the public consultation, including the public hearing proceedings, submitted by the applicant to the regulatory authority for the grant of an EC. EAC is under a mandate to conduct the process of appraisal in "a transparent manner". On the conclusion of these proceedings, EAC has to make "categorical recommendations" to the regulatory authority either for:

(*i*) the grant of a prior environmental clearance on stipulated terms and conditions; or

(*ii*) the rejection of the application.

The recommendations made by EAC to the regulatory authority must be based on "reasons".

(para 118)

EAC has failed to consider relevant circumstances bearing on the environmental impact of the project and has instead considered circumstances extraneous to its function. That the project proponent, according to EAC, has not concealed facts and circumstances is not reason enough to warrant a grant of an EC. Moreover, even this hypothesis is incorrect. There is no analysis of the EIA report. EAC has failed to answer to the call to its expertise.

(Paras 119 to 125)

EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA report. It is duty-bound to analyse the EIA report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required. The reasons which are furnished by EAC constitute a live link between its processes and the outcome of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated.

(Para 127)

EAC, as an expert body, has to scrutinise all relevant aspects of the project or activity proposed, including its impact on the environment. In taking that decision, the EIA report is an input for its analysis. The scrutiny and appraisal has to be undertaken by EAC as an expert body and its reasons must reflect that this has been done. As the minutes indicate, the non-application of mind by EAC is evident with reference to the presence of 15 ESZs in the study area. EAC notes that the project is outside the ESZ delineated by the Kasturirangan Committee. In the absence of a critical analysis, EAC failed in discharging its duties under the 2006 Notification. The recommendations of EAC furnish a guide for MoEFCC. Indeed, the 2006 Notification stipulates that the recommendations of EAC would normally

be accepted. Consequently, a failure of due process before EAC, as in the present case, must lead to the invalidation of EC.

(Para 129)

I. *The appellate jurisdiction of NGT : the requirement of a merits review*

The failure to consider materials on a vital issue and indeed the non-consideration of vital issues raises a substantial question of law leading to the invoking of the jurisdiction of the Supreme Court under Section 22 of the NGT Act, 2010. The failure of process in the present case has been compounded by the absence of a merits review by NGT.

(Paras 132 to 136)

Save Mon Region Federation v. *Union of India*, (2013) 1 All India NGT Reporter 1; *Sreeranganathan K.P.* v. *Union of India*, 2014 SCC OnLine NGT 15, *approved*

The doctrine of proportionality must be applied to matters concerning the environment as part of judicial review.

(Para 140)

Lafarge Umiam Mining (P) Ltd. v. *Union of India*, (2011) 7 SCC 338, *relied on*

EAC as an expert body abdicated its obligations to make an expert determination based on reasons. NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it under Section 16(*h*) read with Section 20 of the NGT Act, 2010 by merely deferring to the decision to recommend and grant an EC. The parameters in regard to the existence of substantial questions of law have hence

been established in the classical or conventional sense of that expression.

(Paras 130 to 141)

Mantri Techzone (P) Ltd. v. *Forward Foundation*, (2019) 18 SCC 494 : 2019 SCC OnLine SC 322; *Chunilal V. Mehta and Sons Ltd.* v. *Century Spg. and Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 : AIR 1962 SC 1314; *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647; *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388; *M.C. Mehta* v. *Union of India*, (1997) 2 SCC 353; *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718; *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664; *Indian Council for Enviro-Legal Action* v. *Union of India*, (2011) 8 SCC 161 : (2011) 4 SCC (Civ) 87, *relied on*

J. *Environmental rule of law*

Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement—both in developed and developing countries alike. The environmental rule of law seeks to address this gap.

(Paras 142 to 155)

United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowe d=y>; Bruntdland definition of Sustainable Development, *referred to*

In the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.

(Paras 156 and 157)

In the present case, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1.

(Para 159)

EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making.

(Para 160)

In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Bearing in mind the need to bring about a wholesome balance between the development of infrastructure of an airport and the preservation of the environment, time-bound directions should be issued. Bearing in view the necessity to maintain a balance between the need for an airport and environmental concerns, it would be appropriate if EAC is directed to revisit the conditions subject to which it granted its EC on the basis of the specific concerns which have been highlighted in this judgment.

(Paras 158 and 161 to 167)

Federation of Rainbow Warriors v. *Union of India*, 2018 SCC OnLine NGT 831, *reversed*

SS-D/62216/S

Advocates who appeared in this case:

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The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.—

INDEX

A. *Introduction*

1. An appeal was filed before the Principal Bench of the National Green Tribunal (NGT) at New Delhi challenging the grant of an environmental clearance (EC) for the development of a greenfield international airport at Mopa in Goa. NGT, by its judgment dated 21-8-2018[1] came to the conclusion that the present case "is not a case where the project compromises with the environment". While affirming EC, NGT came to the conclusion that "further safeguards for environmental protection need to be incorporated". NGT, accordingly, proceeded to formulate additional conditions, while affirming the grant of EC.

2. Village Mopa is situated in North Goa, in close proximity to the inter-State boundary which the State shares with Maharashtra. The site of the proposed airport lies at a distance of 35 km from Panaji, the capital of Goa. The Village of Mopa is situated in Pernem Taluka. The site for the development of the airport is situated on a tabletop plateau which rises to a height of 150 to 180 m above mean sea level and is surrounded by steep slopes. The soil is predominantly of a laterite character. The airport which presently serves the region is situated at Dabolim, Goa.

3. Since the airport at Dabolim is saturated in terms of its capacity for annual air traffic, the State Government initiated a process in 1997 to commission studies and project reports for a proposed international airport, which include the following:

3.1. A project report prepared by Engineers and Management Associates, Spain in 1997.

3.2. A preliminary technical feasibility study prepared by the Airports Authority of India in May 1998.

3.3. A final feasibility report for the proposed airport at Goa prepared by the International Civil Aviation Organisation, Montreal, Canada in August 2005.

3.4. A Goa dual airport study prepared by the International Civil Aviation Organisation in August 2007.

3.5. A report of a Six-member Committee chaired by the Chief Minister of Goa in 2008 to "look into all aspects relating to construction of an international airport at Mopa, Goa".

3.6. A document styled as the "Airport Master Plan" dated 10-2-2012, submitted to

the Public Private Partnership (PPP) cell of the Government of Goa by Ammann & Whitney, USA envisaging:"consultancy services for preparation of master plan, preliminary project report, tender document and project management services for the proposed greenfield airport and commercial/industrial and allied development near Mopa in the State of Goa".

4. On 1-5-2000, the Government of India communicated its approval for the setting up of an airport at Mopa and for the closure of the existing airport for civilian operations on the commissioning of the new airport. Subsequently, on 1-7-2010, the earlier decision was modified to allow for the continuation of civilian aircraft operations at Dabolim even after the commissioning of the new airport. The process of land acquisition commenced in 2008 under the Land Acquisition Act, 1894. Originally, the land area anticipated for the development of the project was pegged at 4500 ac. During the pendency of project appraisals, the area required for the proposed airport stood reduced to 2271 ac.

5. On 14-9-2006, the Government of India in the Ministry of Environment and Forests (MoEF, later renamed as MoEFCC in 2014) issued a notification [No. S.O. 1533 (the 2006 Notification)] mandating a prior EC for Category 'A' projects (specified in the Schedule) by the Union Government and for Category 'B' projects at the State level by the State Level Environment Impact Assessment Authority (SEIAA). Following the 2006 Notification, MoEF placed an EIA Guidance Manual for Airports (the Guidance Manual) in the public

domain in February 2010. The stages of scoping, public consultation and appraisal, leading up to the grant of EC for the proposed airport are governed by the express terms of the 2006 Notification.

6. In March 2011, the State of Goa, as the project proponent submitted Form 1 as stipulated in the 2006 Notification to MoEF. On 8-3-2011, the State of Goa applied for terms of reference (ToR) to MoEF. ToR were finalised on 11-5-2011 and 12-5-2011 by the Expert Appraisal Committee (EAC) constituted under the 2006 Notification. On 1-6-2011, MoEF issued ToR for the preparation of the Environmental Impact Assessment (EIA) report. ToR was valid for a period of two years until 31-5-2013. On 22-11-2012, the Government of Goa revised the project boundary by decreasing the project area from 4500 ac to 2271 ac. At its meetings on 28-1-2013 and 29-1-2013, EAC recommended an amendment to ToR as requested by the State Government and granted an extension to the validity of ToR until 31-5-2014. On 19-6-2013, MoEF communicated its approval for the amendment of ToR and for the extension of its validity.

7. On 3-10-2014, the State Government floated a tender for the development of a greenfield international airport project on a PPP basis. On 20-10-2014, the Directorate of Civil Aviation, Government of Goa submitted a draft EIA report to the Goa State Pollution Control Board, requesting it to initiate steps to conduct a public hearing. A public hearing was conducted at the project site on 1-2-2015. EAC, at its meetings held on 9-3-2015 to 11-3-2015, recommended an extension of the validity of ToR for another year ending on 31-5-2015.

8. On 20-5-2015, the State of Goa submitted a final EIA report to MoEFCC, seeking the grant of an EC for the project. On 29-5-2015, MoEFCC communicated its approval

for extending the validity of ToR until 31-5-2015. Between 24-6-2015 and 26-6-2015, EAC, at its 149th meeting, deliberated on the EIA report and sought additional information from the project proponent, inter alia, on:

"• 10 years' data regarding rainfall in the area;

• Drawing of traffic circulation plan for smooth circulation of traffic in the area;

• Minimum 20% energy conservation measures should be adopted in incorporating provisions for use of LED, star rated ACs, and a revised energy conservation plan to be submitted;

• Measures taken to comply with the CPCB guidelines formulated for noise pollution control in airport area to be submitted."

In the meantime, a representation was submitted by the Federation of Rainbow Warriors, one of the appellants before this Court to EAC. EAC, at its 151st meeting held on 7-9-2015 to 9-9-2015, deliberated upon the representation and sought a clarification from the project proponent on the issues raised. On 28-9-2015, the project proponent submitted its reply to the representation. EAC, at its 152nd meeting on 20-10-2015, sought a further clarification from

the project proponent on the reply submitted by the Federation of Rainbow Warriors. At that meeting, EAC recommended the grant of an EC for the project.

9. On 28-10-2015, MoEFCC, as the regulatory authority under the 2006 Notification for Category 'A' projects, communicated its approval for the grant of an EC. Following the grant of EC, the tender process which had been initiated on 3-10-2014 was concluded on 26-8-2016. Consequent to the opening of the final bids, a technical scrutiny, evaluation coupled with pre-bid meetings, deliberations on the draft concession agreement and other required steps, GMR Goa International Airport Ltd. (GGIAL) was awarded the contract on a revenue sharing of 36.99% to the State of Goa. On 8-11-2016, the concession agreement was executed between the Government of Goa and GGIAL for the development and operation of the airport with the concession period of 40 years. Upon financial closure, the three-year period for the construction of the airport commenced on 4-9-2017. The target date for the commissioning of the first phase of the project is 3-9-2020.

10. The grant of EC was challenged before the Western Zonal Bench of NGT (Appeal No. 61 of 2015) by the Federation of Rainbow Warriors. Hanuman Laxman Aroskar also filed an appeal (Appeal No. 1 of 2016) before the Western Zonal Bench of NGT. These appeals were subsequently renumbered (Appeals Nos. 5 and 6 of 2018) before the Principal Bench of NGT at New Delhi. On 7-11-2017[2], NGT issued an ad interim order restraining the cutting or felling of trees in the area designated as the site of the proposed airport. On 22-11-2017[3], the order of restraint was modified on the statement of the Advocate General of Goa that the State shall not cut or fell any trees, nor allow it to take place without valid permission from the lawful authority for a fortnight thereafter in order to enable the appellants to pursue their remedies. On 6-2-2018, the Deputy Conservator of Forests granted permission for felling 21,703 trees at the airport site. The appellate authority under the Goa, Daman and Diu Preservation of Trees Act, 1984 (6 of 1984) dismissed the appeal on 7-3-2018.

11. On 8-3-2018[4], the High Court of Judicature at Bombay at its seat at Goa set

aside the order of the Deputy Conservator of Forests and remanded the matter to be heard by the Principal Chief Conservator of Forests. On 2-4-2018, the Principal Chief Conservator of Forests stipulated several conditions for the cutting and the felling of trees at the site of the airport including : (*i*) enumeration of trees; and (*ii*) the plantation of ten times the number of trees felled. Upon being moved in a public interest litigation (PIL), the High Court by its order dated 25-4-2018 allowed the exercise of enumeration to be carried out. As a result, 54,676 trees were enumerated, including the 1548 trees which had been

felled earlier in terms of the order dated 6-2-2018 of the Deputy Conservator of Forests. On 13-1-2018, the High Court issued final directions in the PIL directing the State of Goa to approach NGT seeking permission for felling and cutting trees. The State was directed to carry out the cutting and felling of trees only after prior permission was granted by NGT.

12. A miscellaneous application (MA No. 975 of 2018) was filed by the State of Goa before NGT on 2-7-2018 seeking permission for the felling of trees. By its judgment dated 21-8-2018[1], NGT disposed of both the appeals and the miscellaneous application filed by the State of Goa, upholding EC and imposing additional conditions to safeguard the environment. This Court has been informed that the felling of trees was initiated on 3-9-2018 and completed on 14-1-2019. Assailing the judgment of NGT, two appeals have been filed before this Court : one by Hanuman Laxman Aroskar (Civil Appeal No. 12251 of 2018) and the other by the Federation of Rainbow Warriors (Civil Appeal No. 1053 of 2019).

13. On 18-1-2019[5], notice was issued in the appeals and an order of status quo was passed by this Court. The appeals were admitted for hearing and final disposal.

B. *Submissions*

14. We have heard Ms Anitha Shenoy, learned counsel appearing on behalf of the appellants. Mr K.K. Venugopal, learned Attorney General (AG) for India appeared on behalf of the State of Goa. Mr Atmaram S. Nadkarni, learned Additional Solicitor General (ASG) of India appeared on behalf of MoEFCC. Mr Parag P. Tripathi, learned Senior Counsel and Ms Aastha Mehta, learned counsel appeared on behalf of the concessionaire.

15. Ms Anitha Shenoy, learned counsel appearing on behalf of the appellants urged that the EIA report which is carried out under the terms of the 2006 Notification is a tool to evaluate the environmental consequences of a proposed activity. The proposed international airport, being a Category 'A' project, is governed by the second, third and fourth stages of scoping, public consultation and appraisal respectively envisaged under the 2006 Notification. In addition to the 2006 Notification, the Guidance Manual furnishes a significant signpost in the procedure envisaged prior to the grant of an EC. The project proponent is required to submit Form 1 complete with relevant details of the proposed project and the status of the environment. ToR which is finalised by EAC is founded on the disclosures which are made by the project proponent.

16. In this backdrop, the principal submissions urged by the appellants before the Court are as follows:

16.1. There were material concealments by the project proponent in failing to

disclose that as many as 54,676 trees were required to be felled. Form 1, which was submitted by the project proponent, was silent in regard to the

number of trees required to be felled. The final EIA report, while dealing with the biological environment in Clause 2.1.5 contains the following statement:

> "2.1.5. Biological environment
>
> Construction phase
>
> *Impacts (Significance-Medium)*
>
> The area acquired for proposed airport has only few trees, mainly bushes. These will be cleared during site preparation."

Contrary to the above assertion is the statement contained in the counter-affidavit filed by the State of Goa:

> "…I say that the permissions which have been obtained for cutting of 54,676 trees have been granted by the authorities concerned in terms of the relevant statutory provisions and after laying down various conditions. I say that the context in which it was mentioned as sparse trees has to be seen from the huge area of the land. The land being 2133 ac, it would proportionally work out to about 25 trees in an area of 1 ac i.e. 4000 sq m, which is one tree in an area of about 160 sq m."

The submission urged by the appellants is that the purpose of the EIA report is to form an assessment of the state of environment as it exists in reality. The project proponent is duty-bound to make a proper disclosure and the highest level of transparency is required. Accompanying Form 1 is a declaration of the project proponent that EC will be liable to be rejected in the event of a suppression or misstatement of material facts. The State of Goa filed a miscellaneous application before NGT seeking permission to fell around 55,000 trees. This is a clear indicator that the original statement by the project proponent in Form 1 as well as in Clause 2.1.5 of the EIA report that only a few trees were required to be felled is factually incorrect.

16.2. There was a concealment of Ecologically Sensitive Zones (ESZs) in the State of Maharashtra. In terms of the Guidance Manual, primary data through measures and full surveys; and secondary data from secondary sources have to be collected. Primary data includes the study area within 10 km radius from the Aerodrome Reference Point (ARP) and covers one season other than the monsoon. Secondary data includes data collected within an aerial distance of 15 km for the parameters which are specifically mentioned in Column 9(III) of Form 1 of the 2006 Notification and covers one full year. In the present case, while furnishing details of ESZs falling within an aerial distance of 15 km, the EIA report stipulates that there were none in the State of Maharashtra. The State of Goa has also averred in its counter that there are no ESZs within a radius of 15 km from ARP and that there are no reserve forests in that radius. After hearings had begun before NGT, a letter was addressed by the Principal Chief Conservator of Forests on 12-2-2018 to the Director of Civil Aviation stating that a list of reserved forests had been notified under Section 20 of the Forest Act, 1927 in Sawantwadi Forest Division of Sindhudurg District in Maharashtra which was obtained from the working plan of Sawantwadi Forest Division

(2014-15 to 2023-24). The letter stated that there was no reserved forest notified under Section 20 of the Forest Act, 1927 in the Sawantwadi Forest Division, within a radius of 15 km from the ARP. On this aspect, it was urged on behalf of the appellants that restrictions come into force as soon as a notification under Section 4 of the Forest Act, 1927 is issued. Under the Forest Conservation Act, 1980, any use of forest land for non-forest purposes requires prior permission of the Union Government, as elaborated in the judgment of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India*[6] (*Godavarman*). The purpose of elucidating forest areas which fall within an aerial distance of 15 km from the project site is to enable an assessment to be made of the impact of the project on forested areas. Failure to mention forests in the State of Maharashtra was a significant omission in the EIA report.

16.3. Form 1 requires a disclosure of the details of ESZs within an aerial distance of 15 km of the project boundary. The EIA report rests content in stating that Pernem Taluka is not included in an ESZ by the High Level Working Group (HLWG) constituted under the Chairmanship of Dr K. Kasturirangan, Member (Science), Planning Commission (Kasturirangan Report). The project proponent, in response to the disclosures required for areas which are important or sensitive for ecological reasons — wetlands, water sources or other water bodies, coastal zone, biospheres, mountains and forests, left the required details blank. In this context, it was urged by the appellants that the purpose of the EIA report was not only to make an assessment of the project site but also of an area surrounding the project site within an aerial distance of 15 km. HLWG recognised that there were ESZs. In the present case, several villages are situated at a bare distance of 1.5 km from the project site in Maharashtra. Yet, there was no disclosure of this fact and the EIA report merely recorded that Pernem Taluka is not included in an ESZ.

16.4. The State of Maharashtra comprises nearly 40% of the study area. Yet, there was no sampling of soil, air and water in Maharashtra. Sampling was carried out in 2011 and 2014-15 in Goa but no sampling site is situated in Maharashtra. In the absence of baseline data generated with regard to environmental parameters in the State of Maharashtra surrounding the project site, the EIA report suffers from a gross deficiency.

16.5. The EIA report is grossly deficient in failing to notice wildlife in the surrounding forests. On the contrary, the appellants have relied on a rapid survey conducted to assess the presence of various mammals in the study area. Moreover, no avi-faunal study was done.

17. Apart from the above submissions, Ms Shenoy has urged that the stages of public consultation and appraisal under the 2006 Notification are crucial to the assessment process. As far as the public consultation is concerned, the draft EIA is given before the hearing. During the course of the public consultation, as many as 70 persons spoke, 1150 representations were received and 1586 persons are stated to have participated. The range of concerns expressed during

the course of the public consultation covered a variety of environmental issues. Amongst them was the presence of perennial springs, the porous nature of the laterite plateau where permeation is a source of drainage for water collection and the existence of cashew plantations on which the livelihood of the local residents depends. Under the

2006 Notification, the State Pollution Control Board (SPCB) was required to collate the issues raised and the response of the project proponent, before submitting required documents to EAC. Before EAC, the project proponent in its presentation, indicated that the objections were only about employment opportunities. The project proponent clearly failed in its duty to appraise EAC about serious environmental concerns which were raised during the course of the public consultation.

18. On the aspect of appraisal, it has been urged that the minutes of EAC meeting recommending the grant of an EC contain, as the learned counsel for the appellants submitted, "not a line on the EIA report". EAC was required to state its reasons for recommending the grant of an EC in terms of the 2006 Notification. The reasons must indicate that there was an appraisal by EAC. In the present case, the recommendations of EAC are based on vague considerations such as : (*i*) larger public interest; (*ii*) non-concealment of the facts by the project proponent; and (*iii*) the delay which had occurred in the process. The submission urged is that EAC, as an expert body, has failed to furnish reasons; acted on the basis of considerations which are not germane to the exercise of its functions and failed to apply its mind to relevant considerations including the environmental consequences of the project.

19. Finally, it has been submitted that under Section 16(*h*) of the National Green Tribunal Act, 2010 (the NGT Act, 2010) an appellate remedy is provided against the order granting EC. By virtue of the provisions of Section 20, NGT is under a mandate to apply the principles of sustainable development, the precautionary principle and the polluter pays principle while passing any order, decision or making the award. An appeal lies before this Court under Section 22 from an order, decision or award of the Tribunal on a substantial question of law as specified in Section 100 of the Code of Civil Procedure, 1908. NGT, by virtue of its adjudicatory authority under Section 16(*h*), is entrusted with a duty to conduct a merits review. The failure to consider materials on a vital issue constitutes a substantial question of law as does the failure to consider vital issues in the proceedings before it. In the present case, the Tribunal has merely relied on the process conducted by EAC and its recommendations, abdicating its own jurisdiction to conduct a merits review.

20. Mr A.N.S. Nadkarni, learned Additional Solicitor General appearing on behalf of MoEFCC, urged that the EIA report, besides dealing with environmental concerns, addresses the impact of the project during both the phases of construction and operation. EAC is sourced from experts from outside the Government. The airport project was conceived in 1996; consultants were appointed and three sites were initially shortlisted. It was in 2011 that ToR were sought by and given to the project proponent by EAC. The draft EIA

was placed for public consultation in 2014 and the final EIA report came to be submitted in 2015. EAC deferred consideration of the EIA report on three occasions, including among them to consider the representation filed by the Federation of Rainbow Warriors.

21. Countering the submission of the appellants on the non-disclosure of *reserved forests* in Form 1, the learned ASG urged the following submissions:

21.1. The submission of the appellants was not raised either in the public hearing or

in the grounds urged before NGT, but was addressed in the written submissions filed before NGT and when a map of the Surveyor General of India was produced.

21.2. Table 2.1.5 of the EIA report states that there is no reserved forest in the State of Maharashtra while delineating ESZs within 15 km from the project boundary. The report proceeded on the plain meaning of the Forest Act, 1927 according to which it is only upon the issuance of a notification under Section 20 that a reserved forest is declared.

21.3. As a matter of fact, within the area of 15 km from the project boundary in the State of Maharashtra, no reserved forest stands declared under Section 20(2) of the Forest Act, 1927.

21.4. The decision in *Godavarman*[6] which adopts the ordinary meaning of the expression "forest" is site specific : MoEFCC follows it scrupulously even if there is a notification under Section 4 while considering the diversion of forest land for non-forest uses. The decision in *Godavarman*[6] has also been explained in the decision of this Court in *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*[7] (*Okhla Bird Sanctuary*).

21.5. The Guidance Manual notices that environmental facets which have to be considered in relation to airport development are categorised into seven groups : (*a*) land use; (*b*) water quality; (*c*) air quality; (*d*) noise pollution; (*e*) biological environment; (*f*) socioeconomic changes and occupational health; and (*g*) solid waste management. Baseline data of these environmental facets is ascertained through primary data extending to one season while secondary data extending to a year is gathered in terms of the Guidance Manual and the distance specified in Para 4.1.

21.6. The EIA report records that the surrounding land use of the airport site is predominantly forest land. Land use and land cover specifically for a 10 km radius from the airport site in Maharashtra is also set out in Chapter II of the EIA report, which indicates a reference to the forest area. Annexure IX of the EIA report incorporates land use with land cover maps, both for Goa and Maharashtra in the 10 km radius, which includes forested areas within the State of Maharashtra; Annexure X of the EIA report elucidates surface water bodies both in Maharashtra and in Goa in the radius of 10 km while Annexure XI provides a hydrogeomorphological map of Goa and Maharashtra. In other

words, it was urged that : (*i*) a legally designated forest under the Forest Act, 1927 requires a notification under Section 20; however, at the same time, (*ii*) the EIA report contains a clear disclosure of the presence of forest areas in both the States of Goa and Maharashtra within a radius of 10 km including areas of dense forest.

22. As regards the lack of *sampling points* in Maharashtra, the learned ASG urged that while all the six sampling points for ambient air quality within 10 km of the study area were in Goa, the air quality which was being tracked was within the stipulated radius and was not confined to the State of Goa. Similarly, in studying the water environment, the groundwater quality was measured at four locations in Goa within 10 km of the study area. As regards the monitoring of noise, nine sampling points were chosen within the State of Goa in accordance with the Central Pollution Control Board (CPCB) guidelines. The monitoring of noise environment, both at the construction and operational phases, has similarly been dealt with in the EIA report. The learned ASG

urged that the choice of the sampling locations was not arbitrary : though the sampling points were not in Maharashtra, data required was tracked across a radius of 10 km from the ARP which also included the State of Maharashtra.

23. Dealing with the submission that no avi-faunal study was carried out, it was urged that the EIA report specifically deals with this aspect in paragraph 4.6 of Chapter II which elucidates that 385 species of plants belonging to 88 plant families were documented and identified in the 10 km radial distance of the proposed project site. The study similarly dealt with faunal diversity. As many as 86 species of birds were observed in the course of the avi-faunal study, which has been elucidated in Table 4.17 of the EIA report.

24. On the issue of ESZs, the learned ASG urged that there is a specific reference to the Kasturirangan Report, under the heading of "Environmentally Sensitive Zones" in Chapter IV of the EIA report. The EIA report notices that the proposed airport site falls in Pernem Taluka of North Goa which has not been included in the ESZs mapped by HLWG. Annexure XVI of the EIA report is a notification dated 13-11-2013 (the 2013 Notification) of MoEF, which contains a list of villages (State, district and taluk-wise) identified by HLWG. Para 9 of the 2013 Notification which has been issued under Section 5 of the Environment (Protection) Act, 1986 specifies the categories of new and expansion projects which are prohibited in ESZ. The proposed airport notification project does not fall within the prohibited category. Moreover, since the site of the proposed airport was not included in an ESZ, the prohibition imposed by the 2013 Notification had no application.

25. The learned ASG has also urged that the report of HLWG on Western Ghats, submitted on 15-4-2013, stipulates certain development restrictions in ESZs which are as follows:

25.1. A complete ban on mining, quarrying and sand mining.

25.2. A complete ban on thermal power projects while hydro power projects may be permitted subjected to conditions.

25.3. A strict prohibition on "red category" industries.

25.4. A prohibition on building and construction projects of 20,000 sq m.

25.5. All other infrastructure and development projects/schemes would be subject to the grant of an EC as Category 'A' projects under the 2006 Notification.

25.6. All development projects within 10 km of the Western Ghats ESZ and requiring ECs shall be regulated in accordance with the 2006 Notification.

26. Based on the above recommendation of HLWG, it was submitted that the proposed airport project, which falls under Category 'A' projects as delineated by the 2006 Notification, is regulated by it and does not attract a blanket prohibition.

27. The submission that EAC had failed to apprise the environmental consequences of the project and should have applied its mind to environmental concerns has been countered by relying on the minutes of the meetings conducted by EAC.

27.1. At its 149th meeting held on 26-6-2015, EAC sought additional information on six distinct aspects upon receiving the presentation by the project proponent.

27.2. At its 151st meeting held on 7-9-2015 to 9-9-2015, EAC took note of a

representation filed by the Federation of Rainbow Warriors and deferred further consideration of proposal for the grant of EC. The project proponent was called upon to submit a response to the issues raised in the representation.

27.3. At its 152nd meeting held on 20-10-2015, EAC dealt with clarifications issued by the project proponent to the concerns raised by Rainbow Warriors and proceeded to recommend the project for the grant of an EC subject to the stipulated conditions.

28. On 28-10-2015, EC was granted by the Union Government. On the basis of the procedure which was followed by EAC, the following submissions have been urged:

28.1. The application of mind by EAC can be inferred and seen from the record.

28.2. Where considered necessary, EAC sought information outside the EIA report.

28.3. Having appraised the EIA report, EAC imposed site specific conditions.

28.4. EAC consists of experts in the field and once it has been shown that all relevant considerations were borne in mind, this Court must give due deference to their view.

29. Mr K.K. Venugopal, learned Attorney General, appearing on behalf of the State of Goa, urged the following submissions:

29.1. The proposed project for setting up an international airport at Mopa has been on the drawing board for nearly two decades. Successive studies were

commissioned to assess the feasibility of the project from diverse sources, both within and outside the Government. This includes studies by private organisations as well as reports by Airports Authority of India, the International Civil Aviation Organisation and the six-member Committee constituted by the State Government under the auspices of the Chief Minister.

29.2. The setting up of an airport is an imminent need, since the existing airport at Dabolim has reached a saturation point and is unable to cater to the growing volume of passenger traffic into Goa.

29.3. Tourism, it has been urged, is a major source of revenue for the State, with the banning of mining activities. A balance must be drawn between development and the environment. A distinction needs to be drawn between overwhelming environmental objections which are not reversible and incapable of amelioration, and cases such as the present where the environmental consequences of project are capable of being countered by suitable measures.

29.4. Objections primarily based on a defect in procedure should not be sufficient to quash a project conceived in public interest with vast benefits for the development of the State and for the members of the travelling public. It was urged that there was no major environmental objection and the challenge to the EIA report is not substantial enough to overcome the interests of three million passengers. The expected inflow is anticipated to reach 30 million in 2030.

30. On the aspect of the *felling of trees*, the learned AG submitted that following the order of the Bombay High Court, the Principal Chief Conservator of Forests passed an order on 2-4-2018 providing for:

(*i*) enumeration of all trees covered by the project site;

(*ii*) issuance of tree felling permission by the Deputy Chief Conservator of Forests; and

(*iii*) plantation of ten times the number of trees felled under the supervision of the Forest Department.

Thereafter, when the High Court was moved in a PIL, an order was passed on 13-6-2018 that the grant of permission for felling trees and the actual felling of trees will be carried out only after NGT granted permission in the pending proceedings. A miscellaneous application seeking permission for the felling of trees was instituted before NGT. In its final order dated 21-8-2018[1], NGT disposed of both the appeals as well as the miscellaneous application. Moreover, NGT has specifically dealt with the felling of trees in the course of its distinction.

31. On behalf of the concessionaire, Mr Parag P. Tripathi, learned Senior Counsel and Ms Astha Mehta, learned counsel urged that upon the grant of an EC, a concession agreement was executed by it with the State of Goa on 8-11-2016. Possession of the project site was handed over on 4-9-2017 and work commenced on 3-3-2018. The indicative capital for Phase 1 of the development is Rs 1900 crores while the cost of the entire project is likely to

be Rs 3000 crores. The State of Goa has incurred a total expenditure of Rs 240 crores for land acquisition, rehabilitation, road widening, consultancy and other related aspects while the concessionaire has thus far incurred an expenditure of Rs 230 crores as on 18-1-2019. 14.06% of the project work has been completed and a manpower consisting of 1500 persons has been mobilised at the site together with plant and machinery.

32. The concessionaire has stated that it has tied up with a consortium of banks and the servicing of the loans is linked to project milestones. As on 18-1-2019, the major works in progress included:

(*i*) site preparation and earth works such as excavation and filling up of runways, taxiways, aprons and parking bays;

(*ii*) PTB-foundations and column works; and

(*iii*) excavation of the foundations for the ATC building.

The concessionaire has submitted that apart from the plantation of ten trees for every single tree which has been felled, the Forest Department identified about 500 trees for transplantation, which process is being carried out. In this background, it has been submitted that the project should not be interdicted. The concessionaire, it has been urged, is committed to the completion of the project which accords with all the approvals that have been received.

33. The rival submissions now fall for our consideration.

C. *Scheme of the 2006 Notification and the Guidance Manual for Airports*

C. 1. *EIA Process*

34. The objective of the EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available.

35. The Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from 3-1-1977, inserted Article 48-A to the Constitution which mandates that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51-A(*g*) of the Constitution places a corresponding duty on every citizen to protect and improve the natural environment

including forests, lakes, rivers and wildlife and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm (the Stockholm Conference) in June 1972 in which India participated, Parliament enacted the Environment (Protection) Act, 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

36. On 27-1-1994, MoEF, in exercise of the powers conferred by sub-section (1) and clause (*v*) of sub-section (2) of Section 3 of the 1986 Act read with clause (*d*) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, issued a notification, S.O. 60(E) (the 1994 Notification) imposing restrictions and prohibitions on the expansion and modernisation of any activity

or new project unless an EC was granted under the procedure stipulated in the notification. Under the notification, any person undertaking a new project or expanding and modernising an existing project was required to submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

37. The application, which was to be made in accordance with the schedule provided in the notification was to be submitted with a project report which included with it an EIA report, an Environment Management Plan (EMP) and the details of a public hearing which had been carried out in accordance with guidelines issued by the Central Government from time to time. Limited exceptions to the public hearing process and the submission of an EIA were provided.

38. MoEF as the Impact Assessment Agency (IAA) would then evaluate the application and reports submitted. IAA was empowered to constitute a committee of experts, if necessary, which would have a right of entry into and inspection of the site during or after the commencement of the preparations relating to the project. IAA would prepare a set of recommendations based on the documents furnished by an applicant within 90 days from the receipt of the documents and a decision would be conveyed to the applicant within 30 days thereafter. EC granted was valid for a period of five years and a successful applicant was required to submit half-yearly reports to IAA. Concealing factual data or submitting false or misleading information would make the application liable for rejection and would lead to the cancellation of any EC granted on that basis.

39. The 1994 Notification was amended to reflect the growing protection accorded to the environment.

40. On 14-9-2006, MoEF released another notification, S.O. 1533 (the 2006 Notification) in supersession of the previous notification. The 2006 Notification directed thus:

> "…on and from the date of its publication the required construction of new projects or activities or the expansion or modernisation of existing projects or activities listed in the schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification."

41. There are significant differences between the 1994 Notification and the 2006 Notification. They are:

41.1. The 2006 Notification categorically states that an EC must be granted by the regulatory authority prior to the commencement of any construction work or preparation of land.

41.2. The 2006 Notification divides all projects into Category 'A' and Category 'B' projects. MoEFCC continues to regulate projects of large scale (Category 'A'), while SEIAAs regulate comparatively smaller projects (Category 'B').

41.3. Under the 1994 Notification, an applicant was required to submit an application along with all reports including the EIA report at the time of the application. Under the 2006 Notification, prior to the preparation of the EIA report by the applicant, the authority concerned formulates comprehensive ToR on the basis of the information furnished by the applicant addressing all relevant environmental concerns. This forms the basis for the preparation of the EIA report. A pre-feasibility report must also be submitted with the application unless exempted in the notification. Under the 2006 Notification, a draft EIA is first prepared and it is only after the public consultation process that a final EIA report must be prepared addressing all the concerns raised during public consultation.

41.4. The 2006 Notification stipulates the creation of a regulatory body at the State level — SEIAA comprising members with expertise in the field of environmental laws which is charged with granting ECs for Category 'B' projects.

41.5. Under the 1994 Notification, the final approval was granted by IAA. Under the 2006 Notification, though the final regulatory approval is granted by MoEFCC or SEIAA, as the case may be, the approval is to be based on the recommendations of EAC functioning in MoEFCC or the State Expert Appraisal Committees (SEAC) which are constituted for that specific purpose.

41.6. Under the 2006 Notification, the application can be rejected by the regulatory authority on the basis of the recommendation of EAC or SEAC, as the case may be, at the preliminary stage itself, prior to public consultation.

41.7. Under the 1994 Notification, the public hearing process was overseen by the State Pollution Control Boards (SPCB) which would constitute a public hearing panel for the purpose. Under the 2006 Notification, the public consultation process is expanded to include the receipt of written comments from persons concerned. The public hearing component was to be overseen by SPCBs or the Union Territory Pollution Control Committee (UTPCC).

42. The salient objective which underlies the 2006 Notification is the protection, preservation and continued sustenance of the environment when the execution of new projects or the expansion or modernisation of existing projects is envisaged. It imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless prior EC has been granted by the authority concerned. EC is required before any construction work, or preparation of land (except for securing the land) is started on the project or activity listed in the schedule to the notification. The process stipulated under the 2006 Notification is illustrated by the following flowchart:

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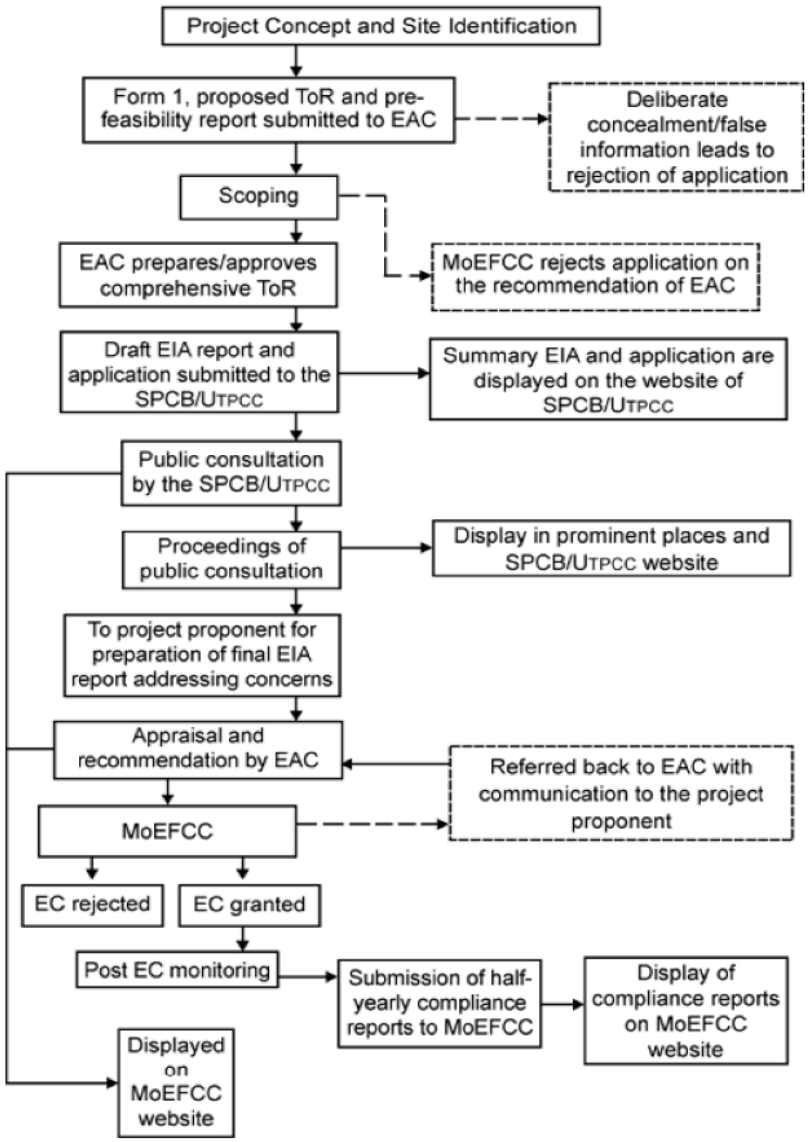
EIA Process for Category 'A' projects



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43. Based on the spatial extent of the potential impact and the potential impacts on human health and natural and man-made resources, the 2006 Notification categorises all projects into Category 'A' and Category 'B' projects. MoEFCC in the Central Government and SEIAA at the State level constitute the regulatory authorities for the purposes of the notification. Category 'A' projects require prior environmental clearance from MoEFCC, based on the recommendation of EAC constituted by the Central

Government for this purpose. Category 'B' projects will require prior environmental clearance from SEIAA, based on the recommendations of SEAC. Where no SEIAA or SEAC has been constituted, Category 'B' projects are treated as Category 'A' projects.

44. Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1-A[8], if applicable. The application must be submitted prior to the commencement of any construction activity, or preparation of the land at the site. A pre-feasibility report must also be submitted with the application except in the cases of construction projects in Item 8 of the Schedule, for which a conceptual plan must be submitted. The significance of the information furnished by the applicant in Form 1 shall be explored shortly.

45. The process to obtain environmental clearance as stipulated by the notification for *new* projects[9] comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the notification:

1. Screening;
2. Scoping;
3. Public Consultation; and
4. Appraisal.

Screening

46. This step is restricted only to Category 'B' projects. This stage entails an examination of whether the proposed project or activity requires further environmental studies for the preparation of an EIA for its appraisal prior to the grant of an EC. Those projects requiring an EIA are further categorised as Category 'B1' projects and remaining projects are categorised as Category 'B2' projects. Category 'B2' projects do not require an EIA. The categorisation is in accordance with the guidelines issued in this regard by MoEFCC from time to time.

Scoping

47. At this stage, EAC or SEAC, as the case may be, formulates detailed and comprehensive terms of reference which address all relevant environmental concerns for the preparation of the EIA. Amongst other things, the information furnished by the applicant in Form 1/Form 1-A along with the proposed ToR by the applicant form the basis for the preparation of ToR. ToR must be conveyed to the applicant within 60 days of the receipt of Form 1, failing which, ToR proposed by the applicant shall be deemed as approved. Significantly, applications for EC may be rejected by the regulatory authority at this stage itself on the recommendation of EAC or SEAC, as the case may be, and the decision along with reasons is to be communicated to the applicant within 60 days of receipt of application.

Public Consultation

48. Prior to this stage, a summary EIA is prepared in the format given in Appendix IIIA on the basis of ToR furnished to the applicant. This stage involves the process "by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate".

The detailed procedure is stipulated in Appendix IV. Subject to the exceptions provided in the 2006 Notification, all Category 'A' and Category 'B1' projects shall undertake the public consultation process. This stage comprises of two components:

(*i*) A public hearing at the site or in its close proximity — district-wise to be carried out in the manner prescribed in Appendix IV; and

(*ii*) Procurement of written responses from persons concerned having a plausible stake in the environmental aspects surrounding the project.

49. The State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC) is charged with conducting the public hearing in the manner stipulated in Appendix IV and forwarding the proceedings to the regulatory authority within 45 days of a request from the applicant. The regulatory authority is empowered to engage another public agency or authority to carry out the process within a further period of forty-five days in case SPCB or UTPCC does not adhere to the prescribed time period stipulated in the notification. The public hearing should be arranged in a "systematic, time-bound and transparent manner" to ensure the "widest possible public participation at the project site(s) or in its close proximity district-wise". The public hearing proceeding is filmed and a copy of the video is submitted to the regulatory authority concerned.

50. Within seven days of receiving a written request to initiate the public consultation process, SPCB or UTPCC shall place the summary EIA and the application on their website and invite responses. The authority concerned may also make use of other appropriate media in addition to publication on their website to ensure wide publicity of the project. On a written request from any person concerned, the authority will make available a hard copy of the draft

EIA for inspection at a notified place during office hours till the date of the public hearing. A duty is placed on the authority to forward all responses and comments received at this stage to the applicant through the quickest available means.

51. After the public consultation process, the applicant is duty-bound to address all the material environmental concerns expressed during the process and make appropriate changes to the draft EIA and EMP. The applicant shall then forward the final EIA report to the regulatory authority to initiate the next stage. Alternatively, the applicant may submit a supplementary report to the summary EIA and EMP.

Appraisal

52. This stage involves detailed scrutiny by EAC or SEAC of all the documents submitted by the applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which the applicant shall be invited for furnishing clarification in person or through an authorised representative. Appendix V stipulates that the following documents are also submitted to the regulatory authority:

(*i*) Final EIA report

(*ii*) A copy of the video tape or CD of the public hearing proceedings

(*iii*) A copy of the final layout plan

(*iv*) A copy of the project feasibility report.

53. The regulatory authority must examine the documents "strictly with reference to ToR" and communicate any inadequacy to EAC or SEAC, as the case may be, within 30

days of receipt of the documents. Within sixty days of the receipt of all the documents, EAC or SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. Within the next fifteen days, EAC or SEAC shall make categorical recommendations to the regulatory authority concerned to either grant EC on the stipulated terms and conditions or reject the application, together with reasons. The appraisal of projects which are not required to undergo the public consultation process or the submission of an EIA is to be carried out on the basis of the prescribed application Form 1 or Form 1-A, as applicable.

54. MoEFCC or SEIAA shall thereafter consider the recommendations of EAC or SEAC and convey its decision to the applicant within 45 days of receipt of the recommendations. The regulatory authorities shall *normally* accept the recommendations of EAC or SEAC, as the case may be. Where there is a disagreement, the regulatory authority shall ask for a reconsideration of the recommendation within 45 days of the receipt of the recommendations. This decision shall be conveyed to the applicant. EAC or SEAC shall then reconsider its recommendation within a further period of 60 days and make its recommendations to the regulatory authority. The regulatory authorities shall then take a decision after considering the views communicated to it and convey the decision to the applicant within the next 30 days.

55. If no decision is communicated to the applicant within the time prescribed, the applicant may proceed according to the recommendation of EAC or SEAC recommending either the grant or rejection of EC. The decision of the regulatory authority and the final recommendations of EAC or SEAC shall be public documents on the expiry of the prescribed timelines. Deliberate concealment and/or the submission of false or misleading information material to the steps involved in the grant of an EC make the application liable for rejection and cancellation of any EC granted on that basis.

56. The 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment : there is no trade-off between the two. The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula. The notification demonstrates an increasing awareness of the complexities of the environment and the heightened scrutiny required to ensure its continued sustenance, for today and for generations to come. It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 Notification attempts to bridge the perceived gap between the environment and development.

57. It is for this reason that EAC and SEAC comprise experts in the field of environmental law. The Chairperson of EAC shall be a person who is an "outstanding and experienced environmental policy expert or expert in management or public administration with wide experience in the relevant development sector". Appendix VI to the 2006 Notification stipulates that EAC and SEAC comprise 15 members who are either "experts" or "professionals". Experts must have at least 15 years of relevant experience in the field or an advanced degree (PhD) with 10 years of relevant experience. Where experts are not available, professionals may be appointed to EAC.

58. EAC and SEAC are charged with evaluating the information submitted by the applicant in Form 1/Form 1-A and preparing comprehensive ToR which guide the preparation of the EIA reports. Given that these bodies comprise experts in the field of environmental law, the recommendation of EAC or SEAC to grant EC to an applicant or reject the application is *normally* accepted by the regulatory authority.

59. The regulatory authority at the State level (SEIAA) which is charged with the approval or rejection of an application for EC comprises three members who possess the qualifications in the field as prescribed in Appendix VI. Significantly, sub-clause (7) of Para 3 of the 2006 Notification stipulates that all decisions of SEIAA shall be unanimous and taken in a meeting. Given the environmental consequences of a proposed project, no difference of opinion is provided for in the grant of an EC at the State level. It is further mandated that the project management submit half-yearly compliance reports to the regulatory authority in respect of EC and conditions.

60. Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1-A. Crucial information regarding the particulars of the proposed project is sought to enable EAC or SEAC to prepare comprehensive ToR which the applicant is required to address during the course of the preparation of the EIA. Some of the information sought is produced thus:

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

60.2. Use of natural resources for construction or operation of the project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply).

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

60.4. Production of solid wastes during construction, operation or decommissioning.

60.5. Release of pollutants or any hazardous, toxic or noxious substances to air.

60.6. Generation of noise and vibration, and emissions of light and heat.

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

60.8. Risk of accidents during construction or operation of the project, which could affect human health or the environment.

60.9. Environment sensitivity which includes, amongst other things, the furnishing of the following details:

60.9.1. Areas protected under international and national legislation.

60.9.2. Ecologically sensitive areas.

60.9.3. Areas used by protected, important or sensitive species of flora or fauna.

61. Under the 2006 Notification, EC process is based on the information provided by the applicant in Form 1. That the information provided in Form 1 is crucial can be borne from the following circumstances:

61.1. EAC or SEAC, as the case may be, formulates comprehensive ToRs on the basis

of the information furnished in Form 1 which addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment.

61.2. At the appraisal stage, the regulatory authority examines the documents submitted by the applicant "strictly with reference to ToR" and communicates any inadequacy to EAC or SEAC.

61.3. Category B2 projects, which do not require scoping, are evaluated by SEAC on the basis of the information furnished by the applicant in Form 1 alone.

61.4. The appraisal of all projects or activities which are not required to undergo public consultation, or submit an EIA report, shall be carried out on the basis of the prescribed application Form 1 and Form 1-A as applicable.

61.5. An application for extension of the validity of EC for certain projects is to be made by submitting a revised Form 1 within the validity period.

62. The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 Notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. Clause (*vi*) of Para 8 of the notification provides thus:

> "Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

C.2. *Guidance Manual for Airports*

63. In February 2010, MoEF brought out its Guidance Manual for Airports. The need for a sector specific manual arose because the 2006 Notification "re-engineered the entire EC process" under its earlier avatar of 1994 and new sectors were incorporated into the ambit of EC process. The 2006 Notification noted that as many as 39 developmental sectors require prior ECs. Sector specific manuals, it was hoped, would bring about standardisation in the quality of appraisal and obviate potential inconsistencies between the work performed by SEIAAs and SEACs. Chapter IV of the Guidance Manual, which is titled "Description of Environment", prescribes the study area for carrying out an EIA:

> "Primary data through measurements and field surveys; and secondary data from secondary sources are to be collected in the study area within 10 km radius from

> Aerodrome Reference Point (ARP). Primary data should cover one season other than monsoon and secondary data is to cover one full year. The basis for selection of these criteria is that the aircraft gains

a height of 1000 ft in this area below which noise and air pollution are generated maximum during its take off stage. Secondary data should be collected within 15 km aerial distance for the parameters as specifically mentioned at Column 9(III) of Form I of the EIA Notification, 2006. Details of secondary data, the method of collection of secondary data, should be furnished. Similarly, the proposed locations of monitoring stations of water, air, soil and noise, etc. should be shown on the study area map."

64. Baseline data of environmental parameters which may be affected by airport activities is collected through primary monitoring in the study area and through secondary sources. The baseline data facilitates the evaluation of the predicted impact on environmental attributes in the study area by using scientific analysis and EIA methodologies. The object is to also aid in the preparation of an EMP that would outline measures for improving environmental quality as well as retain the scope for future expansions in a sustainable manner. The Guidance Manual specifically requires collection of baseline data on the following : (*i*) land environment; (*ii*) water environment; (*iii*) air environment; (*iv*) noise environment; (*v*) biological environment; (*vi*) socioeconomic environment; and (*vii*) solid waste.

65. The importance of collecting data on land environment is emphasised in the following extract:

> "The terrain and hill slope, general slope and elevation of the area, the flow direction of streams and rivers, the water bodies and wetlands and the vegetation which together describe the physiography of the land, will control the drainage pattern in the region. Land farms, terrain, may get affected due to construction of airport. It may require large-scale quarrying, dredging and reclamation, which may cause changes in the topography. This in turn may affect the drainage pattern of the land/terrain. Baseline data pertaining to existing land at the proposed project area including the description of terrain hill slopes, terrain features, slope and elevation are to be collected. Study of land use pattern, habitation, cropping pattern, forest cover, environmentally sensitive places, etc., is to be undertaken by employing remote sensing techniques and ground truthing. Ecological features of forest area; agricultural land; grazing land; wildlife sanctuary land and national parks; migratory routes of fauna; water bodies; and drainage pattern including the orders of the drain and watersheds are to be described. Settlements in the study area may be delineated with respect to ARP on the site map. High rise buildings, industrial areas and zones, slaughterhouses and other features of flight safety importance may also be marked on the map. Secondary data from Central Water Board, GOI; State Groundwater Department, State Irrigation Department is to be obtained. Geomorphology of the region is to be clearly delineated. Study of land use patterns, habitation, cropping pattern, and forest cover data is undertaken. Information on the location of water bodies, drainage, forests, surface travel routes with respect to the project site is obtained within the study area and plotted on a map. This map will show the natural slopes and the drainage

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patterns, which give a guideline while planning the drains in the airport project. The drains help in discharge of storm water from the airport to avoid flooding and waterlogging in the project area."

66. The study of the water environment is necessitated for the following reasons:

"Groundwater quality is important, as change in its chemical parameters will affect the water quality. Airport activities during construction/operation may have impact on groundwater quality. Due to airport construction, existing low areas may be reclaimed with dredged spoil. The pollutants from dredged spoil are likely to enter into the groundwater. This is likely to increase sedimentation of pollutants in airport area, which may migrate in time to the neighbouring groundwater. Also runoff from solid waste, if any, may percolate into the ground and may contaminate the groundwater. Hence, they need to be studied through primary surveys and secondary sources. Monitoring locations are to be finalised as per CPCB norms which can represent the baseline conditions."

67. On the aspect of air environment, the Guidance Manual emphasises that:

"Aircraft engines produce emissions that are similar to other emissions resulting from any oil-based fuel combustion. These, like any exhaust emissions, can affect local air quality at ground level. It is emissions from aircraft below 1000 ft, above the ground (typically around 3km from departure or, for arrivals, around 6 km from touchdown) that are chiefly involved in influencing local air quality. These emissions disperse with the wind and blend with emissions from other sources such as emissions from domestic sources, emissions from industries and from surface transport."

Local emissions attributed to aircraft operations at airports include oxides of nitrogen (NOx), carbon monoxide (CO), hydrocarbons (HC), sulphur dioxide (SO_2), and particulate matter (PM 10 and PM 2.5).

68. The Guidance Manual brings into focus the biological environment. It acknowledges that airport operations may alter ecosystems, threaten endangered species and disturb the movement and breeding patterns of wildlife. In this context, the collection of baseline data on sensitive habitats and wild or endangered species in the project area is contemplated. The Guidance Manual stipulates thus:

"Airport operations may cause change in local ecosystems, threaten endangered species, and disturb movements and breeding patterns of local wildlife. Airports are located within a variety of settings (both urban and rural), which support habitats and species of their own, some of which will have direct interaction with those located on the airport and vice versa. Some local areas will also be designated for their nature conservation value. The biological environment of the airport should hence be seen as

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an integral component of the wider landscape scale ecological network. To accomplish this:

(*i*) Baseline data from field observations for various terrestrial and aquatic

systems are to be generated.

(*ii*) Comparison of the data with authentic past records to understand changes is undertaken.

(*iii*) Environmental components like land, water, flora and fauna are characterised and,

(*iv*) The impact of airport development on vegetation structure in and around project site is to be understood.

Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolises the functioning efficiency of the entire ecosystem. Just as wild flora needs special treatment for preservation and growth, wild fauna as well deserves specific conservatory pursuits for posterity. As per the Wildlife Act (1972), the various wild animals are enlisted in the schedules of the Wildlife Act based on the intensity of threat to them as rare, endangered, threatened, vulnerable, etc. Primary data on survey of the wild animals and birds in the study area is collected and identified with the classification into various schedules taken from secondary data."

69. It is in the backdrop of the 2006 Notification and the Guidance Manual that it becomes necessary to assess the process that was adopted in the present case and its outcome.

D. *Forests*

70. The essence of the challenge to EC is twofold:

70.1. Form 1, which was filed by the project proponent, did not contain any disclosure of the name or identity of forests within an aerial distance of 15 km. Item 2 under the heading of "Environmental Sensitivity" requires a clear disclosure of "areas which are important or sensitive for ecological reasons — wetlands, water sources or other water bodies, coastal zone, biospheres, mountains and forests".

70.2. Table 2.1 of Chapter II of the EIA report delineates ESZs within an aerial distance of 15 km from the project boundary. For the State of Goa, the table indicates the presence of forests but not of protected forests. For the State of Maharashtra, Table 2.1 indicates that there were neither reserved nor protected forests within 15 km from the project boundary.

71. The learned ASG made an earnest effort to support this by urging that a reserved forest is one which is notified under Section 20 of the Forest Act, 1927. The issuance of a notification under Section 4, it was urged, is indicative only of an intent and a forest stands reserved under sub-section (2) of Section 20 only upon the issuance of a notification. The ASG submitted that the reliance which the appellants placed on the Survey of India map is misplaced as, in the absence of a notification under Section 20, a forest cannot be regarded as being

reserved. In the alternative, it was urged that as a matter of fact, the EIA report (save and except Table 2.1) takes into account the forest cover surrounding the site and within the prescribed aerial distance. As regards Form 1, the learned ASG submitted that at that stage, the project proponent may not be expected to be aware of all the features of the environment and hence, the omission to refer to forests and other areas which are sensitive ecologically should be discountenanced.

72. We cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1. The disclosure in Form 1 constitutes the very foundation of the process which is initiated on the basis of the information supplied by the project proponent. Following the disclosure in Form 1, ToR are formulated, and this leads to the preparation of the EIA report. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1.

73. There can be no manner of doubt that Form 1 is an important ingredient in the entire process envisaged under the 2006 Notification. Hence, clause (*vi*) of Para 8 of the 2006 Notification provides that deliberate concealment or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection and lead to the cancellation of a prior EC granted on that basis. The declaration which is required of the project proponent is to a similar effect.

74. We are unable to accept the submission that the disclosure required was of reserved forests comprehended within a notification under sub-section (2) of Section 20 of the Forest Act, 1927. Form 1 requires a disclosure of areas which are important or sensitive for ecological reasons, among them, being "forests". The expression "forests" is used without reference to a statutory or artificial definition and must hence incorporate a meaning which bears upon the ordinary description of the term. The expression "forests", means a forest as commonly understood, without reference to a notification under the Forest Act, 1927 or any other statutory enactment. Such an interpretation will subserve the purpose of an EIA. The purpose is to ensure that all relevant facets of the environment are noticed, that baselines are documented, and that the potential impact of a project or activity on the environment is assessed. Forests are forests without reference to recognition in a statutory form devised for a specific purpose.

75. The need to construe the expression "forests" in a broad and generic sense was emphasised in the decision of this Court in *Godavarman*[6]. This Court held : (SCC pp. 269-70, para 4)

> "*4*. The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation

of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest (Conservation) Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership."

76. Subsequently, in *Okhla Bird Sanctuary*[7], this Court explained the position : (SCC p. 762, para 35)

> "*35*. Almost all the orders and judgments of this Court defining "forest" and "forest land" for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries."

In *Okhla Bird Sanctuary*[7], trees had been planted with an intent to set up an urban park. This Court found it "inconceivable" that those trees would turn into a forest "within a span of ten to twelve years and the land, which was for agricultural use would be converted into forest land". Hence, the decision was based on a factually distinguishable situation. The decision emphasises that in construing the term "forest", courts must have due regard both to text and to context.

77. In the context of the 2006 Notification and the underlying purpose of facilitating an EIA report, the expression "forests" must receive its ordinary and natural connotation. The effort must not be to overlook and destroy forests but to notice and protect them.

78. Having said this, we must delve into the alternate submission that the EIA report does, as a matter of fact, consider the prevalence of forested areas both in Goa and in Maharashtra within the study area. In this context, Para 2 of the Executive Summary introducing the EIA report acknowledges that the "surrounding land use of the airport site is predominantly forest land". In the context of land environment, the EIA report records that "forest is the predominant land use in the study area". The EIA report acknowledges that territories in Maharashtra fall within one kilometre from the proposed greenfield airport. Villages falling in Goa and Maharashtra within the 10 km radius were considered for assessment. Para 2.3.1 of Chapter II deals with land use. Land use/Land cover statistics for a 10 km radius from the Mopa airport in the State of Maharashtra have been tabulated. Among them is the following:

Sl. No.	*Description*	*Area (sq m)*	*Area (ha)*
5.	Forest-Tree Clad Area-Dense	6,63,41,913.84	6634.19

Similarly Para 4.4 in Chapter IV, which is titled "description of environment statistically", provides thus:

> "Surrounding land use of the airport site is predominantly forest land. The northern and eastern side of site is reserve forest areas, whereas western side is barren and village cultivated land. The existing land use plan is attached as Annexure IX."

79. The presence of a "diverse system set as dense and open forest, cultivated lands, sand dune vegetation, wetlands and human habitation" is noticed in Para 4.6 dealing with the biological environment. Annexure IX to the EIA report provides land use/land cover maps for both Goa and Maharashtra in the study area. The maps in Annexure IX cover forested areas in Maharashtra and Goa within an aerial boundary of 10 km from the project site. Annexure XI contains the hydrogeomorphological maps for Goa and Maharashtra.

80. Though the EIA report adverts to the presence of forests within the study area in Goa and Maharashtra, we have to consider whether this by itself warrants the grant of an EC in spite of the fact that there has been a patent failure on the part of the project proponent to make a transparent and candid disclosure of material facts in Form 1. Information furnished in Form 1 is crucial to the preparation of ToR by EAC. EAC comprises of experts. It is constituted, among other reasons, for the specific purpose of assessing the information furnished in Form 1 and preparing comprehensive ToR. There is an intrinsic link between the disclosures in Form 1 which constitute the basis for formulating ToR and between the ambit of the EIA report required by ToR and the final EIA report. ToR guide the preparation of the EIA report. A failure to disclose information in Form 1 impairs the functioning of EAC in the preparation of ToR and in consequence, leads to preparation of a deficient EIA report.

81. The submission that the EIA report deals with the prevalence of forested areas and warrants the grant of an EC cannot be accepted for yet another reason. EACs and SEACs are conferred with the authority to reject applications for the grant of an EC at the stage of scoping itself, prior to the preparation of ToR. The application may be rejected on the basis of the information furnished by the project proponent in Form 1. Claiming an EC as a matter of right merely because the EIA report has assessed parameters that were omitted in Form 1, bypasses the authority of EAC and SEAC to reject an application at the preliminary stage and cannot be countenanced. The regulatory authority is required to assess the final documents submitted to it "strictly with reference to ToR" and communicate to EAC and SEAC any discrepancies between the EIA report and ToR. A deficient ToR on the basis of the non-disclosure of material information in Form 1 impedes this process.

82. The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The 2006 Notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 Notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The

terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment : a "heads I win, tails you lose" approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law.

E. *Ecologically Sensitive Zones (ESZs)*

83. The substratum of the case of the appellants is based on the following extract contained in the EIA report:

> "Ecologically Sensitive Zones, Ministry of Environment and Forests had constituted a High-level Working Group (HLWG) under the Chairmanship of Dr K. Kasturirangan,

Member (Science), Planning Commission vide office order dated 17-8-2012 to study the preservation of the ecology, environmental integrity and holistic development of the Western Ghats in view of their rich and unique biodiversity. HLWG submitted its report to MoEF on 15-4-2013. HLWG identified 37% of natural landscape having high biological richness, low forest fragmentation, low population density and containing protected areas, world heritage sites and tiger and elephant corridors as ecologically sensitive areas (ESA). The present proposed airport site is falling under Pernem Taluka of North Goa District. The Pernem Taluka has not been included in the ecologically sensitive areas submitted by HLWG. MoEF order on ESA is attached as Annexure XVI."

84. According to Ms Shenoy, the EIA report notices the Kasturirangan Report submitted on 15-4-2013. The submission is that the EIA report has conveniently glossed over the areas adverted to by the Kasturirangan Report as an ESZ. This includes those areas which fall within the study area on the ground that Pernem Taluka, where the project site is situated, has not been included as an ESZ. In this context, reliance is placed on a draft notification dated 3-10-2018 issued by MoEFCC under which the Union Government has proposed to notify 56,825 sq m spread across six States — Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu as the Western Ghats ESZ. The preamble to the draft notification adverts to the steps taken by the Union Government between 2013 and 2016 in pursuance of the report of the HLWG. This includes draft notifications issued on 10-3-2014 and 4-9-2015. The draft notification dated 3-10-2018 emphasises the importance of the Western Ghats as a global biodiversity hot spot:

"WHEREAS, Western Ghats is an important geological landform on the fringe of the west coast of India and it is the origin of Godavari, Krishna, Cauvery and a number of other rivers and extends over a distance of approximately 1500 km from Tapti River in the north to Kanyakumari

in the south with an average elevation of more than 600 m and traverses through six States, namely, Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu;

AND WHEREAS, Western Ghats is a global biodiversity hotspot and a treasure trove of biological diversity and it harbours many endemic species of flowering plants, endemic fishes, amphibians, reptiles, birds, mammals and invertebrates and it is also an important centre of evolution of economically important domesticated plant species such as pepper, cardamom, cinnamon, mango and jackfruit;

AND WHEREAS, Western Ghats has many unique habitats which are home to a variety of endemic species of flora and fauna such as Myristica swamps, the flat-topped lateritic plateaus, the Sholas and wetland and riverine ecosystems;

AND WHEREAS, UNESCO has included certain identified parts of Western Ghats in the UNESCO World Natural Heritage List because Western Ghats is a centre of origin of many species as also home for rich endemic biodiversity and hence a cradle for biological evolution;"

85. Ms Shenoy has emphasised that sixteen villages in the taluka of Sawantwadi of the district of Sindhudurg which fall within the study area have been mapped as an ESZ in the annexure to the draft notification dated 3-10-2018. They are:

"State	*District*	*Taluk*	*Village Name*
Maharashtra	Sindhudurg	Sawantwadi	Tamboli

Maharashtra	Sindhudurg	Sawantwadi	Kumbhavade
Maharashtra	Sindhudurg	Sawantwadi	Degave
Maharashtra	Sindhudurg	Sawantwadi	Banda
Maharashtra	Sindhudurg	Sawantwadi	Padve Majgaon
Maharashtra	Sindhudurg	Sawantwadi	Ronapal
Maharashtra	Sindhudurg	Sawantwadi	Padve
Maharashtra	Sindhudurg	Sawantwadi	Dandeli
Maharashtra	Sindhudurg	Sawantwadi	Madura
Maharashtra	Sindhudurg	Sawantwadi	Dingne
Maharashtra	Sindhudurg	Sawantwadi	Aros
Maharashtra	Sindhudurg	Sawantwadi	Galel
Maharashtra	Sindhudurg	Sawantwadi	Kondure
Maharashtra	Sindhudurg	Sawantwadi	Satarda
Maharashtra	Sindhudurg	Sawantwadi	Dongarpal
Maharashtra	Sindhudurg	Sawantwadi	Sateli Tarf Soundal"

86. A comparison of the above villages with Annexure IX of the EIA report indicates that several of the above villages which have been mapped as ESZs in the draft notification fall within the 10 km buffer from the project site. Hence, the submission of Ms Shenoy merits a close analysis.

87. The EIA report has rested content with the observation that Pernem Taluka, where the project site is situated, is not an ESZ. That is not sufficient or adequate, since the purpose of the EIA report is to make an assessment of ESZs which fall within the study area. Mr Nadkarni's response to the above submission is that:

87.1. Neither the Mopa Plateau nor Pernem Taluka constitute a part of the Western Ghats.

87.2. The HLWG chaired by Dr Kasturirangan recommended a prohibition of specified activities while for other activities, the 2006 Notification was required to be followed.

87.3. The EIA report, while considering the project, has also adverted to the Kasturirangan Report.

87.4. Infrastructure projects except in the prohibited category are permissible, subject to an EIA.

88. The report of the HLWG dated 15-4-2013 recommends that there should be a complete ban on mining, quarrying and sand mining activity in the ESZ. Similarly, it recommends that no thermal power project should be allowed in ESZs and that all "red category" industries should be strictly banned. Building and construction projects of 20,000 sq m and above should not be allowed. However, all other infrastructure and development projects, which have been recommended, should be subject to the grant of ECs under Category "A" projects of the 2006 Notification.

89. The Union Government issued a Notification on 13-11-2013 in pursuance of Section 5 of the Environment (Protection) Act, 1986 to the effect that from the date of the issuance of those directions, no pending case or fresh case shall be considered by EACs/MoEF or SEACs/SEIAAs covering the following industries:

(*a*) Mining, quarrying and sand mining;

(*b*) Thermal power plants;

(*c*) Building and construction projects of 20,000 sq m area and above;

(*d*) Township and area development projects with an area of 50 ha and above and/or with a built-up area of 1,50,000 sq m and above; and

(*e*) "Red category" industries.

90. The submission of the ASG is that there is no prohibition on setting up a Category "A" project in an ESZ. An infrastructure project such as an airport does not fall within the range of prohibited activities. What is necessary is that the project must be assessed in terms of the 2006 Notification.

91. The glaring deficiency which emerges from the EIA report is its failure to notice the existence of ESZs within a buffer distance of 10 km of the project site. On one hand, the EIA report takes note of the HLWG report dated 15-4-2013. But, on the other hand, the EIA report ignores the existence of ESZs within the study area on the ground that the *project site* is not situated in an ESZ. That, as we have seen, can never be accepted as an adequate

response. The purpose and object of the EIA report is to map areas, understand their vulnerabilities, and conduct a study on a scientific basis of the impact of the proposed project on an ecologically sensitive terrain. The EIA report fails to meet a classical requirement of administrative law : to take into account a relevant consideration, namely, that within the study area which has to be considered, there is the presence of ESZs.

92. In deducing the impact of a proposed activity on an ESZ, it is not sufficient to take recourse to a generic assessment of a proposed activity on the ecology of the study area. The EIA report must factor in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests. The vulnerabilities of each of them must be studied as distinctive components together with a holistic analysis of their existence in a chain of biodiversity. Where an area is ecologically sensitive because of the presence of flora or fauna requiring protection, that must be specifically adverted to and studied. The deficiency of the EIA report emanates from its failure to notice that the purpose of the study was not only to determine whether the project site is ecologically sensitive. Confining itself to this aspect, the EIA report failed to consider a crucial and relevant consideration.

F. *Sampling points*

93. The submission of the appellants is that the Guidance Manual requires the collection of primary data through measures and field studies in the study area within 10 km radius from the ARP. Secondary data has to be collected within a 15 km aerial distance for the parameters mentioned in Column 9(III) of Form 1 of the 2006 Notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra. As a result, no sampling sites for any of the parameters fall within 40% of the study area. Consequently, no primary data collection was done despite the carrying out of two samples in 2011 and

2014 respectively. In response to this submission, it has been urged that all sampling points were based on Para 4.1 of the Guidance Manual. As a result, it was submitted that areas within Goa and Maharashtra were studied along with impact studies. In order to assess the submission, it is necessary to refer to relevant aspects of the EIA report:

F.1. *Air quality*

94. In order to study the ambient air quality in terms of suspended particulate matter, respirable particulate matter, SO_2, NO_X, CO and HC, ambient air quality monitoring stations were set up at six locations. They are at Sinechaadvin, Katwal, Mopa Village, Pernem, Nagzor and Patradevi. All are in Goa. The location at Patradevi was on the border shared by Goa with Maharashtra. The study area extended to a radial distance of 10 km from the ARP. We accept the submission of the ASG that they would hence cover areas falling within both Goa and Maharashtra. Para 4.1.2 of Chapter IV of the EIA

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report sets out the baseline data collected at the monitoring stations. Since the entire study area within a radius of 10 km was considered for monitoring air quality, we accept the submission that the location of the sampling points within Goa did not preclude the monitoring of air quality within the study area.

F.2. *Water quality*

95. Para 4.2 of the EIA report states that groundwater quality was measured at four locations : Mopa Village, Pernem, Dargal and Patradevi marked within 10 km of the study area. The surface water quality was measured at three locations : Chapora River, Tiraikol River and Nala near Mopa Village within 10 km of the study area. The impact assessment is contained in the EIA report. The Mopa Plateau is at a height of 155 metres above mean sea level and water from the plateau flows down to the rivers in the State of Goa. The laterite plateau is an important source of drainage by providing natural channels for water. The impact of a greenfield airport on the closing of natural channels which feed the water bodies has not been scientifically mapped or studied.

F.3. *Noise quality*

96. While monitoring the noise quality, the EIA report covered a radius of 10 km. In order to obtain baseline data of noise quality, nine monitoring stations were chosen in the study area. While it is true that all nine locations were situated in the State of Goa, one (Patradevi) was situated on the border shared between Goa and Maharashtra. The EIA report contains an impact study and the study area covered includes both the States.

F.4. *Flora and fauna*

97. The EIA report indicates that the area surrounding the site for the proposed airport has dense forests[10]. These total up to nearly 6634.19 hectares[11]. Ms Shenoy has urged that it is impossible that the fauna found by the project proponent through both primary sampling and secondary sources was only limited to animals such as : domestic dog, cat and cattle, common house mouse, rat and mongoose, jackal and the three striped palm squirrel. This, in her submission, is a clear indication that the EIA report is faulty and clearly incorrect.

98. While dealing with the above submissions, it is necessary to note that the Guidance Manual contains a specific reference to the collection of data of sensitive

habitats and wild/endangered species in the project area. The Guidance Manual stipulates thus:

> "Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolises the functioning efficiency of the entire ecosystem. Just as wild flora needs special treatment for preservation and

growth, wild fauna as well deserves specific conservatory pursuits for posterity."

99. The grievance is that no data has been collected from the State of Maharashtra and all secondary data collected by the project proponent related only to the State of Goa. There is substance in the submission which has been urged on behalf of the appellant. A reading of the counter-affidavit filed by the State of Goa would seem to support the appellant's submission. It is stated:

> "I say that several recognised publications and research papers were referred to in order to verify and assess the data collected, to name a few of the publications:
>
> (*i*) *Birds of Goa* by Heinz Lainer & Rahul Alvares;
>
> (*ii*) *The Goan Jungle Book* by Nirmal Kulkarni;
>
> (*iii*) *A Photographic Guide to Butterflies of Goa* by Parag Ragnekar;
>
> (*iv*) *Flora of Goa, Diu, Daman, Dadra and Nagarhaveli* (Vol. 1) by R.S. Rao;
>
> (*v*) *Flora of Goa, Diu, Daman, Dadra and Nagarhaveli* (Vol. 2) by R.S. Rao;
>
> (*vi*) *Red Data Book* published by Botanical Survey of India;
>
> (*vii*) Study materials published in Goa ENVIS Centre were also referred."

100. The appellant, on the other hand, has sought to rely upon several independent studies including the following:

> "(*a*) A rapid survey to assess mammal presence at Barazan Plateau, Mopa, Goa, India conducted by Girish Punjabi (Wildlife Biologist) and Atul S. Borker (Full Member of IUCN/SSC Otter Specialist Group) that Schedule I species such as gaur, leopard and Indian Pangolin; Schedule II species such as giant squirrel, common palm civet; Schedule III species such as sambar, wild pig and Schedule IV species such as Indian hare, Indian porcupine.
>
> The report also mentions the presence of the Sawantwadi — Dodamarg wildlife corridor within the 10 km proposed project site.
>
> (*b*) Report on one day survey conducted to find evidence of Otter presence at Mopa, Goa conducted by Atul Borker (Full Member of IUCN/SSC Otter Specialist Group) that found that a perennial stream on the plateau had presence of the smooth coated otter, that falls within Schedule II of the Wildlife (Protection) Act, 1972.
>
> (*c*) Report on two days' survey to find evidence of plant and bird species at Mopa Plateau conducted by Aparna Watve (Ecologist) and Sanjay Thakur (Wildlife Biologist) that found Schedule I species such as the Indian peafowl and the Dipcadi Concanese which is critically

endangered. The study clearly mentions that the EIA study is entire deficit as it does not accurately consider the flora and fauna of the area as well as the number of trees to be cut."

101. We find that the collection of both primary and secondary data of fauna in the EIA report was perfunctory. The primary study is not based on data collected from acknowledged sources such as the Zoological Survey of India, Wildlife Institute of India and Ministry of Earth Sciences as required under the Guidance Manual. Similarly, as regards avi-faunal studies, the EIA report lists 385 plant species in Table 4.15 of Chapter IV, titled "Description on Environment". It also states that 86 species of birds were observed during the survey in the 10 km study area from the proposed site. Column 9(III) of Form 1 refers to "areas" in the following terms:

> "areas which are used by protected, important or sensitive species of flora or fauna for breeding, foraging, nesting, resting, over wintering or migration".

The above column was left blank by the project proponent in Form 1. According to the Guidance Manual, secondary data has to be collected within an aerial distance of 15 km for the parameters specifically specified in Column 9(III) of Form 1 of the 2006 Notification. This was evidently not done. A careful avi-faunal study was necessary, having due regard to the fact that the proposed project is an airport site. Bearing in mind the profile of airport operations, foraging or nesting by bird species in and around the airport must not be discarded. It must be accepted that in a project involving the setting up of an airport, the EIA report must deal with the impact of the airport on birds and likewise the impact of birds on aircraft operations.

F.5. *Felling of trees*

102. Para 2.1.5 of the executive summary to the EIA report deals with the biological environment. Para 2.1.5 stipulates thus:

> "*The area required for proposed airport has only few trees, mainly bushes*. These will be cleared during site preparation."

(emphasis supplied)

103. Similarly, Chapter II which deals with project description specifies in Para 2.3.1 that "*vegetation and trees are sparse at the site*". That the trees which were required to be felled were far from "few" is evident from the reply filed by the State of Goa in the present proceedings where it has been stated that permissions were granted for the *felling of 54,676 trees*. The EIA report ignored them. The submission in the EIA report that there were only sparse trees is sought to be explained by the State from the perspective of the large area of the land proposed for the project. It is sought to be explained that since the total area is 2133 ac, the number of trees would proportionately work out to about 25 trees in an area of one acre (about one tree in an area of 160 sq m).

104. In terms of the order passed by the Bombay High Court in the PIL, to which we have adverted earlier, the Principal Chief Conservator of Forests, Goa passed an order on 2-4-2018 providing for:

104.1. The enumeration of all trees.

104.2. Exploring the possibility of transplanting existing trees which could be safely transplanted into ground areas.

104.3. Issuance of tree cutting permission by the Deputy Conservator of Forests.

104.4. Planting of ten times the number of trees felled by the concessionaire under the supervision of the Forest Department.

105. On 6-2-2018, the Deputy Conservator of Forests had granted permission for felling of 21,703 trees. Following the dismissal of an appeal under Section 15 of the Goa, Daman and Diu Preservation of Trees Act, 1984 filed by the Federation of Rainbow Warriors, a writ petition was filed before the Bombay High Court (WP No. 1 of 2018). The High Court set aside[4] the order of the Deputy Conservator of Forests and remanded the proceedings to the Principal Chief Conservator who passed the order which has been noted above. Following the order of the Principal Chief Conservator, 54,676 trees were enumerated. The competent authority granted permission for the felling of trees thereafter on the following dates:

(*i*) 1422 trees by an order dated 20-4-2018;

(*ii*) 18,408 trees by an order dated 24-7-2018; and

(*iii*) 33,298 trees by an order dated 1-10-2018.

Following this exercise, the felling of trees was completed on 18-1-2019. The Bombay High Court having directed that the order of the Principal Chief Conservator of Forests shall be subject to the specific permission of NGT in the pending proceedings, a miscellaneous application was moved before NGT. While disposing of the main appeal, NGT also disposed of the miscellaneous application and under the head of "Biological Environment", the following directions have been issued:

"E. *Biological environment*

1. Efforts be made to transplant the trees to other locations in the same vicinity by using appropriate mechanical devices which are available these days.

2. Efforts be made to plant indigenous species which are tall in size rather than small saplings.

3. Concerns have been raised by the appellants with regard to plant species "Dipcadi Concanense" which has been claimed to be a threatened plant. This claim of the appellants has been negated by the respondent by producing a documentation of Botanical Survey of India, Western Regional Centre, Pune, Maharashtra titled as "A

Note on Occurrence and Distribution of Dipcadi Concanense". By invoking precautionary principle, we direct the project proponent to draw up a conservancy by plan/scheme for "Dipcadi Concanense" in collaboration with Forest Department, State of Goa and Botanical Survey of India and ensure its implementation."

106. We express our serious displeasure with the manner in which the EIA report made an attempt to gloss over the existence of trees. The EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The EIA report states that vegetation and trees are sparse at the site. A photograph and a google map image are put forth as illustrations in Figure 2.3 of Chapter II. To realise later that the project involved the felling of 54,676 trees is indicative of the cavalier approach to the issue and a process of fact finding which is parsimonious with the truth. Post facto explanations are inadequate to deal with a

failure of due process in the field of environmental governance. The State of Goa would have us gloss over the felling of trees by submitting that 54,676 trees over a project area of 2133 ac averages out to 25 trees per acre or one tree over an area of 160 sq m. This is a fallacious approach to the issue. Mathematical averages cannot displace factual data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinised the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented.

107. In the written submissions which have been filed by the State of Goa, it has been submitted that of the 54,676 trees which were felled:

(*i*) 32,193 trees representing 59% had a girth of 30 to 50 cm;

(*ii*) 19,903 trees representing 36% had a girth of 50 to 100 cm; and

(*iii*) "only 2580 trees" had a girth exceeding 100 cm.

108. The Goa, Daman and Diu Preservation of Trees Act, 1984 defines the expression "tree" in Section 2(*j*) in the following terms:

> "**2. (*j*)** "**tree**" means any woody plant whose branches spring from and are supported upon the trunk or the body and whose trunk or body is not less than ten centimetres in diameter at a height of one meter from the ground level and includes coconut palm."

This definition has been highlighted to indicate that it incorporates a stringent meaning of the expression "trees". The point, however, is simple : there was a glaring omission of the factual existence of as many as 54,676 trees in the EIA report. For project proponents, the environment may not possess a human voice. But the purpose of prescribing an EIA report is precisely to undertake a baseline study on all aspects of the environment and to anticipate the impact of a projected activity on the environment. Ignoring *any* component of the

environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance.

109. The order of the Principal Chief Conservator of Forests mandating transplantation, where possible, and the plantation of ten trees for every tree felled provides a measure of rectification. But there is a reason why issues pertaining to vegetational cover must be taken seriously in the EIA process. The formula of planting a set number of trees for every existing tree felled must be alive to the fact that the survival of new plantations is replete with uncertainty. The survival of transplanted trees is equally a matter of uncertainty. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 Notification must be transparent, candid and robust. A regulatory regime for environmental governance is based on the hypothesis that all stakeholders will act with rectitude. Hiding significant components of the environment from scrutiny is not an acceptable modality to secure project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy.

G. *Public consultation*

110. The importance of public consultation is underscored by the 2006 Notification. Public consultation, as it states, is "the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate". This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. Public consultation is a process which is designed to hear the voices of those communities which would be affected by the activity. They may be affected in terms of the air which they breathe, the water which they drink or use to irrigate their lands, the disruption of local habitats, and the denudation of environmental ecosystems which define their existence and sustain their livelihoods.

111. Public consultation involves a process of confidence building by giving an important role to those who have a plausible stake. It also recognises that apart from the knowledge which is provided by science and technology, local communities have an innate knowledge of the environment. The knowledge of local communities is transmitted by aural and visual traditions through generations. By recognising that they are significant stakeholders, the consultation process seeks to preserve participation as an important facet of governance based on the rule of law. Participation protects the intrinsic value of inclusion.

112. The 2006 Notification postulates:

112.1. A public hearing at or in close proximity to the project site to ascertain the views of "locally affected persons".

112.2. Obtaining written responses from "other concerned" individuals having a "plausible stake" in the environmental aspects of the project or the activity.

112.3. The duty of SPCB to conduct hearings and to forward the proceedings to the regulatory authority within the stipulated time.

112.4. Placing on the website of the Pollution Control Board a summary of the EIA report in the prescribed format and the making available of the draft EIA report by the regulatory authority on a written request by any person concerned, for inspection.

112.5. The duty of the applicant to address all material concerns expressed during the process of public consultation.

112.6. The making of appropriate changes in the draft EIA and EMP.

112.7. The submission of the final EIA report by the applicant to the regulatory authority for appraisal.

112.8. Each of these features is crucial to the success of a public consultation process. Public consultation cannot be reduced to a mere incantation or a procedural formality which has to be completed to move on to the next stage. Underlying public consultation is the important constitutional value that decisions which affect the lives of individuals must, in a system of democratic governance, factor in their concerns which have been expressed after obtaining full knowledge of a project and its potential

environmental effects.

113. Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. Each of these elements is crucial to the design features of the 2006 Notification. A breach will render the process vulnerable to challenge on the ground that:

(*i*) significant environmental concerns have not been taken into account;

(*ii*) there was an absence of a full disclosure when the EIA report was put up for consultation; and

(*iii*) concerns which have been expressed by persons affected by the project have not been adequately dealt with or analysed.

114. The public consultation was held on 1-2-2015 at Mopa. Nearly 70 persons spoke on the occasion and 1586 persons signed the attendance sheet. 1150 representations were received. Some of the environmental concerns expressed during the public hearing are catalogued below:

114.1. Mopa Plateau has multiple watersheds and the discharge of water goes down to the rivers.

114.2. Nearly forty springs would be affected along with flora and fauna.

114.3. The public hearing had been conducted in an area where the land was barren and with no plantation.

114.4 The impact on River Chapora, which is within a 10 km radius from the project, has not been adequately analysed.

114.5. Mopa Plateau has a natural mechanism for groundwater recharge.

114.6. Protection of the Western Ghats is necessary, particularly with the view to not disturb flora and fauna.

114.7. The EIA report has not been made available to the affected areas and Gram Panchayats in the buffer zone.

114.8. Local plantations would be affected.

114.9. The number of trees to be felled by the project proponent has not been specified in the EIA report.

114.10. The Dodamarg Wildlife Sanctuary had been "sanitised" by the High Court.

114.11. Forest clearance had not been obtained.

114.12. The sacred groves of the area have not been described, including the Barazan which will be lost.

114.13. The slopes sustain cashew plantations with nearly forty lakh cashew trees resulting in an annual income of rupees fifty crores.

114.14. No study has been carried out in the 10 km radius falling in Maharashtra.

115. These concerns are at the forefront of the debate in the present case. What is significant, is the manner in which they were projected before EAC at its 149th meeting on 26-6-2015 where the project proponent made a presentation. The minutes of the meeting recorded the following observations of the project proponent:

> "(*x*) Public hearing was conducted on 1-2-2015 at Simechen Adven, Mopa, Goa. *The major issues raised during public hearing and responses sought from the project proponent related to employment opportunities*."
>
> (emphasis supplied)

On the basis of a factual analysis, Ms Shenoy has submitted that only seven out of the 68 objections dealt with the issue of employment. Evidently, the project proponent failed to address the other significant concerns in the manner which is required by the 2006 Notification.

116. In *Utkarsh Mandal* v. *Union of India*[12], the Delhi High Court has succinctly summarised the duty of EAC to apply its mind to the objections raised in the course of public hearings : (SCC OnLine Del para 40)

> "*40*. … It is that body that has to apply its collective mind to the objections and not merely MoEF which has to consider such objections at the second stage. We therefore hold that in the context of the EIA Notification dated 14-9-2006 and the mandatory requirement of holding

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public hearings to invite objections it is the duty of EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negatived. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary."

117. Crucial objections and environmental concerns which were raised during the consultative process were reduced to a single issue by the project proponent before EAC : the need for employment opportunities. The project proponent failed in its duty to inform EAC. The record does not indicate a critical appraisal or analysis by EAC. EAC was duty-bound to apply its mind to the environmental concerns raised by stakeholders. The duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC. The minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 Notification in this regard.

H. *Appraisal by EAC*

118. Appraisal by EAC is structured and defined by the 2006 Notification. The process of appraisal is defined to mean "a detailed scrutiny" by EAC of the application and other documents like EIA report and the outcome of the public consultation, including the public hearing proceedings, submitted by the applicant to the regulatory authority for the grant of an EC. EAC is under a mandate to conduct the process of appraisal in "a transparent manner". On the conclusion of these proceedings, EAC has to make "categorical recommendations" to the regulatory authority either for:

(*i*) the grant of a prior environmental clearance on stipulated terms and conditions; or

(*ii*) the rejection of the application.

The recommendations made by EAC to the regulatory authority must be based on "reasons".

119. EAC, at its 149th meeting held on 26-6-2015, considered the EIA report and sought a clarification from the project proponent on the following six aspects:

"(*i*) There is a need to superimpose the layout plan showing the drainage pattern including natural drainage, construction in the area on superimposed map showing clear topography of the region;

(*ii*) 10 year data regarding rainfall in the area;

(*iii*) Justification on sustainability of existing traffic and transportation arrangements especially at intersection points of the approach road to the airport needs to be submitted;

(*iv*) A traffic circulation plan needs to be evolved for smooth running of traffic in the area;

(*v*) Measures taken to comply with the CPCB guidelines formulated for noise pollution control in airport areas to be submitted; and

(*vi*) Minimum 20% energy conservation measures should be adopted incorporating provisions for use of LED, star-rated ACs, etc. Revised Energy Conservation Plan to be submitted."

120. A representation was received from the Federation of Rainbow Warriors, consequent to which the consideration was deferred and the project proponent was requested to submit a "pointwise reply to the issues raised" in the representation. EAC, at its 152nd meeting held on 20-10-2015, observed that the project proponent had provided "pointwise clarifications to the concerns raised by the 'NGO'". EAC noted thus:

"(*i*) The EIA report has been updated by the PP after taking into account the issues raised in the public hearing and the same has been put in public domain.

(*ii*) The project is outside the ESZ delineated by the Dr Kasturirangan Committee and TERI.

(*iii*) The project envisages construction of rainwater harvesting pits within the plot area, which would contribute to groundwater recharge. Hence, the objection of NGO in this regard does not hold.

(*iv*) The biological data in respect of flora and fauna was collected by the functional area experts of M/s Engineers India Ltd. and not by M/s Pragati Labs stationed at Goa during November 2014 to January 2015 for collection of ambient air quality, noise, water quality, soil, socioeconomics."

121. Following the above statement, EAC recommended the grant of an EC subject to certain conditions. Para 3.1.2 of the minutes of EAC is as follows:

"The Committee noted the peculiar circumstances of the case and the difficulties in land acquisition which led to delay in preparation of the EIA report, and the larger public interest involved.

Keeping in view the fact that the project proponent has not concealed facts and

circumstances of the case and the project is in the public interest, the Ministry may take an appropriate view on the objection that the public hearing could not have been held, in the absence of valid ToR, though the validity has been extended twice and regularised subsequently. The Committee also noted that the public hearing was attended by about 3000 people and hence, there is substantive and active public participation as required under the law for public consultation.

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The PP further provided their reply to the rebuttal by the said NGO on various issues.

EAC, after deliberations, recommended the project for grant of EC subject to the above and the following:

(*i*) The project proponent shall ensure availability of adequate land at the junction of Mopa Airport Road and Mumbai/Goa NH 17 for traffic circulation/management and to provide for all the traffic interchanges and proposed cover.

(*ii*) The approach and exit roads to the airport would be approved from the NHAI and should be according to IRC norms.

(*iii*) A perusal of the topo sheet superimposed on the runway area indicates that the extreme end of the runway is covering the drainage area partly. The drainage area which is under the runway needs to be channelised. The area between the parallel taxi way and runway needs to be handled carefully to drain the water from the area in the outfall."

122. The above explanation must be assessed with reference to the norm that EAC is required to submit reasons for its recommendation. The above extract indicates that EAC has adverted to the following circumstances:

122.1. The "peculiar circumstances" of the case.

122.2. The difficulties in land acquisition which led to a delay in the preparation of the EIA report.

122.3. The "larger public interest" involved.

122.4. The project proponent had not concealed facts and circumstances of the case.

122.5. The project is in the public interest.

122.6. The project proponent had provided a reply to the rebuttal by Rainbow Warriors on various issues.

123. This analysis of the EIA report is, to say the least, sketchy and perfunctory and discloses an abdication of its functions by EAC. The requirement that EAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons:

123.1. EAC makes a recommendation to the regulatory authority in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as Para 8(*ii*) provides, shall normally accept the recommendations of EAC. Where it disagrees, it would request reconsideration, stating the reasons for its disagreement. In turn, EAC will consider the observations of the regulatory authority and furnish its views within a stipulated period.

123.2. The grant of an EC is subject to an appeal before NGT under Section 16 of the NGT Act, 2010.

124. The reasons furnished by EAC for its recommendation are a basic link in the ultimate decision of the regulatory authority. They constitute substantive material which will be considered by the Tribunal when it considers a challenge to the grant of an EC.

125. What, then, do the reasons which have been furnished by EAC tell us? EAC relies on the "peculiar circumstances of the case" as the basis of its recommendation. What the peculiar circumstances are, is left for pure guesswork or surmise. EAC refers to the delay in acquisition proceedings, a larger public interest and the fact that the project proponent "has not concealed facts and circumstances". Each one of the reasons which has weighed with EAC betrays a lack of comprehension of the true nature of its function under the 2006 Notification. EAC has failed to consider relevant circumstances bearing on the environmental impact of the project and has instead considered circumstances extraneous to its function. That the project proponent, according to EAC, has not concealed facts and circumstances is not reason enough to warrant a grant of an EC. Moreover, even this hypothesis (as we have seen earlier) is incorrect. There is no analysis of the EIA report. EAC has failed to answer to the call to its expertise.

126. Clause (*vi*) of Para 8 of the 2006 Notification stipulates thus:

> "(*vi*) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

Deliberate concealment or the submission of false or misleading information or data material for screening, scoping, appraisal or decision on the application makes it liable for rejection. That the project proponent must submit all information and data without concealing relevant features is a basic hypothesis and expectation of the 2006 Notification. EAC has, in the brief reasons which are contained in Para 3.1.2, not applied its mind at all to the environmental concerns raised in relation to the project nor do its reasons indicate an appraisal of those concerns by evaluating the impact of the project.

127. EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA report. It is duty-bound to analyse the EIA report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required. The reasons which are furnished by EAC constitute a live link between its processes and the outcome of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated.

128. Mr A.N.S. Nadkarni, learned ASG, urged that EAC had, in its 149th meeting, sought additional information on six issues. Subsequently, at its 151st meeting, it deferred consideration upon the representation filed by the Federation of Rainbow Warriors and at its 152nd meeting, it analysed the response of the project proponent to the representation. Hence, EAC must be deemed to have applied its mind. This approach is completely flawed. At its 149th meeting, EAC specifically called for a clarification on six issues. The next meeting was deferred. The minutes of the 152nd meeting contain no assessment of whether the clarifications which were sought by EAC had been replied to its satisfaction by the project proponent. The objection to the modalities adopted by EAC, however, are more fundamental. The minutes of the 152nd meeting indicate that EAC primarily, if not exclusively, dealt with the "pointwise clarifications" of the project proponent to the representation by the Federation of Rainbow Warriors. Dealing with a representation is not exhaustive of the function of EAC. Arguably, if no representation was received, or if a representation submitted by an individual objector is found to be incorrect, that by itself is no ground to recommend an EC.

129. EAC, as an expert body, has to scrutinise all relevant aspects of the project or activity proposed, including its impact on the environment. In taking that decision, the EIA report is an input for its analysis. The scrutiny and appraisal has to be undertaken by EAC as an expert body and its reasons must reflect that this has been done. As the minutes indicate, the non-application of mind by EAC is evident with reference to the presence of 15 ESZs in the study area. EAC notes that the project is outside the ESZ delineated by the Kasturirangan Committee. In the absence of a critical analysis, EAC failed in discharging its duties under the 2006 Notification. The recommendations of EAC furnish a guide for MoEFCC. Indeed, the 2006 Notification stipulates that the recommendations of EAC would normally be accepted. Consequently, a failure of due process before EAC, as in the present case, must lead to the invalidation of EC.

I. *The appellate jurisdiction of NGT : the requirement of a merits review*

130. NGT is entrusted with appellate jurisdiction under Section 16 of the NGT Act, 2010. Section 16(*h*) provides thus:

> "**16. *Tribunal to have appellate jurisdiction***.—Any person aggrieved by—
>
> * * *
>
> (*h*) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);"

131. Section 20 mandates that the Tribunal shall, while passing any order, decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Several decisions of this Court have given meaning to these principles[13].

132. The decision of NGT indicates that several significant submissions were urged before it. The entire analysis by NGT is contained in one paragraph of its judgment dated 21-8-2018[1] which is extracted below : (*Federation of Rainbow Warriors case*[1], SCC OnLine NGT para 27)

> "*27*. We find that the Expert Appraisal Committee had before it pointwise reply of the project proponent which we have already quoted above. Therein delay in land acquisition process and collection of fresh baseline data are mentioned. It is also mentioned that data for Maharashtra was also considered. Other issues duly explained are hydro-geological features and data with regard to flora and fauna, socioeconomic profile, topography, vegetation, observance of due procedure in public hearing, relevance of study with regard to ecosensitive areas of Western Ghats, feasibility of proposed airport in terms of cost benefit analysis as well as environmental cost benefit analysis. EAC also considered the data compiled by various offices. Mere fact that different opinions have been expressed by other experts is not enough to hold that EAC did not apply its mind. The rehabilitation programme was also produced before EAC."

The next paragraph contains a brief reference to the fact that the requirement of a study over a distance of 15 km is in regard to the collection of secondary data. The above paragraph, in our view, does not fulfil the requirement of a merits review by an expert adjudicatory body vested with appellate jurisdiction.

133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment. In order to be eligible for appointment as an expert member, a person must fulfil the following qualifications prescribed in Section 5(2):

> "**5. (2)** A person shall not be qualified for appointment as an Expert Member, unless he—
>
> (*a*) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five year's practical experience in the field of environment and

forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or

> (*b*) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution."

134. NGT is an expert adjudicatory body on the environment.

135. In two of its previous decisions, NGT has shown the path along with which it must traverse in arriving at its decisions:

135.1. In *Save Mon Region Federation* v. *Union of India*[14], the grant of an EC to a 780 MW Hydroelectric Project in Tawang District of Arunachal Pradesh was challenged. NGT framed the question before it in broad terms:

"... the material issue, therefore, that needs to be answered in the present appeal is as to whether the process of grant of prior EC to the project in question suffers from vice of faulty scoping process or not."

Having reviewed the information furnished in Form 1 by the project proponent as well as the multiple reports on record on the bird species involved in the site for the proposed project, NGT held that facts material to the case were not present before EAC and the consequent "vacuum in the EIA report" led to aberrations in the appraisal process conducted by it. Suspending EC granted to the project, NGT accepted the contention which was urged before it that NGT has the "authority to take an appropriate decision on the facts placed before it" and "set aside or suspend EC".

135.2. Similarly, in *Sreeranganathan K.P.* v. *Union of India*[15], the grant of an EC to the KGS Aranmula International Airport Project was challenged. NGT found fault with the process leading to up to the grant of EC since sector-specific issues had not been dealt with. NGT extensively reviewed the information submitted by the project proponent in Form 1, the deficiencies in the EIA report, the process of appraisal conducted by EAC and the sector-specific guidelines laid down with regard to the constructions of airports and held thus : (SCC OnLine NGT paras 182 & 187)

"*182*. ... a duty is cast upon EAC or SEAC, as the case may be, to apply the cardinal principle of sustainable development and principle of precaution while screening, scoping, and appraisal of the projects or activities. While so, it is evident in the instant case that EAC has miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal expectations from the same. For a huge project as the one in the instant case, the consideration for approval has been done in such a cursory and arbitrary manner without taking note of the implication and importance of environmental issues. ... Thus, EAC has not conducted itself as mandated by the EIA Notification,

2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC.

* * *

187. ... the Tribunal is of the considered opinion that there is no option but to scrap the impugned EC granted by MoEF to the 3rd respondent/project proponent for setting up the Aranmula airport."

136. The failure to consider materials on a vital issue and indeed the non-consideration of vital issues raises a substantial question of law leading to the invoking of the jurisdiction of this Court under Section 22 of the NGT Act, 2010. The failure of process in the present case has been compounded by the absence of a merits review by NGT.

137. The learned ASG has placed reliance on the decision of this Court in *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*[16] (*Lafarge*) to contend that the failure to disclose the presence of trees should not lead to the invalidation of EC. In that case, an application was made under the 1994 Notification for the grant of an EC to a proposed limestone mining project at Nongtrai Village, East Khasi Hills District, Meghalaya. EC was granted for the project in 2001. Pursuant to a letter by the Principal Chief

Conservator of Forests to MoEF drawing attention to the non-disclosure of forests, the project proponent applied for a revised EC and forest clearance under the Forest (Conservation) Act, 1980. An ex post facto EC along with forest clearance was granted in 2010. Challenging the grant of EC, it was urged that there was a failing on part of the project proponent to disclose the presence of forests on the proposed project site.

138. A three-Judge Bench of this Court rejected the challenge and upheld the grant of EC to the proposed project. This Court relied, among other factors, on the following:

138.1. The mining of limestone in Khasi Hills dates back to 1763 and is an integral part of the culture of Nongtrai Village.

138.2. The site was cleared after thorough consultation with the custodian of the land, who decided to lease the land for the mining project following the loss of revenue caused due to mining by the unorganised sector.

138.3. The Headman of Nongtrai and Village Durbar, who participated at the public hearing and filed written submissions before this Court, supported the project and certified that no damage would be caused to adjacent lands.

138.4. At the stage of site clearance, MoEF had before it certificates by the Executive Committee, Khasi Hills Autonomous District Council and the DFO, Khasi Hill Division, Shillong, certifying that there were no forests in the proposed project site.

138.5. The DFO certified that the proposed mining site was not a forest as defined in *Godavarman*[6].

138.6. The 2006 Notification was not applicable.

138.7. MoEF had, at multiple stages, sought clarifications from the project proponent and had undertaken requisite care and caution to protect the environment.

139. Upholding the grant of EC and the forest clearance, this Court held thus : (*Lafarge case*[16], SCC p. 380, para 120)

> "*120*. … The word "development" is a relative term. One cannot assume that the tribals are not aware of principles of conservation of forest. *In the present case, we are satisfied that limestone mining has been going on for centuries in the area and that it is an activity which is intertwined with the culture and the unique landholding and tenure system of Nongtrai Village*. On the facts of this case, we are satisfied with the due diligence exercise undertaken by MoEF in the matter of forest diversion. *Thus, our order herein is confined to the facts of this case*."
>
> (emphasis supplied)

140. The decision of this Court in *Lafarge*[16], was based on the facts summarised above. Significantly, the standard of judicial review which must be applied in cases relating to the environment has been formulated by the three-Judge Bench in *Lafarge*[16]. S.H. Kapadia, C.J. noted that the doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. The principles of judicial review in environmental matters have been enunciated thus : (SCC p. 380, para 119)

> "*119*. … In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any

extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint."

141. In a recent three-Judge Bench decision of this Court in *Mantri Techzone (P) Ltd.* v. *Forward Foundation*[17], this Court had the occasion to construe the provisions of Section 22 of the NGT Act, 2010. Speaking for the Bench, Abdul Nazeer, J. held that the test to determine whether a substantial question of law arises (within the meaning of Section 100 CPC) was formulated in the decision of a Constitution Bench in *Chunilal V. Mehta and Sons Ltd.* v. *Century Spg. and Mfg. Co. Ltd.*[18], where it was held thus : (AIR p. 1318, para 6)

"*6*. … The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general

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

Reappreciation of the "factual matrix" has been held to be distinct from a substantial question of law. In the present case, we have indicated the basis for the invocation of the jurisdiction of this Court under Section 22. There was a failure to follow binding norms under the 2006 Notification. There were serious flaws in the decision-making process. Relevant material has been excluded from consideration and extraneous circumstances were borne in mind. EAC as an expert body abdicated its obligations to make an expert determination based on reasons. NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it under Section 16(*h*) read with Section 20 of the NGT Act, 2010 by merely deferring to the decision to recommend and grant an EC. The parameters in regard to the existence of substantial questions of law have hence been established in the classical or conventional sense of that expression.

J. *Environmental Rule of Law*

142. Fundamental to the outcome of this case is a quest for environmental governance within a rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor which ensures the health of our ecosystem.

143. Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and

their implementation and enforcement — both in developed and developing countries alike[19]. The environmental rule of law seeks to address this gap.

144. The environmental rule of law provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace[19]. It imbues environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance[19]. The environmental rule of law becomes a priority particularly when we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, supports sustainable economic and social development, protects public health,

contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights[19]. Similarly, the rule of law in environmental matters is indispensable "for equity in terms of the advancement of the Sustainable Development Goals (SDGs), the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socioeconomic rights[20]."

145. Amartya Sen argues for a broadening of the notion of sustainable development which is the most dominant theme of environmental literature, from a need-based standard[21] to a standard based on freedoms[22]. Thus recharacterised, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar — or more — freedoms. The intertwined concepts of environmental rule of law thus further intragenerational as well as intergenerational equity.

146. Decision 27/9 which was adopted by the United Nations Environment Programme's (UNEP's) Governing Body at its first universal session in 2013 on "Advancing Justice, Governance and Law for Environmental Sustainability" was the first internationally negotiated document to establish the term "environmental rule of law." It declared that "the violation of environmental law has the potential to undermine sustainable development and the implementation of agreed environmental goals and objectives at all levels and that the rule of law and good governance play an essential role in reducing such violations". It thus urged governments and organisations to reinforce cooperation to combat non-compliance with environmental laws towards achieving sustainable development. It also called upon the Executive Director to assist with the "development and implementation of environmental rule of law with attention at all levels to mutually supporting governance features, including information disclosure, public participation, implementable and enforceable laws, and implementation and accountability mechanisms including coordination of roles as well as environmental auditing and criminal, civil and administrative enforcement with timely, impartial and independent dispute resolution". Similarly, the first United Nations Environment Assembly in 2014 adopted Resolution 1/13, which calls upon countries "to work for the strengthening of environmental rule of law at the international, regional and national levels".

147. In 2016, the First World Environmental Law Congress, co-sponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law[23] which outlines 13 principles for developing and implementing solutions for ecologically sustainable development:

(*i*) Obligation to Protect Nature

(*ii*) Right to Nature and Rights of Nature

(*iii*) Right to Environment.

(*iv*) Ecological Sustainability and Resilience

(*v*) In Dubio Pro Natura

(*vi*) Ecological Functions of Property

(*vii*) Intragenerational Equity

(*viii*) Intergenerational Equity

(*ix*) Gender Equality

(*x*) Participation of Minority and Vulnerable Groups

(*xi*) Indigenous and Tribal Peoples

(*xii*) Non-regression

(*xiii*) Progression

148. Dhvani Mehta's doctoral thesis[24] explores this idea of environmental rule of law in the Indian context by analysing the functioning of the three institutions of the Government with regard to environmental law. It develops a framework to assess whether the environmental rule of law in India is being strengthened or weakened, through an analysis of the legal instruments of each of the institutions of Government-statutes, executive orders and judicial decisions. The indicators on the basis of which this is done are:

(*a*) the capacity of statutes to guide behaviour (one of the organising principles of the rule of law) by clearly articulating goals or balancing competing interests;

(*b*) the ability of the executive to take flexible but reasoned decisions grounded in primary legislation; and

(*c*) the ability of the judiciary to apply statutory interpretation and consistent standards of judicial review to give effect to environmental rights and principles.

149. In 2015, the International Community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs. These 17 goals are:

(*i*) Eradication of poverty;

(*ii*) Eradication of hunger;

(*iii*) Good health and well-being;

(*iv*) Quality education;

(*v*) Gender equality;

(*vi*) Clean water and sanitation;

(*vii*) Affordable and clean energy;

(*viii*) Decent work and economic growth;

(*ix*) Industry, innovation and infrastructure;

(*x*) Reduced inequalities;

(*xi*) Sustainable cities and communities;

(*xii*) Sustainable consumption and production;

(*xiii*) Climate action;

(*xiv*) Protecting life below water;

(*xv*) Life on land;

(*xvi*) Peace, justice and strong institutions; and

(*xvii*) Partnerships to achieve the goals.

150. Each of these goals has a vital connection to the others. Together, they provide an agenda for human development : development in a manner which accords adequate protection to the environment. UNEP recognises that the natural environment—forests, soils and wetlands—contributes to the management and regulation of water availability and water quality, strengthening the resilience of watersheds and complements investments in physical infrastructure and institutional and regulatory arrangements for water access and disaster preparedness.

151. SDG 13 emphasises the urgent action required to combat climate change and its impacts. This is based on the recognition that extreme weather events such as heat waves, droughts, floods and tropical cyclones have aggravated the need for water management, pose a threat to food security, increase health risks, damage critical infrastructure and interrupt the provision of basic civil services.

152. The statistics on climate change indicate that:

152.1. Between 1880 and 2012, average global temperatures have increased by 0.85°C.

152.2. Between 1901 and 2010, as ocean expanded, the global average sea level has risen by 19 cm.

152.3. Since 1990, global emissions of CO_2 increased by almost 50%.

152.4. Between 2000 and 2010, emissions grew at a more rapid rate than each of the three decades preceding it.

153. In this backdrop, SDG 16 emphasises the need to protect, restore and promote sustainable use and management of terrestrial ecosystems and forests, combat desertification of river lands, prevent land degradation and halt the loss of biodiversity. Terrestrial ecosystems provide a range of ecosystem services including the capture of carbon, maintenance of soil quality, provision of habitat for biodiversity, maintenance of water quality and regulation of water flow together with control over erosion. Maintenance of ecosystems is hence

crucial to efforts to combat climate change, mitigate and reduce the risks of natural disasters including floods and landslides. In this backdrop, promoting environmental justice and ensuring strong institutions is quintessential to promoting peaceful and inclusive societies for sustainable development. SDG 16, therefore, construes the promotion of the rule of law as intrinsic towards implementing multilateral

environmental agreements and progressing towards internationally agreed environmental goals.

154. On 2-10-2016, India ratified the Paris Agreement[25] on climate change which reaffirmed the goal of "limiting global temperature increase to well below 2°C, while pursuing efforts to limit the increase to 1.5 degrees above pre-industrial levels". Article 5 of the Agreement encourages parties to conserve and enhance sinks and reservoirs of greenhouse gases, which include forests. Under its Nationally Determined Contributions under the Paris Agreement, India made the following three commitments[26]:

(*i*) Greenhouse gas emission intensity of its gross domestic product will be reduced by 33-35% below 2005 levels by 2030;

(*ii*) 40% of India's power capacity would be based on non-fossil fuel sources; and

(*iii*) An additional "carbon sink" of 2.5 to 3 billion tonnes of CO_2 equivalent through additional forest and tree cover will be created by 2030.

155. In March 2019, UNEP released the Global Environment Outlook themed "Healthy Planet, Healthy People"[27]. Noting clear "links between human health and the state of the environment", the report concludes that clean-up and efficiency improvements are not adequate to pursue the 2030 Agenda and SDGs and achieve the internationally agreed environmental goals on pollution control. Instead, "transformative change" which reconfigures basic social and production systems and structures is needed. This includes well-designed policies on institutional frameworks, social practices, cultural norms and values along with their implementation, compliance and enforcement. In this view, a systemic and integrated policy action[27] would ensure that a "healthy environment is a prerequisite and foundation for economic prosperity, human health and well-being"[27].

156. The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution.

157. The 2006 Notification must hence be construed as a significant link in India's quest to pursue SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The

processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.

158. Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the need for a new airport is paramount with an increasing volume of passengers and consequently the flaws in the EIA process should be disregarded. The need for setting up a new airport is a matter of policy. The role of the decision-makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed. This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened.

159. In the present case, as our analysis has indicated, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part of this judgment including the failure to acknowledge that within the study area contemplated by the Guidance Manual, there is a presence of ESZs.

160. EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. The 2006 Notification postulates that normally, MoEFCC would accept the recommendation of EAC. This makes the role of EAC even more significant. NGT is an adjudicatory body which is vested with appellate jurisdiction over the grant of an EC. NGT dealt with the submissions which were urged before it in essentially one paragraph. It failed to comprehend the true nature of its role and power under Section 16(*h*) and Section 20 of the NGT Act, 2010. In failing to carry out a merits review, NGT has not discharged an adjudicatory function which properly belongs to it.

161. In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Equally, as an area requiring balance between development of infrastructure and the environment, we are of the view that appropriate directions should be issued by this Court, which would ensure that while the need for a public project as significant as an international

airport is duly factored into the decision making calculus, such development proceeds on a considered view of the importance of the prevailing state of the environment. Bearing in mind the need to bring about a wholesome balance between the development of infrastructure of an airport and the preservation of the environment, we have come to the conclusion that time-bound directions should be issued.

162. Bearing in view the necessity to maintain a balance between the need for an airport and environmental concerns, we are of the view that it would be appropriate if EAC is directed to revisit the conditions subject to which it granted its EC on the basis of the specific concerns which have been highlighted in this judgment. Such an exercise primarily is for EAC to carry out in its expert decision-making capacity. EAC is entrusted

with that function as an expert body. The role of judicial review is to ensure that the rule of law is observed. Hence, we propose by the directions which we will issue under Article 142 of the Constitution, to direct EAC to revisit the conditions for the grant of an EC. While doing so, it would be open to EAC to have due regard to the conditions which were incorporated in the order of NGT and to suitably modulate those conditions in pursuance of the liberty which we have preserved to it. To facilitate an expeditious decision, we propose to direct EAC to carry out this exercise in a prescribed time schedule during which period, EC shall remain suspended. We propose to direct that after EAC has formulated its views, they shall be placed before this Court in a miscellaneous application in the present proceedings, so as to enable the Court to pass final orders. The miscellaneous application may be filed either by the State of Goa as the project proponent or by MoEFCC. We clarify that no other court or tribunal shall entertain any challenge to the ultimate decision of EAC and final orders thereon shall be passed by this Court in the present proceedings.

K. *Directions*

163. We accordingly issue the following directions:

163.1. EAC shall revisit the recommendations made by it for the grant of an EC, including the conditions which it has formulated, having regard to the specific concerns which have been highlighted in this judgment.

163.2. EAC shall carry out the exercise under 163.1 above within a period of one month of the receipt of a certified copy of this order.

163.3. Until EAC carries out the fresh exercise as directed above, EC granted by MoEFCC on 28-10-2015 shall remain suspended.

163.4. Upon reconsidering the matter in terms of the present directions, EAC, if it allows the construction to proceed will impose such additional conditions which in its expert view will adequately protect the concerns about the terrestrial ecosystems noticed in this judgment. EAC would be at liberty to lay down appropriate conditions concerning air, water, noise, land, biological and socioeconomic environment.

163.5. EAC shall have due regard to the assurance furnished by the concessionaire to this Court that it is willing to adopt and implement necessary safeguards bearing in mind international best practices governing greenfield airports.

163.6. We grant liberty to the State of Goa as the project proponent and MoEFCC, as the case may be, to file the report of EAC before this Court in the form of a miscellaneous application so as to facilitate the passing of appropriate orders in the proceedings.

163.7. No other court or tribunal shall entertain any challenge to the report that is to be submitted before this Court by EAC in compliance with the present order.

164. Before we part with the present case, we consider it appropriate to record a finding on the bona fides of the appellants before this Court. It was briefly urged by the respondents that the appellants have invoked the jurisdiction of this Court based on a personal agenda and consequently, the present appeal is liable to be dismissed. This argument cannot be accepted. We accept the submission of Ms Shenoy, learned counsel appearing on behalf of the appellants, that the non-consideration of vital issues by EAC

has led to the invocation of the statutory remedy available to them under Section 22 of the NGT Act, 2010. Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment. If a court comes to the finding that the appeal before it was lacking bona fides, it may issue directions which it thinks appropriate in that case. In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow.

165. The learned Attorney General for India has presented the submissions before this Court with his characteristic sense of objectivity and candour. We wish to record our appreciation for the able assistance rendered to this Court by Ms Anitha Shenoy, learned counsel for the petitioner, Mr A.N.S. Nadkarni, learned Additional Solicitor General for MoEF, Mr Parag P. Tripathi, learned Senior Counsel and Ms Aastha Mehta, learned counsel for the concessionaire.

166. The appeal is allowed in the above terms. There shall be no order as to costs.

Civil Appeal No. 1053 of 2019

167. This appeal is also disposed of in the same terms, conditions, directions and observations as in Civil Appeal No. 12251 of 2018.

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† Arising from the Judgment and Order in *Hanuman Laxman Aroskar* v. *Union of India* (National Green Tribunal, Principal Bench at New Delhi, Appeal No. 6 of 2018, 21-8-2018 sub nom *Federation of Rainbow Warriors* v. *Union of India* [National Green Tribunal, Principal Bench at New Delhi, Appeal No. 5 of 2018 (earlier Appeal No. 61/2015/WZ), dt. 21-8-2018] 2018 SCC OnLine NGT 831

[1] *Federation of Rainbow Warriors* v. *Union of India*, 2018 SCC OnLine NGT 831

[2] *Federation of Rainbow Warriors* v. *Union of India*, 2017 SCC OnLine NGT 1964

[3] *Federation of Rainbow Warriors* v. *Union of India*, 2017 SCC OnLine NGT 1962

[4] *Federation of Rainbow Warriors* v. *Conservator of Forests*, 2018 SCC OnLine Bom 329 : (2018) 3 Mah LJ 424

[5] *Hanuman Laxman Aroskar* v. *Union of India*, 2019 SCC OnLine SC 500

[6] *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

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

[8] Only for construction projects listed under Item 8 of the Schedule.

[9] Applications for EC for expansions or modernisation of *existing* units as stipulated under the notification are made in Form 1 and shall be considered by EAC or SEAC within 60 days, which will decide on the due diligence necessary including the preparation of the EIA and public consultations and the application shall be appraised accordingly for the grant of environmental clearance.

[10] See for instance Para 2.0 of the executive summary and Para 2.3.1 of Chapter I.

[11] See Para 2.3.1, Chapter II.

[12] *Utkarsh Mandal* v. *Union of India*, 2009 SCC OnLine Del 3836

[13] *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647; *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388; *M.C. Mehta* v. *Union of India*, (1997) 2 SCC 353; *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718; *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664; *Indian Council for Enviro-Legal Action* v. *Union of India*, (2011) 8 SCC 161 : (2011) 4 SCC (Civ) 87

[14] *Save Mon Region Federation* v. *Union of India*, (2013) 1 All India NGT Reporter 1

[15] *Sreeranganathan K.P.* v. *Union of India*, 2014 SCC OnLine NGT 15

[16] *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*, (2011) 7 SCC 338

[17] *Mantri Techzone (P) Ltd.* v. *Forward Foundation*, (2019) 18 SCC 494 : 2019 SCC OnLine SC 322

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[25] Entered into force on 4-11-2016.

[26] India's Intended Nationally Determined Contribution : Working Towards Climate Justice at P. 29, submitted to the UNFCCC secretariat.

[27] Global Environment Outlook 6, UNEP, 4-3-2019

(2020) 2 Supreme Court Cases 66 : 2019 SCC OnLine SC 1543

In the Supreme Court of India

(BEFORE DR D.Y. CHANDRACHUD AND AJAY RASTOGI, JJ.)

KEYSTONE REALTORS PRIVATE LIMITED . . Appellant;

Versus

ANIL V. THARTHARE AND OTHERS . . Respondents.

Civil Appeal No. 2435 of 2019[†], decided on December 3, 2019

Environment Law — Development Projects — Environment Impact Assessment Notification 2006, bearing S.O. 1533 — Paras 2 and 7 — Interpretation of — Objectives of EIA Notification, clarified

— Amendment of environmental clearance (EC) which had already been granted, for expansion of projects — Impermissibility of — Fresh clearance can be obtained from authorities for expansion, held, only by following procedure laid down under Para 7(ii) — Mandatory nature thereof, emphasised

— On facts held, amendment of EC for expansion of the project was impermissible — NGT direction of imposition of Rs One crore towards compensatory costs, affirmed — Expert committee to evaluate environmental impact and to suggest total compensatory costs to be imposed

— Held, EIA Notification seeks to ensure protection and preservation of environment during execution of new projects and expansion or modernisation of existing projects — It imposes restrictions on execution of new projects and on expansion of existing projects, until their potential environmental impact has been assessed and approved by grant of EC

— In a case where text of provisions require interpretation, court must adopt an interpretation which is in consonance with object and purpose of legislation or delegated legislation as a whole — EIA Notification was adopted with intention of restricting new projects and expansion of new projects until their environmental impact could be evaluated and understood — It cannot be disputed that as size of project increases, so does magnitude of project's environmental impact — Interpretation lending meaning that EIA Notification which would permit, incrementally or otherwise, project proponents to increase construction area of project without oversight from Expert Appraisal Committee or State Level Expert Appraisal Committee (SEAC), as applicable — It is not for courts to lay down bright-line test as to what constitutes marginal increase and what constitutes material increase — As EIA Notification currently stands,

expansion within limits prescribed by Schedule is subject to procedure set out in Para 7(ii)

— Plain reading of second half of Para 2(ii) would indicate that it applies to cases where project was initially below threshold limits stipulated in Schedule but after the proposed expansion, would breach threshold limits — Therefore, it does not cover a case where project had already crossed lower threshold limit set out in Schedule and expansion does not cross upper limit stipulated by Schedule

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— Para 2(ii) must be r/w Para 7(ii) — Para 7(ii) lays down exact procedure to be followed by project proponent in case of expansion — Two crucial aspects of Para 7(ii) are : (A) it uses phrase "expansion with increase in production capacity beyond the capacity for which prior environment clearance has been granted"; and (B) qualifying language referring to breaching threshold limits "after expansion" is absent — "Expansion" can occur even after grant of EC when project first crossed the lower limit stipulated in threshold — It is not necessary for project to breach upper limit after expansion — Therefore close reading of Para 7(ii) would mean that even after obtaining EC if project is expanded beyond limits for which the prior EC was obtained, fresh application would need to be made even if expansion is within upper limit prescribed in Schedule

— If Para 2(ii) does not cover a case where expansion is within limits stipulated by Schedule, project proponent may incrementally keep increasing size of project area over time — This would result in significant increase in project size without assessment EIA resulting from expansion — Such outcome would defeat entire scheme of EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by relevant regulatory authorities

— There is considerable merit in observations of Committee constituted by MoEF that requirement of an EC at time of expansion forms a critical step in environmental clearance regime — It assists officials not just in evaluating and mitigating any adverse impact caused by expansion but also in assessing whether project proponent is in compliance with their existing obligations — Crucially, any form of expansion necessarily puts a strain on local environment and infrastructure and needs to be carefully evaluated in holistic manner

— Lower limit of Entry 8(a) of Schedule is built-up area of 20,000 sq m and upper limit is 1,50,000 sq m — Environmental impact of construction of 1,50,000 sq m is drastically more than 20,000 sq m — At the time of

second increase in present case, total construction area of appellant's project enlarged from 32,395.17 sq m to 40,480.88 sq m — As result of such expansion, appellant constructed 16 addition flats which were sold at prevailing market rate — Appellant did not comply with procedure set under Para 7(ii) — It rather sought amendment to EC — Amendment to EC dated 13-3-2014 did not discuss potential environmental impact of increase in construction area — But merely records that construction area now stands at 40,480.88 sq m

— Procedure set out under Para 7(ii) exists to ensure that where project is expanded in size, environmental impact on surrounding area is evaluated holistically considering all relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area — This was not done in case of appellant's project — Held, it was not open to authorities to grant amendment of EC without following procedure set out in Para 7(ii)

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— As appellant had completed construction, authorities were denied ability to evaluate environmental impact and suggest methods to mitigate any environmental damage — Therefore, only remedial measures may be taken — Hence, direction of NGT to appellant to deposit Rs One crore affirmed — Expert committee constituted by NGT directed to continue its evaluation of project so as to bring environmental impact as close as possible to that contemplated in EC dt. 2-5-2013 and also suggest compensatory exaction to be imposed on appellant — Housing and Real Estate — Building/Planning Norms — Development Permission/Occupancy Certificate/NOC/Environmental NOC — Interpretation of Statutes — Basic Rules — Purposive construction/interpretation/Mischief rule/Heydon's rule — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Restitution — Disgorgement of Gains of Wrongdoer

(Paras 6 and 13 to 21)

Anil Tharthare v. *State of Maharashtra*, 2019 SCC OnLine NGT 876, *affirmed*

Keystone Realtors (P) Ltd. v. *Environment Department*, 2016 SCC OnLine Bom 9340, *cited*

The appellant, a project proponent of residential redevelopment, received commencement certificate. When project commenced, area was 8720.32 sq m. As area of construction was increased to 32,395.17 sq m, the appellant applied for

Environmental Clearance (EC) under Environment Impact Assessment (EIA). The State Level Expert Appraisal Committee for Maharashtra (SEAC) recommended the grant of an EC for the project. On 2-5-2013 the third respondent, the State Level Environment Impact Assessment Authority for Maharashtra (SEIAA), based on the recommendations of SEAC granted an EC for total construction of 32,395.17 sq m. The appellant increased total construction area by 40,480.88 sq m. Therefore, in environmental clearance given on 2-5-2013, the appellant sought amendment. Accordingly, amendment was granted to EC dated 2-5-2013.

Respondent 1 challenged grant of amended environmental clearance before the National Green Tribunal (NGT). The appellant raised several grounds questioning maintainability of petition before NGT. The contentions raised by the appellant were rejected. The appellant approached the High Court, which held that appeal on behalf of Respondent 1 not maintainable and challenge to the environmental clearance barred by limitation. However, this dispute was transferred to Principal Bench of NGT and decided against the appellant, which is challenged in this appeal. While dismissing the appeal, the Supreme Court held as above.

G-D/63343/C

Advocates who appeared in this case:

Mukul Rohatgi, Senior Advocate (Kunal Tandan, Pranaya Goyal, Aman Raj Gandhi, Nikhil Rohatgi, Abhishek Sharma, Ms Sanjana Arora, Ms Richa Saudilya and Ms Narayani Bhattacharyya, Advocates) for the Appellant;

Aditya Pratap, Munawwar Naseem, Chirag M. Shroff, Ms Mahima C. Shroff, Ms Yashika Verma and Riya Thomas, Advocates) for the Respondents.

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

1. 2019 SCC OnLine NGT 876, *Anil Tharthare* v. *State of Maharashtra* 69*a*

2. 2016 SCC OnLine Bom 9340, *Keystone Realtors (P) Ltd.* v. *Environment Department* 70*d*

The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.— The present civil appeal arises from an

order dated 11-2-2019[1] of the Principal Bench of the National Green Tribunal (NGT). In its order, NGT held that the increase in the total construction area of the appellant's project was an "expansion" under a Notification (bearing number S.O. 1533) dated 14-9-2006 (EIA Notification) of the Ministry of Environment and Forests. NGT found that the appellant had undertaken an "expansion" as set out in Para 2 of the EIA Notification without complying with the regulatory procedure prescribed. The appellant was directed to deposit an amount of rupees one crore with the Central Pollution Control Board (CPCB). Noting that the construction at the project site had been completed, NGT appointed a five-member expert committee to study the impact of the appellant's expanded project and to suggest remedial measures.

The facts

2. The appellant is the project proponent of a residential redevelopment, called "Oriana Residential Project" situated at CTS No. 646, 646 (Pt) Gandhinagar, Bandra (East), Mumbai 400 050. On 8-6-2010 the appellant received a commencement certificate to carry out the development and erect a building situated at the project property. The appellant began construction. When the construction commenced, the total construction area was 8720.32 sq m. The ambit of the project was expanded, and the constructed area was increased to 32,395.17 sq m. Under the EIA Notification, an Environmental Clearance (EC) was necessary if the total construction area exceeded 20,000 sq m. Hence, the appellant applied for an EC under the EIA Notification.

3. The fourth respondent, the State Level Expert Appraisal Committee for Maharashtra (SEAC) recommended the grant of an EC for the project. On 2-5-2013 the third respondent, the State Level Environment Impact Assessment Authority for Maharashtra (SEIAA), based on the recommendations of SEAC granted an EC. It is not in dispute that at the time when EC dated 2-5-2013 was granted, the total construction area of the project was 32,395.17 sq m. The grant of EC was conditional on the appellant obtaining a "consent for establishment" from the Maharashtra Pollution Control Board under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.

4. By a letter dated 24-9-2013, the appellant informed the Environment Department of the Government of Maharashtra, the second respondent, that the construction area was being further increased by 8085.71 sq m, as a result of which the total construction area of the project would stand enhanced to 40,480.88 sq m. In its letter, the appellant sought an "amendment" to EC dated 2-5-2013 by the third respondent to reflect the increase in the total construction area. On 13-3-2014, the third respondent granted an "amendment" to EC dated 2-5-2013 on the ground that there was only a "marginal

increase

in built-up and construction area". The third respondent noted the changes in the specification of the project as follows:

Description	*As per EC dated 2-5-2013*		*Amendment*	
FSI area	16,346.32 sq m		21,365.54 sq m	
Non-FSI area	16,048.85 sq m		19,115.34 sq m	
Total construction area	32,395.17 sq m		40,480.88 sq m	
Nos. of tenements	Members 64	Sale 61	Members 64	Sale 77
Building configuration	Member	2 Basement	Member	2 Basement

5. The first respondent, claiming to be a resident of MIG Colony, Gandhinagar, Bandra East, Mumbai, challenged the grant of the amended EC dated 13-3-2014 before the Pune Bench of NGT. In response, the appellant filed two applications, challenging the standing of the first respondent and contending that the challenge was barred by limitation. By an order dated 4-5-2016, the Pune Bench of NGT rejected the applications questioning the maintainability of the proceedings and setting up the bar of limitation. The appellant filed a writ petition before the High Court of Judicature at Bombay to challenge the decision of the Pune Bench of NGT. The Bombay High Court, allowing the writ petition held by an order dated 23-8-2016[2], that the appeal was not maintainable at the behest of the first respondent, and the challenge against the grant of the amended EC dated 13-3-2014 was barred by limitation. By an administrative order dated 31-7-2018, the dispute was transferred from the Pune Bench of NGT to the Principal Bench which heard the parties and delivered the impugned order.

Relevant clauses of the EIA Notification

6. The present dispute raises important questions regarding the interpretation of the EIA Notification. The EIA Notification seeks to ensure the protection and preservation of the environment during the execution of new projects and the expansion or modernisation of existing projects. It imposes restrictions on the execution of new projects and on the expansion of existing projects, until their potential environmental impact has been assessed and approved by the grant of an EC. Para 2 of the EIA Notification reads thus:

"2. *Requirement for prior Environmental Clearance (EC)* : The following projects or activities shall require prior environmental clearance from the regulatory authority concerned, which shall hereinafter be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

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(*i*) All new projects or activities listed in the Schedule to this notification;

(*ii*) *Expansion and modernisation of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the sector concerned, that is, projects or activities which cross the threshold limits given in the Schedule after expansion or modernisation*;

(*iii*) Any change in product — mix in an existing manufacturing unit included in Schedule beyond the specified range."

(emphasis supplied)

7. The Schedule to the EIA Notification classifies potential projects into Category 'A' and Category 'B' based on their size and potential environmental impact. Category 'A' projects require project proponents to secure an EC from the Ministry of Environment, Forests and Climate Change. Category 'B' projects require project proponents to secure an EC from the SEIAA, based on the recommendations of SEAC. Where a project falls within the parameters stipulated in the Schedule, Para 2 of the EIA Notification provides that no construction work shall begin unless an EC is granted in regard to three types of activity : (*i*) new projects or activities provided in the Schedule, (*ii*) expansion or modernisation of existing projects or activities provided in the Schedule, and (*iii*) changes in the product mix in existing manufacturing units provided in the Schedule beyond the specified range. The present dispute raises questions as to how the second type of activity, the "expansion" of existing projects, should be construed under the EIA Notification.

8. In order to secure an EC, the project proponent must submit an application in the manner set out in Form 1 and Supplementary Form 1

-A (if applicable) of the EIA Notification. Under Para 7(*i*) of the EIA Notification, the project proponent must also submit a pre-feasibility report. However, in the case of projects under Item 8 of the Schedule, only a conceptual plan is required to be submitted. Para 7(*ii*) of the EIA Notification states that:

> "7(*ii*) *Prior Environmental Clearance (EC) process for expansion or modernisation of change of product mix in existing projects*:
>
> *All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area* or production capacity in the case of mining projects or for the modernisation of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product mix *shall be made in Form 1 and they shall be considered by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultation* and the application shall be appraised accordingly for grant of environmental clearance."
>
> (emphasis supplied)

Clause (*ii*) of Para 2 of the EIA Notification requires the project proponent to secure an EC from the relevant regulatory authority prior to undertaking any "expansion" of an existing project. Para 7(*ii*) further stipulates that all applications for an EC in cases of "expansion" resulting in the increase of production capacity or lease area beyond the capacity/area stipulated in the previous EC shall be made in the manner set out in Form 1 or 1-A (as applicable).

9. The appellant's application in Form 1 acknowledges that the project fell under Entry 8(*a*) of Schedule 1 of the EIA Notification. Entry 8 deals with "Building and Construction projects having a built-up area of or greater than 20,000 sq m but less than 1,50,000 sq m". Entry 8 of the Schedule to the EIA Notification is as follows:

8 — *Building/Construction projects/Area Development projects and Townships*

8(*a*)	Building and construction projects	≥20,000 sq m and <1,50,000 sq m of built-up area	Built-up area for covered construction : in the case of facilities open to the sky, it will be the activity area
8(*b*)	Townships and area development projects	Covering an area ≥ 50 ha and or built-up area ≥1,50,000 sq m	All projects under Item 8(*b*) shall be appraised as Category B1

Issue

10. In applying for the original EC, the appellant submitted an application in Form 1 as required under the provisions of the EIA Notification. The total construction area identified in the appellant's Form 1 was 32,395.17 sq m. However, in September 2013 the appellant informed the second respondent of an increase by 8085.71 sq m as a result of which the total construction area of the project would be 40,480.88 sq m. In seeking an "amendment" to EC dated 2-5-2013 the appellant did not submit an updated Form 1. Further, the "amendment" to EC was granted by the SEIAA without the recommendations of SEAC. The issue before this Court is whether the "amended" EC dated 13-3-2014 granted by the SEIAA without following the procedure stipulated in Para 7(*ii*) of the EIA Notification is valid.

Submissions

11. Mr Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellant submitted that:

11.1. When construction began, the total construction area of the appellant's project was 8720.32 sq m. As the EIA Notification requires projects with a total built-up area of or more than 20,000 sq m to procure an EC prior to the start of construction, no EC was required before construction of the appellant's project commenced;

11.2. Pursuant to the first increase, when the appellant's project crossed the 20,000 sq m threshold provided for in the EIA Notification, the appellant submitted Form 1 and was granted a valid EC dated 2-5-2013 by the third respondent;

11.3. Pursuant to the second increase, the built-up area of the

appellant's project only marginally increased by 8085.71 sq m to a total construction area of 40,480.88 sq m, which is within the upper limit of 1,50,000 sq m prescribed by Entry 8(*a*) of the Schedule to the EIA Notification. Therefore, the second increase was not an "expansion" within the meaning of clause (*ii*) of Para 2 of the EIA Notification and no fresh Form 1 or EC was required at the time of the second increase;

11.4. Clause (*ii*) of Para 2 only applies to situations where the project crosses the lower or upper threshold limits stipulated in the Schedule. Any increase in production capacity or construction area *within the limits* set out in the Schedule would not constitute an "expansion" within the meaning of Clause (*ii*) of Para 2 and does not require compliance with the procedure under Para 7(*ii*) of the EIA Notification;

11.5. The increase in the appellant's project is only marginal and does not have an adverse impact on the environment;

11.6. The SEIAA applied its mind to the appellant's request for an "amendment"; noted that the increase in construction area was only marginal and issued an amendment to the original EC dated 2-5-2013; and

11.7. NGT had no basis to impose the fine of rupees one crore on the appellant.

12. Joining issue with the above submissions, Mr Aditya Pratap, learned counsel appearing on behalf of the first respondent submitted that:

12.1. Under clause (*ii*) of Para 2 read with Para 7(*ii*) of the EIA Notification, any expansion beyond the "threshold limit" requires a fresh EC. The appellant's project had crossed the threshold limit of 20,000 sq m and the second increase of 8085.71 sq m constituted an "*expansion beyond the threshold limit*" and hence required a fresh EC;

12.2. Once a project breaches the lower threshold limit set out in the Schedule to the EIA Notification, any expansion or modernisation, even within the upper threshold set out in the Schedule, will require the submission of a fresh Form 1 and the matter to be placed before the Expert Appraisal Committee or SEAC, as applicable in accordance with Para 7(*ii*) of the EIA Notification;

12.3. Adopting the appellant's interpretation of Clause (*ii*) of Para 2 would defeat the object and purpose of the EIA Notification as a whole. It would allow project proponents to incrementally increase the construction area and over time significantly impinge on the environmental impact of the project without seeking a fresh EC;

12.4. If the law prescribes an act to be done in a particular manner, it must be done only in that manner and no other. Under Para 7(*ii*) of the EIA Notification, it was incumbent on the SEIAA to place the matter

before SEAC for appraisal and recommendations; and

12.5. The EIA Notification is an operationalisation of the precautionary principle, which forms a part of the environmental law of India. The EIA Notification must be read in a manner which gives effect to the precautionary principle.

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Interpreting Paras 2 and 7

13. The central controversy between the parties to the present dispute is the manner in which Paras 2 and 7 of the EIA Notification should be interpreted. Clause (*ii*) of Para 2 of the EIA Notification stipulates that a project proponent shall require an EC prior to the start of construction in the case of an "expansion". Clause (*ii*) uses the phrase "expansion…beyond the limits specified for the sector concerned". The first respondent sought to lay emphasis on this construction to argue that any expansion beyond the lower limit stipulated in the Schedule would attract the requirement of a prior EC under Para 2. However, the above language in Clause (*ii*) is further qualified by the phrase "that is, projects or activities which cross the threshold limits given in the Schedule *after* expansion or modernisation". A plain reading of the second half of Clause (*ii*) would indicate that it applies to cases where a project was initially below the threshold limits stipulated in the Schedule but after the proposed expansion, would breach the threshold limits. Clause (*ii*) of Para 2 of the EIA Notification therefore would not appear to cover a case where a project had already crossed the lower threshold limit set out in the Schedule and the expansion does not cross the upper limit stipulated by the Schedule.

14. However, Clause (*ii*) of Para 2 must be read with Para 7(*ii*) of the EIA Notification. Para 7(*ii*) lays down the exact procedure to be followed by a project proponent in the case of an expansion. Two crucial points must be noted with respect to Para 7(*ii*). First, it uses the phrase, "expansion with increase in production capacity *beyond the capacity for which prior environment clearance has been granted*". Second, the qualifying language referring to breaching the threshold limits "after expansion" is absent. An "expansion" can occur even after the grant of an EC when the project first crossed the lower limit stipulated in the threshold and it is not necessary for the project to breach the upper limit after the expansion. Therefore, a close reading of Para 7(*ii*) would support the interpretation put forth by the first respondent — that even

after obtaining an EC if the project is expanded beyond the limits for which the prior EC was obtained, a fresh application would need to be made even if the expansion is within the upper limit prescribed in the Schedule.

15. The dangers effectively articulated by the learned counsel for the first respondent are real. If Clause (*ii*) of Para 2 does not cover a case where the expansion is within the limits stipulated by the Schedule, a project proponent may incrementally keep increasing the size of the project area over time resulting in a significant increase in the project size without an assessment of the environmental impact resulting from the expansion. Such an outcome would defeat the entire scheme of the EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by the relevant regulatory authorities. In the present case, the lower limit of Entry 8(*a*) of the Schedule is a built-up area of 20,000 sq m and the upper limit is 1,50,000 sq m. It cannot be doubted that the environmental impact of a construction of 1,50,000 sq m is drastically more than construction of 20,000 sq m. If the appellant's argument is accepted in totality, a project proponent could potentially secure an EC for constructing 20,000 sq m and by

"amendment" steadily increase the area of construction up to 1,50,000 sq m without submitting an updated Form 1 or any substantive review by SEAC.

16. We note that subsequent to the EIA Notification being published in 2006, a draft notification was issued on 19-1-2009[3]. The draft notification proposed the following amendment:

> "In Para 2 [of the EIA Notification], after sub-para (*iii*), the following shall be inserted; namely:
>
> However modernisation or expansion proposals without any increase in pollution load, and, or without any additional water and or land requirement are exempted from the provisions of this Notification:
>
> Provided that, a self-certification, stating that the proposals shall not involve any additional pollution load, waste generation or water requirement, be submitted to the regulatory authority by the project proponent."

17. Prior to adopting the draft notification, hearings were conducted and written comments were solicited from various stakeholders including : (*i*) Central Ministries and Departments, (*ii*) State

Governments and their Agencies, (*iii*) Industries and their Associations, and (*iv*) Civil Society including NGOs. A committee was constituted by the Ministry of Environment and Forests, Government of India which published a report in October 2009. The committee specifically recommended against the adoption of the above amendment, noting:

> "The amendments propose to exempt modernisation and expansion of projects based on a self-certification by project authorities that there is no increase in pollution load. *It is totally unacceptable that the modernisation and expansion of projects be removed from the environmental clearance regime, with or without the requirement of self-certification*. There are several industries operating in critically polluted areas or are in violation of their environmental clearance conditions, which need to be considered before the expansion of a project is considered. What is to be considered is not just whether there is an increase in pollution load but also the current impact of the project and its compliance with environmental clearance conditions. We can provide clear examples wherein the non-compliance of the clearance conditions has not been considered while granting clearance for expansion which includes adding new components to the existing industrial operations, etc. This has allowed several projects to continue their activities and expand despite blatant non-compliance. Finally, it is only with industrial, thermal power and other such related operations that one can decide on parameters of pollution. *Development projects like highways, airports and other infrastructure projects which seek to expand might have a detrimental impact due to factors such as change in land use (i.e. construction over a wetland, grassland or agricultural land, etc.)*. Despite this, the project proponent can certify that there is no change in pollution

load and hence expansion is to be allowed. *The current process seeks a detailed EIA report to determine whether impacts can be mitigated. If the amendment is brought into force, it will simply do away with this critical and necessary step in the environmental clearance process*. Therefore, this amendment should not be allowed.

* * *

> The draft notification takes a myopic view of environmental and social impact of modernisation and expansion. *Any modernisation/expansion projects will necessarily entail increase in production, increase in transportation, increase in pressure on the*

local infrastructure and local natural resources and increase in the pollution load during the construction phase. So, even if a modernisation/expansion does not lead to an increase in the pollution load or water or land requirement within the factory premises during the operation phase, it will lead to an increase in environmental and social impact outside the premise."

(emphasis supplied)

18. The draft amendment was not adopted in subsequent amendments to the EIA Notification. We find considerable merit in the observations of the committee that the requirement of an EC at the time of expansion forms a critical step in the environmental clearance regime. According to the committee, it assists officials not just in evaluating and mitigating any adverse impact caused by the expansion but also in assessing whether the project proponent is in compliance with their existing obligations. Crucially, any form of expansion necessarily puts a strain on the local environment and infrastructure and needs to be carefully evaluated in a holistic manner.

19. In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project's environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or SEAC, as applicable. It is true that there may exist certain situations where the expansion sought by a project proponent is truly marginal or the environmental impact of such expansion is non-existent. However, it is not for this Court to lay down a bright-line test as to what constitutes a "marginal" increase and what constitutes a material increase warranting a fresh Form 1 and scrutiny by the Expert Appraisal Committee. If the Government in its wisdom were to prescribe that a one-time "marginal" increase (e.g. 5% or 10%) in project size, within the threshold limit stipulated in the Schedule, could be subject to a lower standard of scrutiny without diluting the urgent need for environmental protection, conceivably this Court may give effect to such a provision. This would be subject to any challenge on the ground of there being a violation of

the precautionary principle. However, as the EIA Notification currently stands, an expansion within the limits prescribed by the Schedules would be subject to the procedure set out in Para 7(*ii*).

20. At the time of the second increase, the total construction area of the appellant's project was enlarged from 32,395.17 sq m to 40,480.88 sq m. As a result of the expansion, the appellant constructed sixteen additional flats which were sold at the prevailing market rate. The appellant did not comply with the procedure set out under Para 7(*ii*) of the EIA Notification but rather sought an "amendment" to EC. The third respondent did not require the appellant to submit an updated Form 1 nor was the proposal processed and evaluated by the fourth respondent. The "amendment" to EC dated 13-3-2014 does not discuss the potential environmental impact of the increase in construction area, but merely records that the construction area now stands at 40,480.88 sq m. The procedure set out under Para 7(*ii*) of the EIA Notification exists to ensure that where a project is expanded in size, the environmental impact on the surrounding area is evaluated holistically considering all the relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area. This was not done in the case of the appellant's project. It was not open to the third respondent to grant an "amendment" to EC without following the procedure set out in Para 7 (*ii*) of the EIA Notification.

21. We further note that as on the date of the impugned order construction at the project site had already been completed. A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of a project. By completing the construction of the project, the appellant denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage. At this stage, only remedial measures may be taken. NGT has already directed the appellant to deposit rupees one crore and has set up an expert committee to evaluate the impact of the appellant's project and suggest remedial measures. In view of these circumstances, we uphold the directions of NGT and direct that the committee continue its evaluation of the appellant's project so as to bring its environmental impact as close as possible to that contemplated in EC dated 2-5-2013 and also suggest the compensatory exaction to be imposed on the appellant.

22. The appeal is dismissed. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of.

† Arising from the Judgment and Order in *Anil Tharthare* v. *State of Maharashtra*, 2019 SCC OnLine NGT 876 [National Green Tribunal, Principal Bench at New Delhi, Appeal No. 122 of 2018 (Earlier Appeal No. 9 of 2014), dt. 11-2-2019]

[1] *Anil Tharthare* v. *State of Maharashtra*, 2019 SCC OnLine NGT 876

[2] *Keystone Realtors (P) Ltd.* v. *Environment Department*, 2016 SCC OnLine Bom 9340

[3] Notification S.O. 195(E) dated 19-1-2009.