

THE HON’BLE NATIONAL GREEN TRIBUNAL
AT ITS PRINCIPAL BENCH, NEW DELHI
APPEAL NO. 15 OF 2025

IN THE MATTER OF: -

Vasant Kunj RWA, Sector-B, Pocket-1 Appellant

-Versus-

Ministry of Environment, Forest & Climate Change & Ors. Respondents

COMPILATION OF JUDGMENTS, LEGAL REFERENCES AND LATEST
DOCUMENTS ON BEHALF OF APPELLANT

INDEX

S.No.	Date	Case Particulars along with Citation	Relevant Paragraphs	Page No.(s)
<i>HC Orders restricting RR Texknit from creating third party rights</i>				
1.	12.01.2026	Delhi High Court – Masonic Public School through its Authorised Representative v. DDA & Others [W.P. (C) No. 17433/2025] The Delhi High Court accepted the undertaking of R.R. Texknit that no third party rights will be created.		2832- 2833
2.	27.03.2026	Delhi High Court – Masonic Public School through its Authorised Representative v. DDA &		2834- 2836

		Others [W.P. (C) No. 17433/2025] Notice was issued on the Application by R.R. Texknit for withdrawing the Undertaking given on 12.01.2026 for not creating any third party rights.		
<i>Orders/ Judgments on concealment, misrepresentation, carrying capacity and non-application of mind by EAC</i>				
3.	22.08.2013	NGT (PB) in Gau Raxa Hitaxak Manch and Gauchar v. Union of India [Appeal No. 47 of 2012]	Para 33	2837-2864
4.	28.05.2014	NGT (SZ) in Sreeranganathan K.P. v. Union of India & Ors. [2014 SCC OnLine NGT 5631]	Para 153, 154	2865-3011
5.	29.01.2016	NGT (PB) in Save Mon v. Union of India [Appeal No. 39 of 2012]	Para 17, 22	3012-3037
6.	21.12.2016	NGT (PB) in Debadityo Sinha Ors. vs Union of India (Appeal 79 of 2014)	Para 26, 35, 39 and 40	3038-3086
7.	29.03.2019	Supreme Court in Hanuman Laxman Aroskar v. Union of India & Ors. [(2019) 15 SCC 401]	Para 60, 61, 62, 82	3087-3155
8.	13.02.2026	Supreme Court in Harbinder Singh Sekhon v. State of Punjab & Ors. [(2026) SCC OnLine 204]	Para 7.11, 7.13, 29-33, 51-52, 58, 61	3156-3183
<i>Orders/Judgments of SC, HC and NGT on Delhi Ridge</i>				
9.	15.03.2011	Delhi High Court - Freedom Fighters Social Welfare Association v. Union of India and Others [W.P.(C) No. 3338 of 2021]	Para 20-23	3184-3192

10.	29.06.2016	Supreme Court - in DDA vs Kenneth Builders & Developers [2016 13 SCC 561]		3193-3214
11.	29.11.2021	Supreme Court in T.N. Godavarman v. Union of India & Others [W.P. (C) No. 202 of 1995]		3215-3274
12.	15.03.2023	Supreme Court in T.N. Godavarman [I.A. No.191635/2022 in W.P.(C) No. 202 of 1995]		3275-3292
13.	28.05.2025	Supreme Court in Bindu Kapurea Vs. Subhashish Panda and Ors.		3293-3340
14.	06.08.2025	Supreme Court in T.N. Godavarman [I.A. NO. 117204 OF 2024 (CEC Report No. 5 of 2024 - Status Report in Delhi Ridge) and Issue Regarding Order dated 16.04.2025 passed in W.P.(C)No. 4677 of 1985].		3341-3364
15.	11.11.2025	Supreme Court in In Re: Delhi Ridge [I.A. No. 117204 of 2024 in W.P. No. 202 of 2995] titled T.N. Godavarman v. Union of India and Others.	Para 37 and 57(iii)	3365-3403
<i>Orders/Judgments on Plagiarism and Suppression of Facts in the EIA Report</i>				
16.	08.04.2019	Madras High Court in P.V. Krishnamoorthy vs Government of India & Ors.).	Para 96, Page 127	3404-3538
<i>Court Judgments have retrospective Application</i>				
17.	23.07.2007	Supreme Court in P.V. George v. State of Kerala, (2007) 3 SCC 557.		3539-3551

18.	22.06.2022	Supreme Court in Manoj Parihar & Ors. v. State of Jammu & Kashmir & Ors [SLP (C) No. 11039 of 2022]		3552-3578
19.	27.02.2025	Supreme Court in Kanishk Sinha & Another v. the State of West Bengal & Another [Special Leave Petition (Criminal) No. 8609-8614 of 2024]		3579-3585
20.	17.04.2025	Supreme Court in Directorate of Revenue Intelligence v. Raj Kumar Arora & Ors [Criminal Appeal No. 1319 of 2013, 272 of 2014]	Para 94	3586-3777
Orders /Judgments on requirement of Consent To Establish				
21.	18.02.2026	NGT(PB) in Rainbow Environments Pvt. Ltd. v. MOEF&CC & Others [Appeal No. 16 of 2025]	Para 9	3778-3783
Legal References				
22.	14.02.2000	The Noise Pollution (Control and Regulation) Rules, 2000 issued by the MoEF&CC		3784-3791
23.	24.09.2025	Letter from the Department of Forests and Wildlife, GNCTD to all land owning agencies in NCT of Delhi issuing the Standard Operating Procedure (SOP) on “Morphological Ridge” as per the map provided by the Geological Survey of India (GSI).		3792-3798
Additional Documents				
24.	February 2026 - April 2026	Latest Photographs of the Construction Site		3799-3804

25.	09.04.2026	Show Cause Notice by the SDM to R.R. Texknit for undertaking illegal mining and excavation of the basement.		3805-3806

Date: 18.04.2026

Place: New Delhi

DRAWN AND SUBMITTED BY:



Mansi Bachani, Gitanjali Sanyal & Surya Gupta
Advocates for the Appellant
29, LGF, Presidential Estate, Nizamuddin East,
New Delhi- 110013
Email: eldflegal@gmail.com; +91- 8851323704



\$~46

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 17433/2025 & CM APPL. 72015/2025**

**MASONIC PUBLIC SCHOOL THROUH ITS AUTHORIZED
REPRESENTATIVE**

.....Petitioners

Through: Ms. Vibha Mahajan, Sr. Advocate
with Mr. M Poudiuwibou and Ms.
Mahima Dutt, Advocates.

versus

**DELHI DEVELOPMENT AUTHORITY THROUGH IS VICE
CHAIRMAN & ORS.**

.....Respondents

Through: Ms. Prabhsahay Kaur, Standing
Counsel with Mr. Aditya Verma and
Ms. Anmol M. Kaur, Advocates for
DDA.

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

**ORDER
12.01.2026**

%

1. A request for adjournment is made on behalf of respondent no.3.
2. Rejoinder affidavit, if any, be filed by the petitioner within two (2) weeks from today.
3. Counsel appearing for respondent no.3 submits that no third-party rights shall be created by them on the subject land, which is a part of the Housing Project, without the permission of this Court.
- 3.1 The aforesaid statement is taken on record and respondent no.3 shall be bound by the same.

2833



4. List on 22nd April, 2026.

AMIT BANSAL, J

JANUARY 12, 2026

Vivek/-



\$~15 & 16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11283/2024, CM APPL. 46717/2024, CM APPL. 59819/2024, CM APPL. 59822/2024, CM APPL. 10311/2025, CM APPL. 47356/2025, CM APPL. 11954/2026

VASANT KUNJ RESIDENTS WELFARE ASSOCIATION
SECTOR B POCKET 1 & ORS. Petitioner

Through: Mr. Ajay Verma, Senior Advocate
with Mr. Shreyuss Shankar Joshi, Mr.
Shresth Arya and Ms. Amisha
Awasthi, Advocates

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI & ORS. Respondents

Through: Mr. Sanjay Kumar Pathak, SC for R-
1/L & B with Mr. Sunil Kumar Jha,
Ms. Joohu Kumari, Advs.
Mr. Anurag Ahluwalia, Senior
Advocate with Ms. Devika Mohan and
Mr. Aakash Sehrawat, Advocates
for R-4 to R-14
Mr. Vikas Chopra, Standing Counsel
for MCD with Mr. Neeraj Kumar,
Adv. for MCD

16 AND

+ W.P.(C) 17433/2025, CM APPL. 72015/2025

MASONIC PUBLIC SCHOOL THROUGH ITS AUTHORIZED
REPRESENTATIVE Petitioner

Through: Ms. Vibha Mahajan Seth, Sr. Adv.
with Ms. Eshna Kumar, Ms. Mahima
Dutt, Mr. M. Poudinwibon, Advs.

versus

DELHI DEVELOPMENT AUTHORITY THROUGH ITS VICE
CHAIRMAN & ORS. Respondents

Through: Ms. Prabhsahay Kaur, SC with Mr.



Aditya Verma, Ms. Anmol Kaur,
Advs. for R-1/DDA.
Mr. Anurag Ahluwalia, Senior
Advocate with Ms. Devika Mohan and
Mr. Aakash Sehrawat, Advocates
for R-3
Mr. Tushar Sannu, SC with Mr.
Fajallu Rehman, Advs. for MCD

CORAM:
HON'BLE MS. JUSTICE SHAIL JAIN

ORDER

% 27.03.2026

CM APPL. 18430/2026 (To withdraw the Undertaking) in W.P.(C.)11283/2024

CM APPL. 18403/2026 (To withdraw the Undertaking) in W.P.(C.) 17433/2025

1. The present Applications have been filed by Respondent No. 4 in W.P.(C) 11283/2024 and Respondent No. 3 in W.P.(C) 17433/2025, under Section 151 of the Code of Civil Procedure, 1908, seeking modification of the Order dated 12th January, 2026, to the extent that the statement/undertaking made by the Counsel for Respondent - M/s R.R. Texknit LLP, restraining Respondent No. 4 in W.P.(C) 11283/2024 and Respondent No. 3 in W.P.(C) 17433/2025 from creating third-party rights in respect of the subject property, be withdrawn/relieved in view of subsequent developments pertaining to the subject premises.

2. Order dated 12th January, 2026, reproduced as under;

“1. A request for adjournment is made on behalf of counsel appearing for respondents no.4 to 14.

2. Counsel appearing for respondents no.4 to 14 submits that no third party rights shall be created by them on the subject



land, which is a part of the Housing Project, without the permission of this Court.

2.1 The aforesaid statement is taken on record and respondents no.4-14 shall be bound by the same.

3. List on 22nd April, 2026.”

3. Issue notice.
4. Learned Counsel appearing on behalf of the non-applicant/Petitioners, who appears on advance notice, accepts notice and seeks time to file a reply.
5. Reply to both the Applications shall be filed within a period of one week, with an advance copy duly served upon the other side. Rejoinder thereto, if any, be filed two days before the next date of hearing
6. List the matter on 8th April, 2026, at 12.00 p.m.

SHAIL JAIN, J

MARCH 27, 2026

Pallavi/MM

2837

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

APPEAL No. 47/2012

22nd AUGUST, 2013

CORAM:

- 1. Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**
- 2. Hon'ble Dr. P.C. Mishra
(Expert Member)**
- 3. Hon'ble Shri P.S. Rao
(Expert Member)**
- 4. Hon'ble Shri Ranjan Chatterjee
(Expert Member)**

B E T W E E N:

1. Gau Raxa Hitraxak Manch and Gauchar
Paryavaran Bachav Trust, Rajula
Through its President, Chetan N. Vyas
Having its Office at Ramji Mandir,
At PO Bherai, Tal: Rajula,
District Amreli.

....Appellant

A N D

1. Union of India
through the Secretary,
Ministry of Environment and Forests,
CGO Complex, Lodhi Road

New Delhi - 110003

2. Gujarat Pollution Control Board

Through its Member Secretary,

Paryavaran Bhavan, Sector 10-A

Gandhi Nagar 382043 Gujarat

3. M/s Gujarat Pipavav Port Ltd.

Empire Industries Complex,

Senapati Bapat Road, Lower Parel (W),

Mumbai – 400 013

.....Respondents

(Advocates appeared: Mr. Ritwick Dutta along with Mr. Rahul Choudhary, Ms. Parul Gupta and Ms. Srilekha Sridhar, Advocates for Appellant, Ms. Neelam Rathore along with Mr. Vikramjeet Singh and Ms. Syed Amber, Advocates for Respondent No. 1, Ms. Hemantika Wahi along with Mr. S. Panda, Advocates for Respondent No. 2 and Mr. P.S. Narasimha, Senior Advocate along with Mr. Vishrov Mukerjee, Ms. Apoorva Misra and Ms. Radhika Gupta, Advocates for Respondent No. 3)

NGT

J U D G M E N T

This is an Appeal against order dated 05.06.2012 passed by Ministry of Environment & Forests (MoEF) (R-1) granting Environmental Clearance (EC) to expansion of a Port. M/s Gujarat Pipavav Port Ltd. (R-3) initially started its port in 1998. The port was gradually expanded on three occasions, in the years 2000, 2003, and 2006. The present Appeal is filed under section 14(1) of the National Green Tribunal Act, 2010 challenging the EC dated 05.06.2012, granted for further expansion of the Port, about three times of the current length for handling 26 million tonnes of bulk and about 8 times of TEU's Containers than the present capacity, to M/s Gujarat Pipavav Port Ltd. (R-3).

Facts not in dispute:

2. For establishment of the port, M/s Gujarat Pipavav Port Ltd. (R-3) acquired 624 hectare land. M/s Gujarat Pipavav Port Ltd. (R-3) is a Company incorporated under the Companies Act. The location of the Port is at Rajula, a Taluka place (Dist. Amreli) in the State of Gujarat. In the first phase, the Port started with one berth. The Company was previously a joint venture of the Government of Gujarat (Gujarat Maritime Board) and Seaking Engineers Limited. The latter is now known as "SKIL Infrastructure Limited. Subsequently, SKIL Infrastructure Limited divested its

stake in favour of APM Terminals Mauritius Ltd., which is the largest shareholder of the said Company at present. The expansion of the port was done in four phases between 1990 till 2006. The Port has four dry cargo berths, continuous quay length of around 725 meters with additional 350 meters of quay length as well as an LPG berth for handling LPG and liquid cargo. The port has its container storage yard on an area of 11 hectares. It has got coal storage area in 17 hectare land. It has a deep draft of 14.5 meters. Presently, the Port handles more than 3 million tonnes of bulk and 0.6 millions TEU containers per annum.

3. The Appellant is a registered trust. The Appellant proclaims itself as environmental and social activist.
4. By the impugned order, the MoEF (R-1) granted EC for expansion of the port and modernisation thereof. The expansion and modernisation encompasses proposed addition of berths, utilisation of more area and installation of equipment which will have enhanced capacity as stated above to handle the cargos. There is Mangrove forest alongside the coastal wall of the port in question.
5. The proposed expansion of the project stipulates extension of quay length of berth by 2450 meters, nearly three times of current length , with a view to handle more tonnes of bulk and approximately eight times of TEUs container of the current handling rate.

FACTS IN DISPUTE:

6. The Appellant alleges that several complaints were made against M/S Gujarat Pipavav Port Ltd. (R-3) regarding non-compliance of the conditions which were set-out while granting ECs in 1998, 2000, 2003 and 2006. The proposed expansion and modernization is much in excess and will adversely affect the Mangrove forest, migratory bird habitats, and various species of wild fauna. M/s Gujarat Pipavav Port Ltd. (R-3) has encroached on Gauchar Land (village grazing land). That will cause adverse impact on the live-stock and livelihood of the villagers. The ground water available to the villagers will also be adversely impacted due to the expansion of the port. The salinity of the land in the villages around the port will increase and as such the crops will be adversely affected. The coal dust generated due to movement of the carriage vehicles, which will be disproportionately increasing, will cause health hazard to the villagers residing in the surrounding areas.
7. The Expert Appraisal Committee (EAC) in its 82nd meeting held on dated 23/24.11.2009 considered the proposal of M/s Gujarat Pipavav Port Ltd. (R-3). The additional Terms of Reference (TORs) were finalized and issued on 18.12.2009. The Environment Impact Assessment (EIA) Report was prepared by M/s Gujarat Pipavav Port Ltd.(R-3) based on the TOR furnished by the project proponent and additional TOR provided by EAC.

M/s Aquatech Enviro Engineers, Bangalore was engaged by M/s Gujarat Pipavav Port Ltd. (R-3) to conduct study of the impact assessment. The EIA Report was submitted by M/s Gujarat Pipavav Port Ltd. (R-3) to the MoEF during February 2011. A public hearing was held in 12.05.2011.

8. The Appellant has come out with a case that in spite of the fact that several issues were raised during course of the public hearing, no appropriate responses were given by M/s Gujarat Pipavav Port Ltd. (R-3). The EAC held its meeting on 5th - 7th March, 2012 and recommended EC for the proposed Expansion-modernisation. The MoEF accepted the recommendation and granted the EC for the proposed expansion and modernization of the port vide the impugned order dated 05.06.2012. According to the Appellant, the EAC did not apply its mind to the nature of expansion and modernization of the port which would have serious adverse impact on the life of the villagers. The issues relating to the problems of ballast waste water management and concerns raised by the villagers during the Public Hearing were also not taken into account. The Appellant further alleges that the EAC did not consider the objections raised by the members of the public and the representations made before grant of the EC. The EAC failed to consider management of water resources available at the project site of M/s Gujarat Pipavav Port Ltd. (R-3). If the port is expanded through the EC in question, it will curtail the right of the villagers for grazing their cattle on

part of the Gauchar land. The EAC overlooked previous conduct of M/s Gujarat Pipavav Port Ltd. (R-3) and MoEF blindly granted the EC violating the provisions of the law. The beneficial activities like provision for medical facilities, health care facilities and employment to the villagers had not been considered. The EIA Report does not project a comprehensive picture of the adverse effects due to expansion of the project. The area should be free from such unsustainable activities because the surrounding area of the project site is the habitat of endangered species like Lions, Leopards, etc. The Project Proponent has also not provided information regarding waste management. The violations of the terms and conditions of EC granted earlier have also not been looked into by the EAC. The order passed by the MoEF (R-1) is without application of mind, based on mere report of the EAC and without giving any tangible reason for grant of the EC. Hence, the Appellant sought quashing of the impugned EC.

9. The reply affidavit of MoEF (R-1) says that the impugned order is issued after due consideration of the relevant material. The expansion project does not involve any more land to be acquired. The MoEF noticed that the study report of National Institute of Ocean Technology (NIOT) supported the request of M/s Gujarat Pipavav Port Ltd. (R-3). It is stated that public hearing was held on 12.05.2011 in accordance with procedure laid down in the MoEF Notification dated 14.09.2006. It is further asserted

that the EAC recommended the project after the public hearing and, therefore, considering all the relevant material the EC was granted with conditions which would take adequate care of environment management. For example, the Project Proponent was directed to (i) provide minimum 100 meter buffer from the mangroves, (ii) document with latest satellite map of the area of mangroves and submit the same to the MoEF for verification and compliance.(iii) grow and maintain green belt of not less than 33% along with boundary of the port, (iv)unload the dry cargo into hopper to transport the same through closed conveyor system to the storage yard, etc. These conditions will mitigate the apprehended adverse impact on the environment. In the public hearing, held within premises of the Port itself, about 231 members of the public were present and a good number of people participated. The Project Proponent duly responded to the queries raised by the public members during the public hearing. Thus, there was a fair play in the proceedings of the public hearing. The project was recommended for clearance by the EAC on the basis of available study reports and information. It is denied therefore that the EAC did not apply its mind to the material. The MoEF, therefore, sought dismissal of the Appeal.

10. The Gujarat Pollution Control Board (R-2) also supported the pleadings of the MoEF and adopted the same. It is not necessary, therefore, to separately

reproduce the pleadings of the GPCB, since it would cause repetition and statement of overlapping averments.

11. By filing reply affidavit, M/s Gujarat Pipavav Port Ltd. (R-3) denied all the material averments made by the Appellant. The main contention of M/s Gujarat Pipavav Port Ltd. (R-3) is that there was no requirement of additional acquisition of land for the expansion and modernization of the port. Nor there would be extraction of ground water. It is denied that the expansion and modernization of the project would adversely impact the environment. It is further denied that issues raised in the public hearing were not properly responded. It is also denied that the EAC failed to take into consideration various issues raised in the public hearing. The Project Proponent denied that conditions set-out in the earlier ECs were violated by it.
12. According to the Project Proponent (R-3), on 16.05.2011, the Regional Officer, GPCB, who conducted the public hearing, forwarded the proceedings of the public hearing to the Member Secretary, GPCB and, thereafter, the Project Proponent submitted a revised EIA Report taking into consideration all the issues which were raised in the public hearing. The case of the Project Proponent is that the project will not cause any danger to the wildlife. The Project Proponent also avers that hazardous waste materials will be properly disposed of by recycling and processing method. The Project Proponent submits that

the MoEF granted the EC after due consideration of the material. It is also the case of the Project Proponent that the MoEF is not required to give detailed reasons while granting the EC. Hence, the Project Proponent sought dismissal of the Appeal.

Contentions of Counsel of the Appellant:

13. Mr. Ritwick Dutta, Learned Counsel of the Appellant strenuously argued that the answers given by the Project Proponent during the course of the public hearing were evasive and dissatisfactory. He would submit that presence of Lions in Rajula Taluka near the project site was noticed and therefore victims of the attack by the Lions were granted compensation by the State Government. He contended that the impugned order reveals the “cut and paste” method was adopted by the MoEF (R-1). He argued that 18 points were sought to be clarified during the course of public hearing but appraisal of the responses of the project Proponent to the queries raised by the Public members have not been considered by the MoEF. For example, adequacy of road capacity, connectivity of Shiyalbet (a small island village), impact of excessive dredging had not been duly considered by the MoEF. Mr. Dutta contended that the impugned order is bereft of reasons. He further argued that the EIA Reports were not adequate and no study was conducted on important issues like traffic management, coal dust management, the

responses to additional ToRs as given by the Project Proponent.

14. Mr. Dutta submits that there is no provision for social welfare programme in the conditions imposed by the MoEF and therefore, the impugned order is defective. He would submit that the compliance of earlier conditions were also not verified by the GPCB and as such the expansion project should not have been granted EC.

15. The chief bone of contention of Mr. Dutta is that without giving reasons, the MoEF could not have granted the EC. According to him, the EC is bad in law because it is a non-speaking order. He submits that lack of reasons in the impugned order by itself is sufficient to set-aside the same.

16. Ms. Neelam Rathore and Shri Vikramjit Singh, Learned Counsel appearing for MoEF (R-1) argued that the EC was granted after due consideration of the materials on record. They also argued that the EIA Report sufficiently gave inputs for consideration of the MoEF. They further submitted that necessary mitigating measures were taken by imposing stringent conditions on the Project Proponent. Consequently, they supported the impugned order dated 05.06.2012.

17. Shri Narasimha, Learned Senior Counsel appearing for the Project Proponent submitted that though the expansion was sought and executed on previous occasions in 2005 and 2006 yet no grievance was made by any single

member of the public in the surrounding area. He would submit that when the EAC took decision, the discussion in its meeting itself indicated application of mind. His main argument is that the Regulation 7 of the MoEF Notification dated 14.09.2006 does not mandate recording of reasons if the project is to be cleared. He contended that reasons are required to be stated in the order of MoEF, only if the EC is to be rejected. He submitted that Oceanography Study report, details of the EIA Report and proceedings of public hearing were considered by the EAC and therefore, the expansion project was cleared. He would submit that fair public hearing was held.

18. He would submit that the application of mind is clear because the competent authority, upon consideration of EIA Report, again sought further information/clarification to take care of all the relevant issues. The very fact that the TOR had been modified speak, by itself, of application of the mind. He argued that mere movement of some stray animals at some other places in Rajula Taluka cannot be an impediment in the expansion and modernization of the port. He points out that the Gir Wildlife Sanctuary, being the habitat of Asiatic Lions, is approximately 100 km away from the port area. He further submitted that the Mangroves had been grown by the Project Proponent after the grant of first EC and there was no Mangrove forest in existence in the vicinity of the project site before the project was made operational in the first phase. He submitted,

therefore, that there will be no destruction of Mangrove forest and moreover the condition to maintain a buffer zone will take adequate care of the protection required for the Mangrove reserve. He also pointed out that sewerage plant has been installed. He submitted that coal handling will be done in transport vehicles covered with tarpaulin and as such there is no possibility of pollution on account of spreading of coal dust in the nearby area.

19. Considering the above submissions of the Learned Counsel, we deem it proper to formulate following questions for deciding the Appeal:

- (i). Whether the impugned order suffers from serious infirmity due to absence of reasons?
- (ii). Whether it is necessary to record the reasons only when rejection of EC sought by the Project Proponent is contemplated and not otherwise?
- (iii). Whether the public hearing was conducted appropriately and that it was fairly recorded by the GPCB as per the norms of the MoEF Notification dated 14.09.2006?

20. Before we proceed to consider merits of the main question raised by Mr. P.S. Narasimha, Learned Senior Counsel, it would be appropriate to first deal with the third point. We have gone through the relevant proceedings of the public hearing. It appears that the public hearing was held within the premises of the port. The public hearing was attended by 231 members of the public. Not only that a

large number of public members were present during the public hearing and quite a good number participated but many written representations were also submitted during course of the public hearing by members of the public. Questions were raised in the public hearing, in the context of provision to allow access to the residents of "Shiyalbet village (Island) because they were being denied use of the road connected to the main highway. Objection was also raised for the expansion of the port on the ground that dredging activity is likely to cause pollution. It was also stated by some Agriculturists that the coal dusting due to handling of the cargos in the port, without taking proper care, has caused damage to the crops and the trees in the nearby area and unless proper solution is given to such problem, the project may not be cleared.

21. We have noticed from the record of the statement showing issues raised by the participants and responses of the representative of the project proponent, that some of the written responses were given to the queries. Still, however, some questions raised have not been answered. For example, Shri Mayabhai Vallabhai raised question regarding coal dust generated due to handling/transportation from the port. No response appears to have been given by the project proponent to the said query. So also, Shri Gondalia Vipul Bansidas raised question regarding proper amenities for Shiyalbet. The response to such question is also vague. Moreover, queries

raised by Babubhai Vallabhai about road access remained unanswered.

22. It appears from the record that after the public hearing, additional TOR were issued and the Project proponent was called upon to satisfy the authority about measures adopted for protection of the environment. In our opinion, there was adequate participation of the public members and the public hearing was properly held by the GPCB.

23. At this juncture, let it be noted that the MoEF Notification dated 14.09.2006 comprises certain stages to be followed before grant or refusal of the Environment Clearance (EC). The stages may be summarized as follows:

- (1). Preparation of Environment Impact Assessment (EIA) Report and Environment Management Plan (EMP) by the Project Proponent.
- (2) Issuance of TOR.
- (3) Communication of the Executive Summary and EIA Report, placing it in the public domain at a designated place/s.
- (4) Notice by the State Pollution Control Board for a mandatory public hearing which shall be published in atleast two local newspapers, at least 30 days prior to the public hearing.
- (5) Evaluation of the EIA and EMP by the Expert Appraisal Committee (EAC).

(6) Appraisal of the proposal, EAC Report, etc. for approval or rejection of the EC, by the MoEF.

24. In the present case, the main question to be determined is as to whether the MoEF is required to record reason along with the grant of prior EC. The main edifice of the argument advanced by Learned Senior Counsel, Mr. P.S. Narasimha is that on consideration of the words used in the MoEF Notification and the intention for the purpose of the Stage (4) i.e. Appraisal should be duly appreciated. He pointed out that the Regulatory Authority is free to reject the proposal at the initial stage itself if recommendation of the EAC or SLEAC is sufficient to do so. He invited our attention to sub-clause (iii) of Stage (2) – Scoping. It reads as follows:

“Stage (2) – Scoping – (i) xxxxxxxxxxxx

(ii) xxxxxxxxxxxx

(iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SLEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days of the receipt of the application.”

25. Taking cue from the above provision, Learned Senior Counsel argued that the EAC or SLEAC concerned is required to make categorical recommendations to the Regulatory Authority concerned either for grant of prior EC

on stipulated terms and conditions, or rejection of the application for prior EC, together with reasons for the same. According to the Learned Senior Counsel, it is only when the application of the project proponent deserves rejection, that the reasons ought to be given by the EAC or SLEAC concerned. Otherwise it is not necessary to record reasons where the Regulatory Authority recommend grant of EC after appraisal, to the Project Proponent.

26. There cannot be duality of opinion that rejection of the proposal could also be at the stage of Scoping. It is also contemplated as a result of Appraisal which is captioned as "Stage (4) – Appraisal". The wording as used in EIA Notification pertaining to stage(4) i.e. Appraisal, is reproduced to the extent it is necessary:-

"Stage (4) – Appraisal:

- (i) *Appraisal means the detail scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion*

of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.”

(ii) xxxxxxxxx

(iii) xxxxxxxxx

(Emphasis supplied)

27. Perusal of the above provision would make it clear that at Stage (4) - Appraisal is not a mere formality. It does require the detailed scrutiny by the EAC or SLEAC of the application as well as documents filed such as the final EIA Report, outcome of the public consultation, including public hearing proceedings, etc.

28. The EAC or SLEAC concerned has to make categorical recommendations to the Regulatory Authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior EC, together with reasons for the same. The use of “coma” at the end of first part of the sentence, prefixing the words “terms and conditions” and also suffixing the words “together with reasons for the same” will have to be read in conjunction.

29. Moreover, sub-clause (iii) of Regulation 7 pertaining to Stage(4) indicates that the process of appraisal is required to be completed by the EAC or SLEAC within sixty (60) days of the receipt of the final EIA Report and other documents.
30. Reliance is placed on the Judgment of the Hon'ble Supreme Court in "K.L. Tripathi Vs. State Bank of India & Ors."**(1984) 1 SCC 43 at 58 (Para 31)**. It has been observed:

"31. Wade in his Administrative Law, Fifth Edition at pages 472-475 has observed that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and extent. Everything depends on the subject-matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

31. Ordinarily, in the context of all administrative decisions, it is part of the principle of Natural Justice that objectivity of such decision should be reflected in the order

itself. In case of absence of objectivity, the application of mind by the concerned authority cannot be gathered on basis of available circumstances. In other words, what was passing through the mind of members of EAC when the recommendation of the project was made is necessarily required to be stated in the minutes of the meeting and/or in the order of EC dated 05.06.2012.

32. What appears from the impugned order dated 05.06.2012 is that the MoEF reproduced a part of the letter of recommendation of the EAC, as it is. The impugned order does not show independent evaluation undertaken by the MoEF. So also, the EAC did not evaluate the correctness of responses given by the Project Proponent to the written representations made by the members of the public during course of the public hearing. The EAC also did not take into account the problem of the inhabitants of Shiyalbet (Island). The EAC also did not consider the earlier inspection reports which indicate certain violations of the conditions by the Project Proponent. For example, inspection report about the visit of the authorities of GPCB on 26.06.2008 shows that while unloading of the goods was going on, on berth no. 1, DG set was not in operation, stock of used oil and used batteries was nil. It shows that the DG set was not being used for a long time but was being kept at the place unused. So also, the visit of GPCB officials on dt.11.06.05 indicates that the sand was being removed from the government waste land without payment

of royalty. It was also noticed that the Project Proponent had not taken care of existing Mangroves nor there was new plantation of Mangroves. There was also problem of the conveyor belt used for unloading of coal. Obviously, mere subsequent compliance reported by the GPCB could not be the relevant material. The Appraisal required EAC to specify about the relevant compliance.

33. The definition of the word “Appraisal” as given in Black’s Law Dictionary is as follows:

“Appraisal –

- i. *The determination of what constitutes a fair price; valuation; estimation of worth.*
- ii. *The report of such a determination. – also termed appraisement.”*

Thus, appraisal of the project does require evaluation as well as estimation of worth for the purpose of assessment/determination thereof. Needless to say, the process of “Appraisal” requires application of mind, independently, and evaluation of the material in order to find out whether it is a project worth grant of EC or for the purpose of refusal of the EC, as the case may be.

34. In “*Uttkarsh Mandal Vs. Union of India & Ors.*” **2009 (10) AD (Delhi) 365 WO(C) No. 93401/2009**, etc. a division bench of the Hon’ble Delhi High Court elaborately considered the meaning of expression “Appraisal”. The relevant observations may be reproduced below:

*“..... Consequently, the exercise expected to be performed by the EAC (Mines) is a serious one and has to include a consideration on merits of the objections raised at the public hearing. Its decision must reflect this. We do not accept the contention of the learned ASG that as long as the MoEF while taking the ultimate decision has applied its mind to the objections raised at the public hearing, the requirement in law would be satisfied. The whole purpose of “outsourcing” the task to an EAC comprised of experts was to have a proper evaluation of such objectives on the basis of some objective criteria. It is that body that has to apply its collective mind to the objections and not merely the MoEF which has to consider such objections at the second stage.
.....*

..... 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.”

35. Thus, it is difficult to appreciate the argument of Learned Senior Counsel – Mr. P.S. Narasimha about the validity of the order irrespective of the fact that no reasons have been recorded in the minutes of EAC nor in the impugned order. Perusal of the impugned order shows that there was no independent application of mind by the MoEF (IA Division) to the material placed before it and report of the EAC. The impugned order shows that the EAC had sought additional clarifications from the Project Proponent.

Obviously, it was clear that the EAC was not satisfied at the initial stage after the public hearing was held and as such decided to call for further information by issuance of modified ToR. It was necessary, therefore, to examine as to whether the additional ToR was duly responded to by the Project Proponent and such responses were of satisfactory nature. From the impugned order, it is difficult to say that such exercise was undertaken by the MoEF.

36. The Learned Senior Counsel, Mr. P.S. Narasimha alternatively, submitted that this Tribunal may independently examine the material in order to consider the compliance of the additional ToR. He argued that the impugned decision of the MoEF may not be quashed when the controversy remains within short compass in the context of application of mind by the MoEF and requirement of reasons in the context of the impugned order. We do not agree. It is not within the domain of this Tribunal to verify technical compliance and express any opinion. It would amount to usurpation of power which is not available to this Tribunal under the NGT Act. It is the duty of the EAC and the MoEF to consider the relevant material and take appropriate decision. The appraisal may be accepted, on certain conditions, if it is found that the environment is unlikely to be adversely affected to such an extent that the project would lead to unsustainable development. Nobody will deny that development, modernization and expansion of a port are in fact essential

for the purpose of export and import of goods. The relevant observations in the EAC meeting reveals that the presentation made by the Project Proponent was accepted as “gospel truth” and thereafter the points which emerged were stated as points no. (i) to (viii). Thereafter, the EAC simply stated:

“The Committee recommend the appraisal for environmental and CRZ clearance after submission of information at (viii) above, with above conditions in the clearance letter for strict compliance by the Project Proponent”.

The impugned order practically echoed the minutes of the EAC meeting. In our opinion, therefore, the impugned order is bereft of tangible reasons and as such the process of “Appraisal” is faulty.

37. Now, it remains to be seen whether the impugned order dated 05.06.2012 deserves to be quashed in *toto*. We have noticed that there was proper compliance of the first three stages i.e. screening, scoping and public hearing. The fault lies only at the Stage No. (4) i.e. the stage of Appraisal. The Appraisal could not have been done by the EAC only on basis of the compliance reportedly done by the Project Proponent. It should also examine viability of the project on account of the expansion proposed. We do not find it necessary to make any comment which may prejudice either of the parties. However, EAC and the MoEF may compare the expansion of the existing project with the ports

at Chennai, Vishakapatnam, Bombay Dockyard, Jawaharlal Nehru Port, etc and examine whether the expansion can be granted after laying down certain stringent conditions to take care of the environmental impact due to the expansion and modernization of the port. For example, the Chennai Port is being run with modern techniques. As a part of pollution control measures, the port has installed wind curtains made of ultraviolet resistant fabric along the harbour's beach front for over 1.5 km to the east of the coal terminal to prevent wind carrying coal dust into the city. The Chennai Port has also installed a semi-mechanized closed coal conveyor system comprising two streams with a capacity of 15 million metric tons/annum and a handling rate capacity of 1,500 metric tons/hour/stream and running a length of 5 km at two berths, namely, Jawahar Dock IV and VI. The conveyor belt runs at an elevation of 10-13 m and has provision for longitudinal movement along the road to the plots and transverse movement for stacking coal at individual plots. The coal discharged into the hoppers located at the two docks is conveyed to coal plots through conveyors or tripper cars and is equipped with belt weigher.

38. We deem it proper to clarify that though we have not expressed any opinion on merits yet it would be appropriate if the EAC and MoEF will duly consider the question pertaining to accessibility of the residents of Shiyalbet (Island) inasmuch as easy access to the dockyard roads is

not possible without permission of the competent port authority. The identity of such residents and granting of permission to each of the resident may be a cumbersome process. The Project Proponent may consider relocation of the residents of Shiyalbet if it is possible with the help of local authorities.

39. At this juncture, we deem it proper to refer certain observations in “*State of Punjab & Ors. Versus Dr. Harbhajan Singh Greasy*” **(1996) 9 SCC 322**. In that case, departmental enquiry was held against Dr. Harbhajan Singh Greasy (Respondent therein). He admitted the charge for being absent from duty in the emergency of attending the flood victims. On the basis of the alleged admission, which was subsequently reverted by the delinquent, the Enquiry Officer passed order of penalty. The Apex Court observed:-

“It is now a well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement of the delinquent with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law.”

40. True, the above observations are made in the context of subject of departmental enquiry. Still, however, the observations of the Apex Court are applicable to the present case by analogy. The stage for correction, reconsideration and reappraisal may be restored without calling upon the

Project Proponent to undergo the entire exercise of the screening, scoping and public hearing. For example, if there is no electricity in a house one will have to first go to see whether the fuse connection is in order. Perhaps nobody will immediately rush to the Distribution Centre or the Power Grid. It is pertinent, therefore, to go to the stage of fault and permit re-examination of the entire material from that point onwards, instead of going back to square-A.

41. In our considered view, therefore, it is necessary to keep the impugned order in abeyance for the present with direction to the MoEF and EAC to appraise the project afresh and pass the necessary reasoned order either for approval thereof or for the rejection, whatsoever it may be found necessary, on merits thereof. The authorities shall not be influenced by any discussion made hereinabove. We clarify that we have not given any opinion on merits of the matter concerning Stage (4) – Appraisal. It will be open to the authorities to consider the relevant aspects and if so required by making comparison with the measures adopted by the other such ports located elsewhere in the country for avoiding the adverse impact on environment and the surrounding area.

42. The sum total of the discussion and reasons recorded as above is that point no. (i) is answered as “ Yes“ , point no. (ii) is answered as “No” and point no. (iii) is answered as “ Yes” . We are inclined, therefore, to partly allow the Appeal.

43. In the result, the Appeal is partly allowed. The impugned order dated 05.06.2012 passed by the Respondent No. 1 (MoEF) shall be kept in abeyance for a period of six (6) months hereafter. The matter is remitted to the EAC and MoEF for the purpose of reconsideration of Stage-(4) – Appraisal in the light of the discussion made hereinabove. The authorities may relook into the matter, have objective appraisal of the project on the basis of the available material, on basis of comparison with expansion of other ports in the country, if so required and thereafter to take decision on merits. The Appraisal of the project be made and final order may be passed by the concerned authorities within statutory period as provided by MoEF Notification dt.14.9.2006 after receipt of copy of this order. The Appeal is accordingly disposed of in the above terms. No costs.

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

....., EM
(Dr. P. C. Mishra)

....., EM
(P. S. Rao)

....., EM
(Ranjan Chatterjee)

2014 SCC OnLine NGT 5631

Before the National Green Tribunal Southern Zone, Chennai

(BEFORE M. CHOCKALINGAM, J.M. AND R. NAGENDRAN, E.M.)

Appeal No. 172 of 2013 (SZ)

In the matter of:

Sreeranganathan K.P., Sreepadam
 Vadakkkekkottaram (H) Aranmula P.O.,
 Pathanamthitta District Kerala ... Appellant;

Versus

1. The Union of India Rep. by its Secretary Ministry of Environment and Forests CGO Complex, New Delhi
2. The State of Kerala Rep. by its Principal Secretary Environment Department Thiruvananthapuram
3. Kerala State Pollution Control Board Rep. by its Member Secretary Pattom, P.O., Thiruvananthapuram
4. M/s. K.G.S. Aranmula Airport Ltd., No. 43, Besant Avenue Road Adyar, Chennai-600020 ... Respondents.

Appeal No. 173 of 2013 (SZ)

In the matter of:

Padmakumar S/o. Achuthan Nair Keechemparambil
 House Aranmula P.O., Pathanamthitta District
 Kerala State, PIN: 689533 ... Appellant;

Versus

1. Government of India, Ministry of Environment and Forests Rep. by its Director Parayavaran Bhavan, C.G.O. Complex Lodhi Road, New Delhi-110003
2. The Managing Director M/s. K.G.S. Ltd., Bhasanth Avenue Road Adyar, Chennai Tamil Nadu-600020 ... Respondents.

Appeal No. 174 of 2013 (SZ)

In the matter of:

Aranmula Heritage Village Action Council
 Represented by its Patron Kummanam

Rajashekharan Thekkenada, Aranmula-P.O.
Pathanamthitta District ... Appellant;

Versus

1. State of Kerala, represented by its Chief Secretary Kerala State Government Secretariat Thiruvananthapuram - 695001
2. Secretary to Government, Revenue Department, Kerala Government Secretariat Thiruvananthapuram - 695001
3. Secretary to Government, Industries Department, Kerala Government Secretariat Thiruvananthapuram - 695001
4. Secretary to Government, Agriculture Department, Kerala Government Secretariat Thiruvananthapuram - 695001
5. Secretary to Government, Irrigation Department, Kerala Government Secretariat Thiruvananthapuram - 695001
6. Secretary to Government Environment Department Kerala Government Secretariat Thiruvananthapuram - 695001
7. Agriculture Officer, Krishi Bhavan Aranmula, Pathanamthitta-689533
8. Agriculture Officer, Krishi Bhavan Mallapuzhassery, Pathanamthitta-689533
9. Village Officer, Aranmula, Pathanamthitta-689533
10. Village Officer, Krishi Bhavan Mallapuzhassery, Pathanamthitta-689533
11. Village Officer, Kidanganoor, Pathanamthitta-689514
12. Tahsildar, Kozhenchery, Pathanamthitta-689641
13. District Collector, Pathanamthitta-689645
14. Revenue Divisional Officer, Adoor Pathanamthitta-691523
15. Union of India, Represented by its Secretary, Ministry of Civil Aviation, New Delhi-110001
16. Secretary, Ministry of Defence, New Delhi-110001
17. Secretary, Ministry of Environment and Forests,

- Paryavaran Bhavan, New Delhi-110001
18. M/s. KGS Aranmula International Air Port Ltd.
Registered Office, KGS Corporate House, No. 43,
Basant Avenue Road, Adayar, Chennai-600020
 19. K.J. Abraham @ Kalamannil Abraham,
Kalamannil Veedu, Kozhenchery Village,
Pathanamthitta-689641
 20. Expert Appraisal Committee, Ministry of
Environment and Forest Paryavaran Bhavan, New
Delhi-110001
 21. Taluk Land Board, Kozhencherry, Represented
by its Chairman, Collectorate, Pathanamthitta ...
Respondents.

Appeal No. 1 of 2014 (SZ)

In the matter of:

P. Prasad, aged 45 years S/o Parameswaran Nair R.
Ravindran Smarakam, Kannankara
Pathanamthitta, Kerala ... Appellant(s);

Versus

1. The Union of India represented by Secretary
Department of Environment and Forest New
Delhi
2. The Director, Parayavaran Bhavan CGO Complex,
Lodhi Road New Delhi-3
3. M/s. KGS Aranmula International Airport Limited
Registered Office, KGS Corporate House No. 43,
Basant Avenue Road Adayar, Chennai-600020
Represented by its Managing Director
4. Kerala State Pollution Control Board Represented
by its Secretary Office of Kerala State Pollution
Control Board Pattom P.O., Thiruvananthapuram-
695004
5. Shri. C.P. Mohammed M.L.A. Chairman,
Committee of Environment Kerala Legislature
Kerala Legislature Complex Thiruvananthapuram
6. State of Kerala represented by Secretary,
Department of Revenue Secretariat,
Thiruvananthapuram ... Respondent(s).

Appeal No. 19 of 2014 (SZ)

In the matter of:

K.K. Royson (Former President, Pathanamthitta

District Panchayat) Kaithavana Malayil House
Thekkamala PO, Kozhencherry Pathanamthitta
(District) Kerala-689654 ... Appellant(s);

Versus

1. The Government of India represented by Secretary Ministry of Environment and Forests (IA-III Division) Parayavaran Bhavan, CGO Complex, Lodhi Road New Delhi-110003
2. State of Kerala represented by Secretary, Department of Environment Government Secretariat Thiruvananthapuram-695001
3. M/s. KGS Aranmula International Airport Limited Registered Office, KGS Corporate House No. 43, Basant Avenue Roa Adayar, Chennai-600020 Represented by its Managing Director
4. Kozhencherry Charitable Education Society Represented by its Chairman K.J. Abraham, Kalamannil House Kozhencherry, Pathanamthitta Kerala-689641
5. Enviro Care India Private Ltd. Represented by its Chairman, 43, 2nd Street, Harvey Nagar Madurai, Tamil Nadu-625016
6. Kerala State Pollution Control Board Represented by its Secretary Pattom P.O., Thiruvananthapuram-695004
7. The District Collector Pathanamthitta, District Collectorate Pathanamthitta, Kerala-689645 ... Respondent(s).

Appeal Nos. 172, 173, 174 of 2013 (SZ) and Appeal Nos. 1 and 19 of 2014 (SZ)

Decided on May 28, 2014

Counsel appearing:

M/s. T. Mohan and A. Yogeshwaran, Advocates for appellant

M/s. C. Sangamithirai, Advocate for respondent No. 1, Shri K.P. Dhandapani, Advocate General, State of Kerala assisted by Shri Rohan D. Alexander, Government Pleader attached to Advocate General and Suvitha A.S., Special Government Pleader for respondent No. 2 Shri M. Ajay, Advocate for respondent No. 3. Shri T.R. Rajagopalan, Senior Advocate for Shri Sathish Parasaran, Advocate for respondent No. 4.

Counsel appearing:

M/s. Ashok M. Cherian, K. Janardhan Shenoy, Advocates for appellant

Smt. C. Sangamithirai, Advocate for respondent No. 1, Shri T.R. Rajagopalan, Senior Advocate assisted by Shri. Sathish Parasaran, Advocate for respondent No. 2

Counsel appearing:

M/s. R. Krishnaraj, Advocate for Shri Ramesh Kumar Chopra, Counsel for appellant

Shri K.P. Dhandapani, Advocate General, Kerala assisted by Shri Roshan D. Alexander and Smt. Suvitha, A.S. Advocates for respondent No. 1 to-respondent No. 14 and respondent No. 21, Smt. C. Sangamithirai, Advocate for respondent No. 17 and respondent No. 20, Shri T.R. Rajagopalan, Senior Advocate assisted by Shri. Sathish Parasaran, Advocate for respondent No. 18

Counsel appearing:

Shri Ranjith Thamban, Senior Advocate for Shrimathi Rema Smrithi, and Shrimathi Mallika Srinivasan, Advocates for appellant

Smt. C. Sangamithirai, Advocate for R-1 and R-2, Shri T.R. Rajagopalan, Senior Advocate assisted by Shri Sathish Parasaran, Advocate for respondent No. 3, Shri M. Ajay, Advocate for respondent No. 4, Shri K.P. Dhandapani, Advocate General, Kerala assisted by Shri. Roshan D. Alexander, and Smt. Suvitha A.S., Advocates for respondent No. 5 and respondent No. 6

Counsel appearing:

Shri. Jacob Alex, Advocate for appellant

Smt. C. Sangamithirai, Advocate for respondent No. 1, Shri K.P. Dhandapani, Advocate General assisted by Shri Roshan D. Alexander and Smt. Suvitha, A.S. Advocates for respondent No. 2, Shri T.R. Rajagopalan, Senior Advocate for Shri Sathish Parasaran, Advocate for respondent No. 3 and respondent No. 7, Shri P.S. Raman, Senior Advocate assisted by Shrimathi Pushpa Menon, Advocate for respondent No. 5, Shri M. Ajay, Advocate for respondent No. 6

COMMON JUDGMENT

M. CHOCKALINGAM, JUDICIAL MEMBER)

Appeal No. 172 of 2013 (SZ)

This appeal has been preferred by the appellant herein against the order of the 1st respondent, Ministry of Environment and Forests (for short 'MoEF') dated 18.11.2013, granting Environmental Clearance (for short 'EC') to the 4th respondent, KGS Aranmula Air Port Ltd., to set up an airport at Mallappuzhasserry, Aranmula and Kidangannur villages in Kozencherry taluk of Pathanamthitta District, Kerala. A writ petition has also been filed in W.P. (C). No. 6004 of 2012 challenging the notification issued by the 2nd respondent, the State of Kerala declaring the area as an industrial area and the said writ petition is still pending

before the Hon'ble High Court of Kerala. The brief facts of the appeal filed herein are stated as follows:

2. The proposed airport is being set up by the 4th respondent on the banks of the holy river Pampa, in an ecologically sensitive and environmentally diverse and rich area. Aranmula is a declared heritage site and gets its name from the centuries old Aranmula Parthasarathy temple and it attracts a large number of devotees. The Aranmula village is situate at the beautiful wetland eco-system on the banks of the holy river Pampa represents the epitome of Kerala culture and also the apex heritage of Kerala.

3. Mallappuzhasserry, Aranmula and Kidangannur villages where the airport is to be set up are agricultural villages with paddy being the principal crop and the wetlands in the area are major bio-diversity hotspots. The 1st respondent, without considering the deleterious effects of the airport on the pristine environment of the area, has granted the impugned EC to the 4th respondent. The Environment Impact Assessment (for short 'EIA') submitted by the 4th respondent is inadequate, incorrect, misleading and it is a fraud perpetrated by the 4th respondent. The EIA has not been prepared by an accredited agency. The public hearing conducted for the purpose of the setting up the airport was conducted in a clandestine and undemocratic manner in violation of EIA Notification, 2006 and the impugned EC dated 18.11.2013 was granted without any application of mind.

4. The area is rich in bio-diversity. The region is the home to hundreds of plants, animal and species. The EIA report submitted by the 4th respondent to the 1st respondent for obtaining the EC did not provide any details about the flora and fauna in the region except to state that there are no endangered species in the area. The 1st respondent without considering the falsity of the statement listing only 22 species of plants and a few grasses as the flora in the region, has granted the impugned clearance. The report of the Salim Ali Foundation clearly states that more than 212 species of plants were recorded in a span of 4 days spent in the field making direct observations. The report further states that 27 of these species were endemic to the Western Ghats, 110 are economically important and 88 were wetland species. The Salim Ali Foundation in addition clearly states that more than 60 species of fishes and more than 80 species of birds were recorded. The EIA report submitted by the Project Proponent did not reflect any of these facts and instead falsely stated that 34 species of birds were identified and baldly went on to state that there were no endangered species of flora and fauna in the area. The paddy fields and wetlands in Mallappuzhaserry, Aranmula and Kidangannur where the proposed

project is to be set up serve as the flood plains of the river Pampa. These wetlands minimize damage to the surrounding areas by serving as a natural flood control mechanism. On the onset of monsoon in the month of June, when the water begins to drain into river Pampa, a large number of fishes migrate upwards against the paddy fields and wetlands which serve as a nursery and hatchery for the fish species.

The EIA report had not considered these aspects and the 1st respondent erred in granting the impugned clearance when the very eco system of the area was incorrectly assessed by the EIA report based on which the impugned EC was granted. The EIA did not attempt to characterize the ecology of the area including wildlife inhabited in forest land to locate the runway at the proposed project location. The EIA stated that very limited field studies were made on the ecology of the area and the information allegedly collected from the field studies referred to in the EIA report is lacking in all requisite details. It is impossible to identify and understand the potential impact of the proposed airport without knowing the identity of a single mammal or bird species inhabiting that land for giving clearance to the proposed project. The EIA report relied on by the 1st respondent/MoEF while granting the impugned EC did not even conform to the MoEF's EIA Guidance Manual for Air Ports which states *inter alia* as follows and none of the criteria was met by the EIA prepared in the instant case based on which the 1st respondent granted the impugned EC.

"Airport operations may cause change in local eco-systems, threaten, endangered species and disturb the 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 designated for their nature conservation value will be affected. The biological environment of the airport should hence be seen as an integral component of the wider landscape scale ecological network. To accomplish this, base line data from field observations for various terrestrial and aquatic systems are to be generated; comparison of the data with authentic past records to understand changes is undertaken; environmental components like land, water, flora and fauna are characterized and the impact of airport development on vegetation structure in and around the project site is to be understood.

Data on sensitive habitats, wild and endangered species in the project area also is to be collected from Zoological Survey of India, Botanical Survey of India, Wildlife Institute of India and the Ministry of Earth Sciences. Wildlife symbolizes the functioning efficiency of

the entire eco-system. Just as wild flora needs special treatment for preservation and growth, wild fauna as well deserves specific conservatory pursuits for posterity. As per 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.

5. The 1st respondent has failed to consider the impact of filling in paddy lands and wet lands in the area on ground water table. The wetlands and paddy fields serve as a natural reservoir when water level rises in Pampa River and also functions as a natural irrigation system. It helps to maintain the ground water level, ponds and tanks in the surrounding villages. Destruction of paddy fields by the 4th respondent will affect the ground water table in the area. Due to the filling of 500 acres of lands allegedly acquired by the 4th respondent, the deleterious effects will be felt in all surrounding wetlands as the water path would be blocked leading to the destruction of the intricate natural system.

6. The 4th respondent has provided false information about the number of persons likely to be displaced as a result of the present project. The EIA report is based on woefully inadequate study on the impact of the project in this regard. The EIA report has not provided any details regarding the sociological impact on account of the project activities assessed and the impugned EC has been granted without even assessing this aspect. The 4th respondent has willfully concealed the fact that a huge number of people will have to be evacuated from the area to facilitate the project and has not addressed the rehabilitation and relocation issues involved with such huge displacement. The evacuation of people historically, culturally and economically connected with the region is violation of the right to life as guaranteed by the Article 21 of the Constitution of India.

7. The respondents have not assessed the impact of exploitation of water resources by the proposed airport. While the EIA report in paragraph 2.8.2 under 'Water' contained the information that the total requirement of raw water for this air port will be 7.55. KLD which will be met from the bore wells and municipal water supply, the EIA report does not discuss the impact of such large scale extraction of water on the water table in the area, especially in the light of the fact that the recharge areas are and have to an extent already been filled up illegally prior to the grant of EC.

8. A four lane approach road is proposed from Alkkara junction to the terminal building for which land needs to be acquired. Similarly, road from Parumootampadi junction to Alkkara junction is also required to be

widened for smooth vehicular traffic to the proposed airport. However, the environmental, socio-economic and other impacts of the said road construction have not been addressed by the 4th respondent and the 1st respondent has mechanically granted the impugned clearance. The land use classification as per the EIA states that the Government has recognized the location of this project site as unclassified land while admittedly, paddy lands have to be filled up and the area is covered by the paddy lands and wetlands. The clearance granted was thus based on false information in the EIA report in this respect.

9. The EIA in paragraph 2.6(a) and 2.6(c) read under the captions 'Archaeological Monuments' and 'Cultural Monuments' states that there are no archeological monuments in the 10 km radius. The Aranmula village itself is a heritage village and got its name from the century's old Aranmula Parthasarathy temple on the banks of the holy river Pampa which attracts large number of devotees. The temple has fine murals from the 18th century and the entire region is replete with temples of importance. The Pampa River runs within a few hundred meters of the alleged boundary of the project site described in the EIA. Even according to the 4th respondent and Annexure-A1 of the EC, it is an admitted fact that the Aranmula village is declared as heritage village for its peculiar metal mirror 'Aranmula Kannadi' which is unique, patented product which is produced exclusively from Aranmula village by a family of local craftsmen. The representatives of the mirror making family has approached the Hon'ble High Court of Kerala against the proposed project on the ground that filling up of the paddy lands in that area will seriously affect the making of this metal mirror. They have also stated that the mud and clay collected from the paddy lands is one of the main ingredients in the process of making Aranmula metal mirror. The 1st respondent, being aware of all the facts did not address any such issues in the EC and instead, falsely stated that this project has no connection with the Aranmula metal mirror.

10. The EIA report does not deal with the quantum of materials needed for filling in the 500 acres of land required for the project. However, the impugned EC, in specific condition No. (iii) states that the soil required for the land filling shall be met from the elevated area of about 14.5 acres available within the site itself. The 1st respondent has not considered the fact that the 4th respondent even prior to the grant of EC altered the nature of the land and did not take any action against the 4th respondent.

11. There is no information in the EIA that would allow one to independently verify where exactly the boundary of the airport would be located and where key components of the airport such as runway

would be located. It has been mentioned in Figure 1.2 of the EIA report purport to show the site of the proposed airport and Figure 1.4 which describes the overall plan of the airport including the 2300 m runway. There is no conceivable way that a 2300 m runway as depicted in Figure 1.4 of the EIA would ever fit into the boundary of the site as depicted in Figure 1.2 of the EIA. The maximum lateral distance between the boundaries indicated in Figure 1.2 when measured with Google Earth is only 515 m. The proposed runway of 2300 m and 2800 m in future could not possibly fit into the site as per Figure 1.2 of the EIA report in respect of which the EIA study has been done. The 1st respondent blindly granted the present clearance without even ascertaining the extent of the project boundaries claimed by the 4th respondent.

12. The public hearing was not conducted in a proper manner. The access to the public hearing was not facilitated by the project proponent or other stake holders as a result of which a majority of the people who are likely to be affected due to the setting up of the 4th respondent project were not provided with an opportunity to voice their grievances. The law requires that the project proponent submits copies of the draft EIA report with the generic structure given in Appendix III including a summary of the EIA report in English and in the local language prepared strictly in accordance with the terms of reference communicated after scoping. In the instant case, the 4th respondent applied on 02.02.2011 for conducting the mandatory public hearing. The alleged publication in the dailies did not contain all required information as mandated by the Appendix VI of the EIA Notification, 2006. Even as on date, the EIA is not available for viewing or downloading from the 1st respondent's website. The public hearing was scheduled on 10.03.2011. It was rescheduled to 29.04.2011 and again to 10.05.2011 and that the change in the dates was neither publicized as required in law nor published in any local dailies and this fact was brought forth from the minutes of the public hearing held on 10.05.2011. This is in violation of EIA Notification, 2006 as per clause 3.3 of Annexure IV. Even the time limit between the postponed dates was short of the minimum 30 days as mandated and never publicized and as a result of which the public was prevented from effective participation in the public hearing process. As could be seen from the minutes of the public hearing in Annexure A-4, only 26 persons were able to participate in the public hearing. The tenor of the serious protests held by the people directly affected in the area is not reflected in the public hearing which was also not conducted at the project site or anywhere in close proximity. In the matter of *S. Nandakumar v. the Secretary to Government, Tamil Nadu*, in W.P. No. 10641 of 2009 the

Hon'ble High Court of Madras by its order dated 22.04.2010 observed as follows:

"33. The public consultative process is, therefore, an essential component in the process of EIA. It is essentially an embodiment of the principles of natural justice. The importance of conducting public hearing in a peaceful atmosphere with opportunity to all the local affected persons and others, who have plausible stake in the environment impacts of the project is evident by the fact that the notification wanted District Magistrate or any other officer not below the rank of an Additional District Magistrate to supervise the conduct of the public hearing. Similarly, while conducting appraisal of the application and the documents submitted by the applicant for EC, the EAC has to consider the outcome of the public consultations, including report of the public hearing proceedings. Therefore, public hearing occupies a pivotal position in the matter of EIA.

34. When the notification itself indicates the manner and method of conducting public hearings, the statutory authorities are expected to conduct the hearing by giving reasonable opportunity to all the local affected persons and others who have interest in the particular project or activity. Such public hearings should not be a make belief affair just to comply with the requirements of the notification. It is the responsibility of the District Magistrate or officers of equal status to see that all the affected persons are given audience. The panel of officers conducting the public hearing must remember that such hearings are conducted only to record the views of the affected persons. The statutory panel should hear the views of the affected persons and not those who have assembled in the meeting hall at the behest of the developer with a hidden agenda to block or prevent the opposition to the project. The regulation, therefore, provides for recording the attendance of those who are present at the venue and such attendance register should be forwarded with the minutes of the proceedings. Therefore, the attempt should be to conduct the hearing in an open and transparent manner with an opportunity to express even the dissenting views without fear. The authorities owe a duty to the society to conduct such meetings in the manner prescribed by the statute and if necessary, by taking police assistance. The minutes of the hearing should contain a true note of what has transpired in the meeting. The consultative process is an essential facet of the EIA study and therefore, any violation of the mandatory procedure in the matter of conducting public hearing and recording the views or objections of the affected persons would give the aggrieved a cause of action to challenge the legality and correctness of the public hearing proceedings, without waiting for the final outcome of the impact assessment proceedings."

13. In the light of the above judgment describing the importance of the public hearing in the clearance process and the facts of the present case make it evident that the entire process was farce and the 1st respondent has not considered any of these facts while granting the impugned clearance.

14. According to EIA Notification, airports are Category-A projects and only duly accredited EIA consultants can appear before the EAC or prepare the EIA report. The present agency is found in Serial No. 47 of the QCI list (in Annexure-A-5) and as per the accreditation, Enviro Care India Private Limited is authorized only to carry out EIA preparation for Category B projects and the 1st respondent has not considered even this aspect while granting the impugned clearance. The 4th respondent has submitted false information in the application in Form I submitted to the 1st respondent for the purpose of obtaining clearance. The 4th respondent has provided false data about the ecology in the area, the resources to be used for the project and overall impact on the environment, including the location of protected nearby area and the presence of wetlands or forests. The 4th respondent has provided false data even about the basic information of the project in many of the items in the application form and the 1st respondent has not considered these aspects while granting the impugned EC. Instead, additional "terms of reference" was given and based on the incompetent terms of reference to assess the real environmental impact, the EIA study was conducted and report was prepared and it completely failed to address all the real environmental issues in the area.

15. In accordance with the draft policy of the Ministry of Civil Aviation, no green field airport is permitted within the aerial distance of 150 km of an existing airport without studying the impact of the new airport on the existing airport. However, no such study has been conducted in the instant case. The proposed airport is located between two international airports at Trivandrum and Cochin and the distance between these two international airports and the proposed airport is less than 150 km. The proposed airport is also located at a distance of 44 km from the INS Garuda airfield. The communication from the Ministry of Defence dated 05.04.2010 clearly states that the ministry objected to the setting up of the proposed airport as it would severely restrict the airspace available for military flying operations. The communication further states that the UAV operations would not only hamper flight operations but also compromise safety.

16. The EAC has recommended the present project for clearance during the 115th meeting held during 16th and 17th August, 2012. It can be seen from the minutes of the meeting that the EAC has

discussed a total of 50 items on its agenda. The EAC could not have discussed in detail the various aspects relating to the project as observed in the matter of *Utkarsh Mandal v. Union of India* (W.P. (C). No. 9340 of 2009 by the Hon'ble High Court of Delhi in paragraph 45. The bare perusal of the minutes of the EAC meeting would indicate that none of the issues raised was considered by it.

17. The Wetland (Conservation and Management) Rules, 2010 of the State of Kerala clearly includes in rule 2(g) "creeks" within the definition of wetlands. The Kozhithodu which faces obliteration due to the proposed construction is a creek and is protected under these rules. The classification of lands as 'industrial area' was done without following the due process of law. There are no industries in the area and the present classification has been made with the sole reason of facilitating the 4th respondent's project. The conditions contained in the impugned clearance have no bearing on the factual matrix of the situation and show the non application of mind on the part of the 1st respondent. The respondents have not seen that the Hon'ble Supreme Court of India has held in the matter of *Karnataka Industrial Areas Development Board v. Sri C. Kenchappa* in Appeal (Civil) No. 7405 of 2000 dated 12.05.2006, wherein it was held 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 only if the project does not impair the ecology and environment. The action of the respondents is in direct violation of the above orders. The 1st respondent's clearance is contrary to the Precautionary Principle and Principles of Sustainable Development vide also reaffirmed by the Hon'ble Supreme Court of India in *Research Foundation for Science, Technology and Natural Resources Policy v. Union of India* (AIR 2007 SC (Supp) 852 prescribing the 'precautionary principle' and 'sustainable development' in *Vellore Citizens' Forum v. Union of India* and *Andhra Pradesh State Pollution Control Board v. Prof. M.V. Naidu* reported in (1999) 1 SCR 235.

18. The 4th respondent has commenced the airport construction work even prior to the EC being granted in violation of the EIA Notification, 2006 and the letter dated 12.04.2010 of the 4th respondent stands as evidence for which the 4th respondent is liable to be prosecuted. On 13.07.2013, more than 70 Members of the Legislative Assembly of the State of Kerala submitted a representation to the Prime Minister of India opposing the project. The 1st respondent has not considered the impact of pollution from the airport and the impact of noise on animal and avian lives nor the pollution during

combustion of fuel.

19. Hence, the appellant herein seeks to quash the EC granted by the 1st respondent in the impugned order dated 18.11.2013, to remove all constructions made and to restore the area to its original pristine state, initiate and direct the 1st respondent to initiate appropriate action against the 4th respondent, EIA consultant as per law for providing false and misleading data in the EIA report and to direct the 4th respondent to pay compensation for the damages caused to the area and restore the ecology of the region.

Appeal No. 173 of 2014 (SZ)

20. This appeal has been filed by the appellant herein in his capacity as a social worker as well as a political activist in Pathanamthitta District in Kerala State. He is an ex-Member of Legislative Assembly, Kerala representing Konni Constituency. He is a native of Aranmula in Pathanamthitta District. He is the Secretariat Member of the Pathanamthitta District Committee of Communist Party of India (Marxist) which is a recognized political party in India. This appeal has been filed aggrieved by the EC granted by the 1st respondent/MoEF to the 2nd respondent, the Managing Director, KGS Limited, Chennai-20 in Tamil Nadu. Only two respondents have been arrayed by the appellant in this appeal. The facts of the cases that could be made out from the averments of the appeal grounds can be stated as follows:

21. An application was submitted by the 2nd respondent to the 1st respondent seeking EC under section 3 of the Environmental Protection Act in Form I for developing an international airport on a stretch of land in Kozhencherry Taluk. The proposal involves development of airport at Mallapuzhasserry Aranmula, Kindangannur villages in Kozhencherry Taluk in Pathanamthitta District of Kerala State on a plot area of 500 acres to cater Airbus A-300 aircraft. The airport is proposed to be constructed on land mentioned in Annexure A2 herein which contains paddy land and wetland acquired by the K.J. Abraham, Kozhencherry in the name of a charitable society by name Mt. Zion Charitable Society and reclaimed by him in violation of Kerala Land Utilisation Order, 1967, Kerala Conservation of Paddy Land and Wetland Act, 2008 and Kerala Land Conservancy Act, 1957. The land also comprises of 8.87 acres of Government land encroached upon by the said K.J. Abraham. He had also illegally filled up a natural water course locally known as *Valiyathodu* which is also known as for some distance as *Kozhithode* and which is a tributary to River Pampa. The total length of *Kozhithode* is 12 km. extending from Prakkanam near Pathanamthitta town to River Pampa at Aranmula. The paddy land filled and reclaimed unauthorized by K.J. Abraham is part of a large extent of *puncha* paddy land

(*Padashekharam*) which are in low lying land that get water logged during monsoon, where paddy is cultivated and drained after monsoon. During the season of cultivation the field will be marshy. *Puncha* paddy fields are thus wetlands and they also serve as flood plains of nearby river and provide to maintain waterbed for the locality as in the case of wetland which is not used for paddy cultivation. The stretch of paddy field proposed to be reclaimed for the said purpose serve for natural flood control in the area when the river Pampa overflows in monsoon seasons. Even without any cultivation in the said land, maintenance of the said lands in its nature as low lying wetland is essential for controlling the flush of water in river Pampa during monsoon as the river hits the plains at the area mentioned above. Protection of the said area of low lying wetland is essential to maintain water bed so as to provide water in wells of the nearby villages.

22. The revenue authorities have already initiated proceedings against the unauthorized reclamation of paddy land and wetland, as also the encroachment of Government land and for filling natural water streams vide Annexure-A3(a) and Annexure—A4 filed herein which would prove that K.J. Abraham had acquired the land and reclaimed it violating the law of the land. When application dated 28.06.2010 was submitted by the 2nd respondent, no land was in their possession or ownership. The land reclaimed by K.J. Abraham in the name of Mt. Zion Charitable Society is said to have been transferred in favour of the 2nd respondent on 20.12.2010. Annexures-A3 and A4, however, go to show that no mutation with regard to the said land has been so far effected in favour of the 2nd respondent. On submitting the application for EC, the EAC at its 91st meeting held on 21st-23rd September 2010 finalized the Terms of Reference (for short 'ToR') for the proposed airport and also decided to conduct a public hearing as per the provisions of EIA Notification, 2006. Advertisements regarding the public hearing for the comments on the proposed project were published in '*Malayala Manorama*' and '*Mathrubhoomi*', Malayalam dailies and in '*The Hindu*' English daily. The hearing as notified in the said dailies did not take place on the date thus notified and the same was postponed to 29.04.2011 and on this day also the hearing was not held. The hearing took place on 10.05.2011. The dates of postponement of the hearing were not published in any newspaper after 06.02.2011 and hence, the public at large had no information of the hearing scheduled on 10.05.2011. As there was no proper notice for the hearing, only a few persons and organizations took part in the hearing. The views of the public at large were, therefore, not reflected in the so called public hearing purportedly held on 10.05.2011

23. The EAC in its 107th meeting held on 15th - 16th December, 2011

without any detailed discussion and without proper consideration of the facts and circumstances recommended the grant of EC for the proposed airport at Aranmula. Meanwhile, 'Salim Ali Foundation' a registered charitable trust with a mission 'Biodiversity Conservation and Food Security' conducted a thorough study on the impacts of the proposed airport on the bio-diversity and ecology of the wetlands and paddy lands in Aranmula and its adjoining villages along with analyses of the tangible and intangible benefits of the ecosystem. It analyzed (i) EIA conducted by Enviro Care India Pvt. Ltd., for KGS Aranmula Airport Ltd., who proposed the airport, (ii) the need for an airport at Aranmula, and (iii) the inevitable need for restoring the paddy land. The Legislative Committee for Environment of the Kerala Legislature had unanimously recommended against establishing an airport at Aranmula considering the adverse impact it would cause to the environment and ecology of the State. The 1st respondent has not considered the findings of the Salim Ali Foundation and has consciously avoided answers the aspects pointed out therein which are major concerns of the public and are most relevant while deciding upon granting EC to a major project like constructing an airport. While issuing the EC, the 1st respondent has failed to take into account the need for an airport at Aranmula at the cost of environment and ecology of more than three agrarian villages in Kerala, which are having great traditions. The 1st respondent failed to see that Aranmula is located almost at the middle of the International Airports at Cochin and at Trivandrum with a distance of 128 km, 135 km, respectively. If the proposed airport at Aranmula is expected to serve Pathanamthitta, Kottayam, Idukki and Alappuzha districts, the people from every part of the said districts can reach either the international at Cochin or at Trivandrum within not more than 2 hours by road and roads are made available to have easy access to the international airports to cater the needs of the people from the districts to whom the proposed airport is expected to serve.

24. The 1st respondent has not taken into account the need of the land necessary to be acquired for providing infrastructural facilities such as roads leading to the airport from various places. It has also not considered the competitive impact of the new international airport at Aranmula upon the existing international airports causing its impacts upon the environment and ecology of the State including the natural resources already invested to construct them. A localized impact assessment on the environment and ecology while implementing the project is insufficient while granting EC for a major project like the one in hand. The negative externality that would be caused to the society as whole while implementing the proposed airport project was not assessed by the 1st respondent. The EC has been granted on the

assumption that only a minimum extent of 500 acres of land is required for runway, apron, taxiway etc., and the remaining area will be preserved in its natural form. However, the report of feasibility study conducted by the Airports Authority of India has noted that the developers aim for an ultimate operation of wide bodied aircraft which requires more extent of land and with the present availability of land, the proposed airport can cater only to smaller aircrafts and only for daytime operations. It also mentions the necessity to level the hillocks around the airport site so as to enable the safe landing of aircrafts. Leveling of hillocks is further necessitated when capacity of the airport is required to be increased in future. While EC has been granted by the 1st respondent for establishing the present airport at Aranmula, it has not taken into account the future requirements for expansion of the airport and impacts of such requirements on the environment and ecosystem. The number of families who will be displaced from their abode is much more than what has been stated by the 2nd respondent in the application for EC as well as in the subsequent statements.

25. Hence, the appellant herein seeks the indulgence of this Tribunal to set aside the EC granted to the proposed international airport at Aranmula and for directing the 1st respondent not to grant EC to the proposed international airport at Aranmula.

Appeal No. 174 of 2013 (SZ)

26. This appeal has been filed by the appellant herein, an action council formulated by the Aranmula, Mallapuzhassery and Kidanganloor villages of Kozhenchery Taluk of Pathanamthitta District. The action council has been formulated for resisting the illegal move of the respondents in setting up an airport and other construction by reclaiming the paddy land which will cause serious environmental damage to the entire area and also the residents of the locality. The 17th respondent arrayed in this appeal is the Ministry of Environment and Forests (MoEF) of the Central Government. The 18th respondent arrayed in this appeal is KGS Aranmula International Airport Ltd., having its registered office at Chennai in Tamil Nadu and the 19th respondent is K.J. Abraham of Kozhenchery village in Patthanamthitta District in the State of Kerala. The 20th respondent arrayed in this appeal is the Expert Appraisal Committee, MoEF, New Delhi. This appeal has been filed seeking the indulgence of the Tribunal to set aside the EC granted by the 17th respondent, directions for 17th and 20th respondents to conduct a proper public hearing as prescribed in the matter of granting EC to 18th respondent and for directions to the Government of Kerala to complete the proceedings initiated against the

19th respondent for restoring 49.725 acres of paddy land reclaimed to its original form. The brief statement of facts as could be seen from the appeal grounds can be stated as follows:

27. From the reading of the discussions of facts by the 17th respondent which led to the granting of the clearance would clearly show that the 17th respondent proceeded on the precincts that the entire land in question is either the land already reclaimed or partly developed. This impression was made on the 17th respondent by the State Government as well as the 18th respondent by twisting and suppressing the material facts. In the application submitted before the 17th respondent, the 18th respondent has made a false assertion stating that no reclamation is required for the construction of the proposed Aranmula Airport which is a false statement. As per the documents produced by the appellant, in which it can be seen that an extent of 211 acres out of the total 248 acres of land which has been purchased by the 18th respondent and earmarked for the construction of the airport is either paddy land or wetland. This fact is supported by the revenue as well as agriculture officers of that area, who are officers of the Government. The Government, instead of submitting these facts before the 17th respondent has actually suppressed the facts and has taken an illegal stand to the effect that the properties placed before the 17th respondent as the site for the airport has already been reclaimed and reclamations cannot have any legal implication as it was done prior to 2008, in which year the Act had not come into force. This is an illegal stand taken by the State. It is so because, even prior to 2008 which year the Act was promulgated, Kerala Land Utilization Order was in force and any change in the nature of the land can be made only with the prior permission from the Government. It is an admitted fact that it is under this Land Utilization Order, the 19th respondent has submitted necessary application for getting permission to fill paddy field in an extent of 8 acres and it was suppressed before the 17th respondent that the authorities have permitted the 19th respondent to reclaim the paddy land for construction of an airstrip as part of the Aeronautical College of the 19th respondent under this order. It was by misusing the permission; the 19th respondent instead of filling 8 acres of land has filled an extent of 49.72 acres of paddy fields. The Revenue Officers of the State Government have initiated legal action against the 19th respondent for restoring the above paddy fields to its original form under the Land Utilization Order. In such circumstances, when the officers of the Government have initiated proceedings which are still

pending under the Land Utilization Order against the illegal filling and reclamation of the paddy fields by the 19th respondent, the Government cannot take a stand that since the reclamation has been made by the 19th respondent prior to 2008 and there is no illegality committed.

28. Though the 18th respondent has submitted before the 17th respondent that altogether they are in possession of 350 acres of land earmarked for the purpose of the airport, the revenue officials have informed the appellant that only 248.37 acres of lands stand mutated in the name of the 18th respondent and out of the total 248.37 acres of land (99.35.20 ha), 85.74.02 ha of land is paddy field/wetland and only 13.61.00 ha is dry land. In effect, the application which was considered by the 17th respondent is for a proposal to construct an airport in the paddy field and which can be done only by reclaiming the land. The proposed airport cannot be set up in 33.7 acres of dry land and the airport can be set up only by reclaiming the remaining portion of the paddy land converting the same as dry land. The application submitted by the 18th respondent states that the area in which airport is proposed to be set up is 16, 250M² which comes around 41 acres and even for constructing the terminal building the available dry land will not suffice. The 17th respondent was misled by the 18th respondent and also the Government in granting permission to the 18th respondent to construct an airport in a paddy field. From the stipulation in Clause (iii) of the EC granted to the 18th respondent, the contention of this appellant that the 17th respondent has proceeded with the assumption that the proposed airport site is a dry land stands proved. Moreover, in this stipulation, it is clearly stated that only the area required for the runway with 1000 m × 150 m (37.07 acres) shall be filled within the site itself and that almost 80% of the soil from the only elevated area has already been utilized for illegal reclamation done by the 19th respondent against which action was already been initiated by the revenue officials for restoring the same to its original form of paddy field. The requirement of filling 37 acres at a height of one meter cannot be completed utilizing the remaining soil in the elevated area of 14.5 acres mentioned in the stipulation. From the stipulation, it is very clear that the intention of the 17th respondent is only to permit the 18th respondent to fill the dry land at a height of one meter to make it an elevated portion for the construction of the runway and all these stipulations were made on the assumption that the entire land is a dry land.

29. Moreover, in the stipulation, it has been stated that necessary permission for leveling should be taken as drawn from Kerala Paddy

and Wetland Act into the operation as the filling of paddy land can be made only after obtaining exemption/permission from the Government of Kerala under Section 10 of Act subject to regulation by imposing conditions and on recommendations from the monitoring committees as constituted under the Act. The officers of the Government have informed the appellant that the local or state level committee has not made any such recommendation to the Government till date for converting the paddy land which forms part of the land earmarked for setting up the airport. The State Legislative Committee on Environment has also observed in the report that the reclamation which was already made by the 19th respondent has adversely affected the cultivation of that locality and came to a standstill because of the illegal reclamation of 49.725 acres of land by the 19th respondent. Besides that, the appellant has also filed a writ petition in W.P.(C) No. 8794 of 2013 before the Hon'ble High Court of Kerala for directions to the State Government to take action against the 18th and 19th respondents under the Kerala Wetland and Paddy Act, 2008 and thereby restoring the land to its original form. Matters being so, the State Government will not be able to grant permission to the 18th respondent to fill up the land for reclaiming the paddy field for the construction of the airport. In such circumstances, the permission of the Government is a pre-requisite for the 18th respondent to submit an application for EC before the 17th respondent. The application submitted without the necessary exemption/permission from the State Government under the Kerala Paddy and Wetland Act, 2008 is defective and therefore, the grant of clearance made by the 17th respondent on this defective application itself is illegal. The permission of the Government under the Kerala Paddy and Wetland Act, 2008 is a pre-requisite for the consideration of the applicant by the 17th respondent for the grant of EC is evident from the fact that Column No. 22 of the Form I is concerning the existence of a Government order/policy relevant relating to the site in question. So, the application submitted without exemption from the State Government permitting the 18th respondent to fill paddy land should not have been considered by the 17th respondent as 211 acres of land out of the total extent of 248 acres which is in the possession of the 18th respondent and projected as the site of the proposed airport remains as a paddy field and airport cannot be constructed in 37 acres of land which includes the illegally filled land. In such circumstances, the 18th respondent has falsely stated that no Act or order or policy is applicable in the case of the site in hand. The Government has also supported this suppression made by the 18th respondent in the

application submitted before the 17th respondent. In the application submitted before the 17th respondent, the 18th respondent has made a false statement that no reclamation is required and the 18th respondent has presented the property before the 17th respondent as developed/semi developed property. This stand taken by the State Government contending that the reclamations have already been made prior to 2008 and therefore, there is no illegality in the reclamation done by the 19th respondent since it was prior to the promulgation of the Act, 2008 cannot be accepted since the Land Utilization Order was in force and it was by this order several actions have already been initiated against the 19th respondent by the officials of the Government against the reclamation of 49.725 acres of land. The orders passed by the revenue officials directing the reclaimed land of 49.725 acres to be restored to its original form have not been subjected to legal scrutiny till this date. This legal situation is applicable to the 18th respondent also and in such circumstance, the 17th respondent ought not to have granted EC.

30. The 18th respondent has suppressed the fact that Kerala Land Reforms Act is applicable to the case in hand. As per this Act, no person is entitled to hold any land in excess of the ceiling limit prescribed under this Act and the permission from the Government is required to hold any land in excess of the ceiling limit which can be granted under section 81(3) of the Act in public interest. The appellant has already filed an application before the Government requesting the Government to conduct a public hearing to ascertain the public interest before granting exemption to the 18th respondent and the appellant herein has also filed a writ petition in W.P. (C) No. 14220 of 2013 for a direction to Government to conduct a public hearing with due notice to the residents of the 13 *Grama Panchayat* and Pathanamthitta Municipality before granting exemption to the 18th and 19th respondents which is the subject matter before the Land Board. It is an admitted fact that the application submitted by the 18th respondent before the Government for exemption is not yet allowed by the Government. Hence, the holding of the land by the 18th respondent is illegal even now. The 18th respondent was holding the land which is projected as the site for the proposed airport at the time of making an application before the 17th respondent and in effect, the 17th respondent was granted EC to the 18th respondent for setting up an airport in the property which is illegally held by the 18th respondent. In such circumstance, the proposed land cannot be treated as land owned

by the 18th respondent and the clearance by the 17th respondent permitting the 18th respondent to set up an airport is illegal and without jurisdiction.

31. From the clearance issued by the 17th respondent, it is clear that the 17th respondent has not independently assessed the veracity of the claims made by the 18th respondent and the State Government. The reports of the Legislative Committee for Environment and the Salim Ali Foundation were not properly analyzed. There is no independent assessment or appraisal of the various contentions and submissions made by the 18th respondent and the State Government. The 17th respondent has simply reiterated the various contentions and submissions of the 18th respondent and the State Government and simply accepted the report of the EAC and granted license. The 17th respondent is, therefore, not justified in granting EC especially when the Writ Petition (C) No. 8794 of 2013 are pending before the Hon'ble High Court of Kerala filed by the appellant herein in this behalf.

32. Hence, based on the above averments the appellant in this appeal has sought for the indulgence of the Tribunal to set aside the impugned EC dated 18.11.2013 granted to the 17th respondent, the MoEF, to direct the 17th and 20th respondents to conduct a proper public hearing as prescribed in the matter of granting EC to the 18th respondent for setting up an airport and to direct the Government of Kerala to complete the proceedings initiated against the 19th respondent for restoring 49.725 acres of paddy land reclaimed to its original form.

Appeal No. 1 of 2014

33. This appeal has been filed by the appellant herein challenging the EC granted to the 3rd respondent namely KGS Aranmula International Airport Limited, Chennai by the 1st and 2nd respondents, namely the MoEF dated 18.11.2013. The Kerala State Pollution Control Board and the Secretary to Government, Department of Revenue of the State of Kerala are arrayed as 4th and 6th respondents, respectively. The 5th respondent, Chairman, Committee of Environment, Kerala Legislature, Kerala is deleted. The facts of the case of this appellant as averred in the appeal grounds raised can be briefly stated thus:

34. The 3rd respondent herein as per letter dated 24.6.2011 and subsequent letters has sought EC under the EIA Notification, 2006 for the proposal of the 3rd respondent to establish an international airport at Aranmula in Pathanamthitta district, Kerala. The land proposed for

construction of the airport and other buildings are part of a large extent of paddy fields "*Nilam*" covering more than 1200 acres. It is humbly submitted that paddy fields "*Nilam*" apart from providing paddy/rice for human consumption, serves for the upkeep of ecology in the area. Paddy lands, "*Nilams*" serves as reservoirs of rainwater which ensure the availability of ground water in the area, apart from providing drinking and irrigation water in the nearby wells. "*Nilams*" also serve as the breeding ground of a large number of fauna which are necessary for the upkeep of the local ecology. Moreover, *Nilams* also serve as the wind regulators for the local area. As stated in the objects and reasons of the Kerala Conservation of Paddy and Wetland Act 2008, there are indiscriminate and unregulated filling up of paddy land in the State of Kerala, which apart from resulting in food insufficiency has also adversely affecting the entire ecology and environment of the State of Kerala often called as 'Gods Own country'. Further, the proposed site for the airport is along the banks of one of the major rivers of Kerala, *Pampa* and is situated in an ecologically sensitive and environmentally diverse and rich area. Aranmula is home to the famous ancient "Parthasarathy" temple which is a protected monument by the Archeological Survey of India and which attracts lakhs of devotees across the country. The temple apart from the ancient architecture marvel is also home to 18th century murals that are well preserved and is recognized by the United Nations Development Program (UNDP). The temple by itself is surrounded by wetlands and the customs and traditions associated with the temple and its surrounding areas mirror the upkeep of the ecology of the wetland therein. The 3rd respondent has continued to refill the wetland more specifically the water body, *Karimaram* channel which an effective water reservoir is collecting all the excess water during flooding of the river *Pampa* and this is running through the specified area. In consequence, the entire area has become prone to frequent flooding due to the unnatural filling up of the land and has resulted in serious ecological imbalance. Till the enactment of the Kerala Conservation of Paddy and Wetland Act, 2008 as aforesaid, the filling up of paddy lands in the State of Kerala was regulated by the Kerala Land Utilization Order 1967, which was enacted under the Essential Commodities Act. As per the said order, for converting a paddy land for any other purpose, previous sanction from the District Collector was necessary as can be seen from clause VI of the Kerala Land Utilization Order. As per clause VII of the Kerala Land Utilization Order the District Collector has power to ensure that the illegal conversion of the paddy land is restored to paddy cultivate paddy in the area. Likewise, under the Kerala Conservation of Paddy and Wetland Act there is total prohibition of conversion or reclamation of any paddy land

and Sec. 13 enables the District Collector to restore the land, illegally reclaimed or converted. The Conservation of Paddy and Wetland Act as the name suggests was enacted seeing the urgent need to put in place legislation that would restrict the rampant conversion of wetlands and paddy lands resulting in widespread loss of ecological balance. The aims and objects of the Act state clearly that the legislation is enacted primarily to promote growth in agricultural sector and preserve the ecological balance of the State of Kerala. The conservation and preservation of wetlands and paddy fields are hand in glove with maintenance of ecological balance. India is a signatory to the *Ramsar* Convention on Wetlands and the *Ashtamudi* wetland which is a designated wetland under the Convention comes within the vicinity of the area proposed for this illegal airport by the 3rd Respondent. The 1st and 2nd respondents are bound to follow the conditions under the Convention which includes detailed studies to be conducted and measures to be undertaken to conserve the biodiversity of the wetland. The 1st and 2nd respondents have very clearly ignored this fact while giving the impugned clearance to the 3rd respondent. The fact that the land in which the proposed Aranmula Airport is to be established is a paddy land and there is total prohibition of converting any paddy land in the State of Kerala except for governmental public purposes. This aspect is totally suppressed in the proposal for EC made by the 3rd respondent. Though these aspects were clearly and unambiguously brought to the notice of respondents 1 and 2, these aspects which are of critical importance for considering the environmental clearance is seen ignored (Annexure AI).

35. The land measuring an extent of more than 350 acres, which is now proposed by the 3rd respondent for establishing the airport, was originally owned by one K.J. Abraham @ Kalamannil Abraham, Kalamannil House, Kozhenchery, Pathanamthitta. He had purchased about 350 acres of land in the name of two registered societies in which he was the Chairman and his family members are the office bearers. The aforesaid K.J. Abraham acquired vast extent of paddy field in Aranmula, Mallapuzhassery and Kidangannur village right from 2004 onwards. At that time the land purchased by K.J. Abraham was coming under the provisions of the Kerala Land Utilization Order 1967. The aforesaid K.J. Abraham proposed to the local *Panchayat* that he is intending to start an Aeronautical College and sought permission from the local *Panchayat* to reclaim 8 acres of paddy land. The local *Panchayat* without any authority whatsoever under any provision of law, arbitrarily issued permission for the reclamation of paddy land. On the basis of the alleged illegal permission granted by the local Panchayat, Shri. K.J. Abraham illegally filled up an extent of 49.725 acres of paddy

land. This act *prima facie* was done in violation of the Kerala Land Utilization Order and Kerala Conservation of Paddy and Wetland Act 2008. This paddy land reclamation resulted in mass public protest by the local people. The illegal land filling by the said person also resulted in filling up of irrigation canals which in turn caused flooding and other adverse effects to the nearby paddy fields. Vide letter dated 26.10.07 the Revenue Divisional Officer in his letter to the *Tahsildar* has explicitly stated that the aforesaid K.J. Abraham had illegally reclaimed 3.56 hectares of land and has also trespassed into 8.87 acres of Government land. It is further stated in the above letter that the reclamation of the *Nilams*/paddy fields is done by mining ordinary earth which is a minor mineral from his 5.92 Acres of land in Sy. No. 392/2. No sanction for mining ordinary earth is also obtained by the said K.J. Abraham. The letter dated 03.05.2008 of the Revenue Divisional Officer to the Circle Inspector of Police Aranmula and true copy of letter dated 09.02.2009 of the Assistant Engineer, Minor Irrigation Department to K.J. Abraham is evidencing the above fact. As can be seen from the letter, the Revenue Divisional Officer had directed the Sub Inspector of Police to ensure that there is no illegal filling up of paddy land. By another letter from the Irrigation Department, the said K.J. Abraham was directed to restore the land and the report of the Agricultural Officer would show that paddy cultivation has become impossible in large extent of paddy land because of the illegal filling and encroachment into government land. The above facts will show that there has been widespread illegal filling up of paddy land by the said K.J. Abraham and also encroachment in the irrigation canal. This will show that there is illegal filling up of a big canal to 800 m and the encroachment in the government land by the said K.J. Abraham. This will also show that an estimate of Rs. 19 lakhs as on 19.11.2009 is required for restoring the irrigation canal.

36. It is also clear from the letter dated 03.08.2008 that proceedings under the Kerala Land Utilization Order was initiated by the District Collector for restoring the illegally filled up paddy land. As per letter dated 22.10.2012, the Assistant Director, Agriculture also informed the Principal Agricultural Officer, Pathanamthitta of the above illegality of filling up of paddy land. This also shows that out of the 315 acres of land possessed by the said Shri K.J. Abraham, about 70 acres are partially and illegally filled up, adversely affecting the irrigation facilities to the rest of the paddy lands. It is also reported that during the rainy season, when the holy river 'Pampa' starting from Sabarimala flows with full capacity, the flood like situation is prevented because the water flows to the paddy fields at Aranmula. Since the free flow of water through Kozhithodu is obstructed, the flood like situation in the area cannot be ruled out. It is also reported that because of the

reclamation of paddy land, the ground water table in the area will be lowered and there is possibility of natural disaster as well as drinking water scarcity. Thus, it is clear that there has been illegal filling up of paddy land resulting in environmental degradation. The Joint Land Revenue Commissioner, State of Kerala in his report dated 25.08.2012 has highlighted the illegalities in filling up of paddy land and has recommended a vigilance enquiry into the entire incident. Thus, it is absolutely clear that the major portion of the land now proposed by the 3rd respondent for establishing the Aranmula airport is still paddy land, and the balance portion is wetland. These are illegally filled up in violation of the Kerala Land Utilization Order as well as Kerala Conservation of Paddy and Wetland Act, 2008. It is clear that the revenue authorities are taking action to restore the paddy land, illegally filled up, to its original state. The fact that if the actions against illegal conversion of the paddy land are brought to logical conclusion by revenue authorities, the already filled up lands will become paddy fields again was not even considered. This vital aspect is suppressed by the 3rd respondent while submitting an application for EC before the MoEF. As a matter of fact, the District Collector Pathanamthitta has informed the Additional Chief Secretary, Department of Industries by letter dated 23.7.2012 that almost the entire land possessed by the 3rd respondent which was obtained from aforesaid K.J. Abraham are paddy lands. The Legislative Committee on Environment of the Kerala Legislature Assembly in its report has clearly and in unambiguous terms found that major portion of land held by the 3rd respondent is paddy land and that the committee cannot agree with the development activity that would destroy water resources, acres of paddy fields which are cultivated for centuries and also would destroy the biodiversity of the area. The legislative committee has also observed that action for the illegally converting paddy land under the Land Utilization Order and Kerala Conservation of Paddy and Wetland Act should be taken. The Environment Committee of the Kerala Legislative Assembly had filed the report after eliciting views of at least 3000 people in the locality whereas the alleged public hearing held for obtaining the EC was attended by just about 80 persons including the officials. Moreover, the entire aspect regarding the illegal filling up of paddy land was enquired by the Joint Land Revenue Commissioner, State of Kerala who filed a report on the land issues connected with Aranmula Airport. This will show that there has been illegal conversion of paddy land as well as illegal filling up of *poramboke*/government '*thodu*'. The Land Revenue Commissioner has recommended a vigilance inquiry into the whole issue. The Government of Kerala has filed a report before the MoEF. As can be seen from 2nd page of Annexure A XIV, the government has

reported that the allegations made regarding the illegal filling up of paddy land etc., if true, is very grave and that could erode the validity of the environment impact assessment study. However, in spite of Annexure A XIV, not even an enquiry is made regarding the alleged illegal filling up of paddy land and also the proposal for filling up of about 350 acres of paddy land, before issuing EC. In fact, the Government of Kerala has itself brought to the notice of the Union of India that a portion of paddy land has been filled up, and this can have adverse environmental impact. It is not known whether the agency which conducted the EIA considered this aspect. It is proven that filling up of wetland can adversely affect ground water recharge which would in turn disturb the agricultural activities of the nearby areas. Further, it is true that earth is required for filling up of wetlands to make it suitable for the project. This ought to have been identified before hand and EIA should have looked into that aspect also. However, these aspects were totally ignored while passing EC order.

37. The Kerala State Assembly has got 140 elected members of legislature. Majority of the MLAs of Kerala Legislative Assembly cutting across political affiliations i.e. 72 MLAs have addressed a letter to the Hon'ble Prime Minister of India, stating that there has been illegal filling up of wetland, paddy field as well as canals and that the majority of the MLAs of Kerala Legislature has submitted to the Hon'ble Prime Minister that the project has no moral, legal or scientific ground for existence and it is an impractical project which would cause irreversible damage to the environment. Hence the majority of the MLAs of Kerala Legislative Assembly as well as retired Judges of Hon'ble Supreme Court and High Court of Kerala, religious leaders of all faiths, political leaders of all political parties as well as former diplomats had requested for rejecting the proposal of the airport. These documents will clearly show that the land in which the proposed airport is to be established is a paddy land. These are ignored while granting the impugned EC. In the State of Kerala filling up of paddy land for governmental public purpose is illegal. Annexure AI in the impugned EC mentions that the paddy fields have to be filled for run way, apron, taxi way etc. The Chief Operating Officer of the 3rd respondent admits that about 350 acres of uncultivated paddy land is to be filled up for providing public utility service as part of the project. In the feasibility study conducted by the Airport Authority of India, New Delhi (AAI) it is clearly mentioned that on the date of visit of the Expert Committee i.e., on 15.10.2009, filling up of land for the purpose of runway is going on. Admittedly, the aforesaid filling up activity is done in paddy land, which was prohibited under Sec. 3 of the Kerala Conservation of Paddy and Wetland Act. The photographs attached to Annexure A XVII feasibility study would show the illegality perpetuated even after Kerala Conservation of Paddy and

Wetland Act 2008 has come into force. As per the copy of the letter dated 10.06.2009 issued by KITCO Limited to the Hon'ble Chief Minister of Kerala, it is necessary to convert 350 acres of paddy land to cater the requirement of the proposed project. Thus, it is absolutely clear that the land proposed is a paddy field and under the present enactment namely Kerala Conservation of Paddy and Wetland Act 2008, there is an absolute and total prohibition of conversion or reclamation of paddy land. Sec. 2(xii) defines paddy land as all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy cultivation but uncultivated and left fallow. Thus, the entire land proposed for the project is a paddy land as defined under Sec. 2 (xii) of the Kerala Conservation of Paddy and Wetland Act. Sec. 3 prohibits reclamation or conversion of paddy land except under Sec. 10 which provides for grant of exemption. However, Sec. 10 does not enable the government to grant exemption from the provisions of the Act except for any public purpose. Public purposes defined under Sec. 2 (xiv) is that the schemes undertaken or financed by the State or Central Governments or statutory bodies or other schemes specified by the government. Thus, only if the project is financed or undertaken by the State Government, the exemption can be granted. In Annexure AI, in order to overcome the Kerala Conservation of Paddy and Wetland Act, the State Government has observed that since approximately 100 acres of land is notified as industrial area and since the reclamation was before 2008, the Kerala Conservation of Paddy and Wetland Act 2008 is not applicable. Both these grounds do not stand scrutiny of law. The notification SRO. No. 185/2011 declaring that the area is an industrial area has absolutely no relevance vis-a-vis the Kerala Conservation of Paddy and Wetland Act 2008. Once it is found that the land is a paddy land as defined under Sec. 2(xii) of the Kerala Conservation of Paddy and Wetland Act, there is no escape from the provisions of the Kerala Conservation of Paddy and Wetland Act. The 2nd reason stated is that reclamation was done prior to the coming into force of Kerala Conservation of Paddy and Wetland Act 2008. This itself is not correct in view of the report of the KITCO (Annexure A XVIII), feasibility study of the AAI as well as the letter of the 3rd respondent Annexure A XVI, which will show that even after commencement of the Kerala Conservation of Paddy and Wetland Act, the paddy lands need to be converted or reclaimed and are being reclaimed as can be seen in the photographs of Annexure A XVII report of the AAI. Apart from that, even if the reclamation of paddy land is made prior to 2008, the law that is applicable is the Kerala Land Utilization Order 1967. It is abundantly clear from documents contained in Annexure A II to X that actions are being initiated by revenue authorities against illegal reclamation of the paddy land both under the Kerala Land Utilization

Order as well as under the Kerala Conservation of Paddy Land Act. Hence, the observation made in EC (Annexure AI) that since the area is declared as an industrial area and the reclamation if done before the commencement of the 2008 Act, is not legally sustainable is not tenable. Even in the said observation of the State Government, in Annexure AI paragraph VII(1), it is admitted that paddy field is left fallow and natural irrigation facilities have been encroached upon and blocked at several places by K.J. Abraham who had allegedly sold the property to the 3rd respondent. Hence, the observation in Annexure AI that the Kerala Conservation of Paddy and Wetland Act will not be applicable is not correct.

38. The proposal involves development of an airport in Pathanamthitta district in a plot of area 500 acres. It is revealed that in the meeting held on 21 to 23 September 2010, the ToR was finalized. In the said ToR, the issue regarding filling up of paddy land was not one of the points to be noted. When there was newspaper report and complaints, the project was again reconsidered by the EAC in September 2011. Thereafter, the EAC noticed that there is allegation of inclusion of wetlands and conversion of paddy lands in the project. This was put to the proponent as well as the government. On the basis of the reply filed by the government as well as the proponent it was found that there is no paddy cultivation for past 10 years which is not factually correct. Moreover, even if there is no cultivation of paddy for ten years, it does not take the land out of the purview of Kerala Conservation of Paddy and Wetland Act. As can be seen from relevant pages of the note file of the Government of Kerala (Annexure A XX) in reply to the enquiry made by the MoEF, based on the article in '*The Hindu*', the Additional Secretary has given his observation. As can be seen from Annexure A XX it was mentioned that the enquiry report of the Directorate of Environment and Climate Change does not reveal reclamation of wetland. As for the reclamation of the land where paddy cultivation was there ten years also it requires statutory clearance, it is for the proponent to get the clearance. All these should be examined as a part of EIA Process. However, as can be seen from EC (Annexure A I) none of these aspects was examined. In para 52 of the Annexure A XX, it is admitted that the promoters without obtaining clearance have filled up wetland. It is also reported that commencement of the work without getting clearance from the MoEF is illegal. It is also admitted that filling up of wetland has environmental impact and that the agency which conducted the environmental study has not considered this aspect. The MoEF was requested to consider this aspect. Further in paragraph 54, it is also admitted that ordinary earth is required for further filling up of wetland to make it suitable for the project and the EIA should have considered that aspect also. This was also not considered while issuing

EC. Moreover, the fact that there is no paddy cultivation and the paddy land is left fallow and uncultivated does not mean that the land goes out of the definition of the paddy land under the Kerala Conservation of Paddy and Wetland Act and also loses the character of natural paddy land except that there is no cultivation of paddy, a paddy land even if left uncultivated for 10 years, serves all other ecological purposes including serving the upkeep of the ground water table, breeding ground and fauna and the balancing factor of the local environment. However, as can be seen from Annexure A XIX, the EAC has brushed aside these allegations even though it is clearly found that filling is required for development of runway, taxi way etc., and the details of area required to be filled, were not addressed in the EIA. However, accepting a vague reply from the 3rd respondent, the EAC recommended the proposal for EC. Thus, it is clear that the ToR, was finalized without including the question regarding the existence of paddy fields and filling up of the same.

39. As can be seen from the feasibility study prepared by the AAI, in the suggestion and recommendation in clause VI, it is clearly stated that as the possible approach would be from 34N, the hillocks situated near the area can be obstruction for navigation aids. Hence, action to acquire and level the hillocks should be initiated. However, in the ToR as well as in EC, the environment impact of removing of these hillocks is clearly omitted.

40. The proposal made by the 3rd respondent in Form No. 1 would show that there is no necessity for making any new roads or other transportation facility for the purpose. However, as can be clearly seen from the report of the AAI, there is not even an approach road to the site in question where the airport is proposed. The documents produced before the Central Government would show that there is necessity to provide four lane road from the proposed site of airport to a distance of more than 8 km in two directions. Thus, the proposal of the airport and the construction of at least four lane new roads to a distance of 16 km is an integral part of the project. Without roads or other transport facilities, functioning of an airport is impossible. For construction of the aforesaid roads, large extent of paddy fields and wetlands have to be reclaimed and filled up. Apart from causing environmental disaster in the area, the filling up of paddy land needs ordinary earth. Thus, the social impact of the establishment of the airport by the 3rd respondent especially the necessity of road connectivity should have been a critical item of ToR, which is not included in ToR, nor is this aspect considered in the EC.

41. The MoEF, as per Notification No. SO 1533 dated 14.09.2006, has issued the notification, prescribing the procedure for getting EC. As

a part of the screening, scoping and appraisal of the project, there is a procedure called "public consultation". As can be seen from clause III (ii), the public consultation shall ordinary have two parts. (i) Public hearing at the site and (ii) responses in writing from other concerned persons having stake in the environment. Appendix 4 of the said notification prescribes the procedure for public hearing. As can be seen from clause 2.3 and 2.4, on receipt of the draft EIA report, the authority shall arrange wide publicity of the report to elicit the views of the public. The State Pollution Control Board has also a duty to conduct a public hearing. Clause 3 of the appendix to the notification shows that the Pollution Control Board has to advertise in two daily news papers, the exact date, time and venue of the conduct of public hearing and minimum notice period of 30 days shall be provided for furnishing the responses. Clause 3.2 shows that the advertisement shall inform the public about the place where the public could access the report before the public hearing. Clause 3.3 provides that no postponement of the date or time or venue of the public hearing shall be undertaken unless the emergency contingencies mentioned in the clause happen. Clause 3.4 provides that, if the public hearing is adjourned, the procedure prescribed under clause 3.1 has to be again undertaken.

42. In the present case, there had been hasty attempts to conduct the alleged public hearing with the sole purpose of ensuring that the procedure is complied with in a mechanical manner, without holding on to the spirit of the necessity of public hearing. This is clear from the following facts: On 02.02.2011, the 3rd respondent requested the Kerala State Pollution Control Board to arrange public hearing on the basis of the EIA report. The next day, in the Pollution Control Board letter dated on 03.02.2011, the Secretary of the Kerala State Pollution Control Board wrote to the District Collector for arranging a public hearing on behalf of the Board. The District Collector immediately made arrangements for public hearing to be held on 10.03.2011 at Collectorate Conference Hall, Pathanamthitta.

- I. As can be seen from Annexure A XXI the public hearing is related to the environmental issues of water, air and sound pollution by construction of the airport in 347 acres of land. No agenda on reclamation of paddy lands or use of illegally filled up paddy lands.
- II. The public hearing notice does not make any mention of the conversion of paddy land for the purpose of construction as well as leveling of hillocks and using of ordinary earth, a minor mineral, for filling purpose. It does not mention the issue relating to construction of four lane roads for 16 km.
- III. On 04.03.2013, the Pollution Control Board in its attempt to ensure hasty public hearing, requested the Chief Electoral Officer

to permit conduct of the public hearing on 10.03.2011 itself. The Chief Electoral Officer informed the Pollution Control Board that the public hearing has to be deferred till the election process is over. The said information is issued as per letter dated 07.03.2011 of the Electoral Officer to the Secretary of the Pollution Control Board.

- IV. The Pollution Control Board by letter dated 24.03.2011 in its anxiety to hold public hearing at the earliest again wrote to the District Collector to conduct the public hearing immediately after the election was over i.e., on 13.04.2011, though the election process would be over only after counting and declaration of result.
- V. The 3rd respondent met the Chief Electoral Officer and obtained permission to conduct the public hearing after the poll process was over on 13.4.2011.
- VI. The Pollution Control Board requested the District Collector to convene the Public Hearing on 29.04.2011 at 11 am in the Office of the District Collector. The newspaper publication was made in 'The Hindu' daily on 27.03.2011 that the Public Hearing for construction of new airport at Aranmula would be held on 29.4.2011. As can be seen from newspaper report dated 27.03.2011 in Annexure A XXII, the advertisement did not reveal whether it was an advertisement in accordance with the prescribed procedure for public hearing for the purpose of EC. In contrast to Annexure A XXI newspaper advertisement did not reveal the purpose of public hearing. It only said the postponed public hearing for construction of airport will be held on 29.4.2011. The said advertisement itself is faulty.
- VII. However, no public hearing was held on 29.04.2011 also because of inconvenience of the District Collector. The local land owners have, in the meanwhile, filed objection before the District Collector regarding the aforesaid project. As per the document in Annexure A XXIII, the paddy land is proposed to be filled up for the purpose of airport is not mentioned.
- VIII. Since the Public Hearing on 29.04.2011 was not held, the Pollution Control Board by letter dated 06.05.2011 informed the District Collector that the Public Hearing should be held on 10.05.2011 at 11 am in the conference hall of the Collectorate and the details regarding the public hearing should be published. However, to the knowledge of the Appellant, no newspaper advertisement regarding the public hearing scheduled to be held on 10.5.2011 as mandated in the notification of the Union Ministry was published.

43. The appellant is an environmentalist who campaigns against illegal and disastrous exploitation of environment and is in the forefront of the people's agitation against Aranmula Airport and also a member of Wildlife Board constituted by the State Government. In Pathanamthitta District the contest between the rival political fronts was very intense and one of the major issues was the proposed Aranmula airport. The election process in the State of Kerala started on the first week of March 2011 the polling was held on 13.04.2011. The counting of votes was posted on 11.05.2011. This means that on 10.05.2011 - the penultimate day of counting many of the persons who are involved in political activities like the appellant were in the midst of arranging the party workers as the counting agents and other work in the connection of election process. Apart from that, the politically conscious Kerala people were all eagerly waiting for the election results. It is at the midst of this highly contested election, an excuse of public hearing was conducted in order to complete the formalities prescribed without complying with the spirit of the purpose of public hearing. As a matter of fact, the appellant was present for the public hearing on 10.3.2011 as well as 29.04.2011. On both these days the public hearing was adjourned. There was no newspaper advertisement regarding the public hearing on 10.05.2011. The conduct of the public hearing on the penultimate day of counting of votes in the ballot boxes in a politically conscious state is solely for the purpose of avoiding public participation in the public hearing. This is abundantly clear from the fact that in the alleged public hearing held on 10.05.2011 the total number of participants was only 80 persons, whereas in the public hearing conducted by the Environment committee of the Kerala Legislative Assembly on the same issue more than 3000 persons participated.

44. The illegality of public hearing without proper newspaper advertisement can be seen from the copy of the minutes prepared by the Pollution Control Board as per the document in Annexure A XXV. As can be seen from Annexure A XXV, there is no mention regarding the newspaper advertisement of the public hearing held on 10.05.2011. It also shows that only 80 persons including officials participated. Even the copy of minutes of the proceedings would show that many of the participants had raised the issue of illegal reclamation of paddy land though it was ignored as not part of agenda. Hence, it is absolutely clear that the public hearing held on 05.10.2011 is a farce and without proper notice.

45. A reading Annexure AI of EC would show that the proponent had got ownership and title over 350 acres of land in the aforesaid area. This is the impression one gathers from the list of survey number and lands given as annexure to Form No. I. However, this list is the list of

lands notified as industrial zone. It has nothing to do with ownership of 3rd respondent. In fact, the majority of land mentioned in annexure to Form No. I belong to other persons. Moreover, (i) the claim of the proponent/3rd respondent is that they purchased the land as aforesaid from one K.J. Abraham. It is pertinent to note that under Sec. 83 of the Kerala Land Reforms Act, no person can hold any property in excess of the ceiling area. Sec. 82 of the Kerala Land Reforms Act provides that the maximum land that can be held is 15 acres and the balance excess land automatically vest with the government by fiction of law. In the present case the person who allegedly sold the subject matter of land to the 3rd respondent was holding land far above the ceiling area. The land board has booked a ceiling case under the Kerala Land Reforms Act against the aforesaid person. Under Sec. 84 of the Kerala Land Reforms Act, any voluntary transfer of property, by any person holding excess land, is invalid. Hence, the 3rd respondent who claims to be the transferee from the aforesaid K.J. Abraham cannot have even title or ownership over the property. Thus Annexure AI and the entire process is based on a wrong factual assumption that the 3rd respondent has title to the aforesaid property. This made abundantly clear by the letter issued by the government to the Department of Environment. Annexure AXXVII admits that the land is excess land under the Land Reforms Act. However, it says that exemption can be granted under the Land Reforms Act regarding the ceiling area. It is brought to the notice of the tribunal that no such exemption can be granted under Sec. 81(3) of the Land Reforms Act for various reasons especially in favour of 3rd respondent who is not even an owner of the land.

46. The details given by the 3rd respondent in Form I are misleading and incorrect and for that reason alone the grant of EC is liable to be rejected. As can be seen from the details mentioned in Annexure A XXVII they are either absolutely false or half true. The details are given below.

I. In column 3 of clause 1.0, it is stated that the proposed area is only 16,250 square meters, which is absolutely false. The area covers at least 10 times the area mentioned in the said entry. In clause 22 of the same table, it is wrongly mentioned that there is no government order or relevant policy relating to the site. As can be seen from Annexure A II to XIV there are various reports of the government and government officials regarding the illegal reclamation of paddy land.

II. Entry in clause 24(c) that there is no order or direction of the court is absolutely false.

III. In clause II serial No. 1.1 it is wrongly stated that no permanent

or temporary change in land use, land cover or topography including increase in the intensity of land use will be there by construction of the proposed airport. This is absolutely false since large areas of paddy land and wetland will be converted and used and there will be total change in the land use pattern, the land cover and the topography of the land. This will also cause increase in the intensity of land use. Likewise, the documents produced in the above application would show that there is thick vegetation and also there will be threat to the biodiversity in the entire paddy land. Clause 1.2 sways that the vegetation and buildings will be relocated. Likewise, clause 1.3 falsely says that there is no creation of new land uses. Clause 1.10, falsely says that no reclamation work in the project is necessary. This is only to mislead the authority, especially to show that there is no paddy land in the area, which is factually incorrect.

IV. Clause 1.17 wrongly says that no new road for traffic is necessary and already roads exist. This is factually incorrect. There is not even a approach road to the site. Moreover when the operation of the airport commences there will be at least two four lane roads having 8 kilometers length each.

V. The answer to clause 1.24 that there will be no change in the water bodies or land surface affecting drainage or runoff is wrong.

VI. Clause 2.1 falsely says that there is no undeveloped or agricultural land in the project site. The last page of Form No. 1 deals with the pattern of land. It is wrongly stated in serial No. 1 that the land in which the project is proposed is not covered by any local legislation for ecological, land scale and other related value. As a matter of fact, the land is clearly covered by the Kerala Conservation of Paddy and Wetland Act, the Kerala Land Utilization Order as well as the wetlands under the RAMSAR convention. It is also wrongly stated that the Pampa River is 2 kilometers away from the project. Pampa River is laying very adjacent to the project.

VII. Answer to clause No. 8, 9 and 10 are also false. Hence it is absolutely clear that application has been filed by the 3rd respondent suppressing material facts. The resultant ToR prepared by the EAC and Annexure AI ecological clearance is also illegal.

47. The objections of Salim Ali Foundation were totally ignored. Salim Ali Foundation, Ayyappankavu Road, Kanimangalam, Thrissur, which is an organization functioning for the protection of ecology has filed a detailed report regarding the potential ecological, social and economic impacts of the proposed project. The Salim Ali Foundation

has pointed out various environment disasters that may occur in the area if the aforesaid project is implemented. This includes the loss of intangible values of wetlands and paddy lands in the proposed site as well as adjoining area. It also points out in paragraph 37 to 42 the net physical value of the land which will be lost by the starting of the proposed project. The total benefits of the paddy fields and wetlands from the proposed airport area will be about Rs. 335 to 440 crore per year because of loss and damage. It also points out the total lack of application of mind in preparation of the Environment Impact Assessment report. However, in the EC, nothing is mentioned about the findings of the report. It brushed aside the said report, on the basis of an observation by the State Government that there is no wetland as mentioned in the report. In the observation of the government extracted from EC, it is wrongly stated that report has confused paddy land and wetland. At any rate, since the land which is proposed to be used for the said project is a paddy land which not only serves as a food production area but also serves for the recharge of ground water level and upkeep of the local ecology, the question regarding NPV at least have been addressed.

48. It is clear from the various reports and documents produced as Annexure AII to VI that the tributary of Pampa River, Valiya Thodu as well as Kozhithode which serve as the irrigation water source to the entire paddy fields have been encroached and filled up by the proponent and his predecessor in interest. Steps have been taken under the Kerala Land Conservancy Act for recovering the aforesaid Government land. However, the Environment Impact Assessment Report ignores these allegations also.

1. As a matter of fact, the appellant herein has filed W.P. (c). No. 15101/2013 before the Hon'ble High Court of Kerala seeking direction to restore the illegally filled up paddy land, now in possession of 3rd respondent and which is proposed for the construction of airport.

49. Hence, the appellant herein has sought for the indulgence of the Tribunal to:

- (i) *Call for records leading to the EC given by the MoEF, Union of India as per letter dated 18.11.2013 in favour of the 3rd respondent.*
- (ii) *Direct the respondents to remove all constructions made, excavate the paddy lands and wetlands filled in, remove any and all obstructions to the flow of water and restore the area to its original pristine state. Direct the 3rd Respondent to restore the Karimaram Chahal to its original flow.*
- (iii) *Declare that the ToR finalized which resulted in Annexure AI*

does not cover the core environmental issues relating to the establishment of the proposed Aranmula Airport.

(iv) *Declare that the public hearing alleged to have been held for the purpose of considering the EC for establishment of the Aranmula Airport is invalid and insufficient.*

Appeal No. 19 of 2014 (SZ)

50. The appellant herein is a social worker and a resident of Kozhencherry Taluk of Pathanamthitta District in the State of Kerala, where the proposed Aranmula Airport Project is to be located. He earlier served as the President of the Pathanamthitta District Panchayat and is a Member of Kerala Pradesh Congress Committee at present. The appellant is an activist for protection of environment and promoting paddy cultivation in the Aranmula locality. He is deeply aggrieved by the EC issued to the proposed airport and its allied activities as it will seriously affect the life and livelihood of the people living in Kozhencherry Taluk in particular and Pathanamthitta district in general as it will result in environmental degradation, stoppage of paddy cultivation in *puncha padashekham* (paddy fields) in Aranmula and depletion of ground water. He files this appeal challenging the EC granted to the Aranmula Air Port Project as a person affected by the project and the negative impact on paddy land, depletion of ground water and environmental degradation will directly affect him as also a committed social and political worker, several other persons affected by the project are also complaining to him about the ill consequences of the project. The appellant has arrayed the MoEF as the 1st respondent, State of Kerala as the 2nd respondent, K.G.S. Aranmula Airport Ltd., as the 3rd respondent, Kozhencherry Charitable Education Society as the 4th respondent, who was subsequently given up during the proceedings of the appeal before this Tribunal, Enviro Care India Pvt. Ltd., as the 5th respondent, Kerala State Pollution Control Board as the 6th respondent and the District Collector, Pathanamthitta District in Kerala State as the 7th respondent. The short facts of the case leading to the filing of this appeal as could be gathered from the grounds of the appeal filed herein can be stated thus:

51. The impugned EC is issued without considering several environmental, ecological and social aspects. Conversion of *puncha* (paddy fields), its consequences etc., were not even adverted to by the 1st respondent/MoEF. Similarly, the aspects relating to leveling of neighboring hills and the development of airport, allied buildings, construction of road etc., etc., were not addressed. The 3rd respondent/K.G.S. Aranmula Airport Pvt. Ltd., suppressed several vital

details in the application made seeking EC. The EIA report prepared by the 5th respondent/Enviro Care Pvt. Ltd., is legally defective and is factually inadequate. The EIA report was not prepared by the competent persons and *ex facie*, the impugned EC is bad for non consideration of relevant aspects and irrelevant considerations. The details given in the application form in Form I seeking EC did not reveal that the proposed construction of the project is going to be made in paddy land and that the land use is to be changed or that there will be reclamation of paddy land. Suppression of this vital aspect has resulted in fundamental error of EC as at no point of time, the respondents considered the fact of reclamation of paddy land and its consequential impact on the ecology and environment in its proper perspective. There was also no impact assessment study relating to conversion of paddy lands. Rice is a major wetland crop and paddy fields in Kerala are typical wetland eco-systems that serve numerous important ecological and environmental functions and conversion of paddy fields involves irreversible transformation of the wetland agro-ecosystems. The Aranmula *puncha* and other paddy fields in adjacent villages from the flood plains of river Pampa and they serve as natural flood control mechanism. None of these aspects was considered by the 1st respondent/MoEF while issuing the impugned EC.

52. In a letter dated 01.06.2013, (Annexure A14), the 2nd respondent/State of Kerala specifically brought to the notice of the 1st respondent/MoEF about some grave issues raised in the report of the Salim Ali Foundation (Annexure A2), which if true, will erode the validity of the EIA study and requested to examine those issues before granting EC and none of these issues was addressed in the impugned EC by the 1st respondent/MoEF due to non application of mind. While the letter dated 01.06.2013 of the 2nd respondent was referring to the impugned EC for extracting the views of the 2nd respondent/State of Kerala the land in question as wetlands, instead of adverting to the expression used in that latter, the 1st respondent/MoEF ought to have considered the true nature and significance of the land in question. The 1st respondent/MoEF proceeded on the wrong premise that the reclamation of paddy land by the prior owner, the 4th respondent/Kozhancherry Educational Charitable Trust is legal and valid. Till the date of judgment dated 24.02.2005 in W.P.(C). No. 3917 of 2005 of the Hon'ble Kerala High Court, (Annexure A3), the 4th respondent namely the Kozhancherry Education Trust, the previous owner had no permission to reclaim the paddy land and even subsequent to that date also, no permission was issued by any

competent authority to the 4th respondent to reclaim the paddy land in controversy and contrarily, the competent authorities found that the reclamation of paddy land by the 4th respondent was illegal and ordered to be restored. The legal effect and consequences of those proceedings were not enquired into by the 1st respondent/MoEF. The observations of the AAI (Annexure A16) following the inspection held on 02.07.2012 would show that there are obstacles to the proposed runway approach due to location of a hill and rubber plantation and require to be removed after obtaining environmental clearances and these aspects have not been considered by the MoEF/1st respondent while issuing EC. The issues relating to leveling of the nearby hills were not made a subject matter for enquiry.

53. There is total non application of mind while permitting reclamation of paddy land for the purpose of runway as the length, orientation etc., were not finalized. As per the paragraphs 2.2.1 in Annexure A6 and Annexure A20, the proposed length of the runway is 2800 m in Phase I. In Annexure A11, the 3rd respondent/Aranmula Airport Pvt. Ltd., claimed that the construction of runway to a distance of 1500 m has been already completed and in addition to the existing runway to extend it to another 1000 m. Whereas, after quoting the letter from the 3rd respondent/Aranmula Airport Pvt. Ltd., the 1st respondent/MoEF has recorded in paragraph 6(iii) of the EC that the previous owner had filled the runway of 1000 × 150 m for airstrip and the only area required for runway 1000 × 150 m will be filled and accorded permission to reclaim 1000 × 150 m. According to the impugned EC, the length of the runway is 2000 m and it is all the more relevant to state that according to the original project report prepared by the Consultant (KITCO), the proposed length of runway is 3100 m. Going by the documents on record, there is no certainty on the actual length of the runway and the required area of paddy land to be reclaimed. But, as per the observations made by the AAI (Annexure A16) it is recommended for displacing the threshold of runway by 285 m in view of the obstacle reported due to the existence of temple mast. As such, the 1st respondent ought not to have given any permission to reclaim paddy land before finalization of runway orientation and ascertaining its actual length. The issuance of clearance to fill the paddy land at 1000 m and therefore, issuance of piecemeal EC without taking the proposed project as a whole or considering cumulative effect of the project are illegal.

54. Majority of the Members of the Kerala Legislative Assembly and Assembly Committee for Environment pointed out that the proposed airport project that is going to be established in the paddy land to be

reclaimed would cause severe environmental degradation. But, none of the aspects pointed out therein were considered in its proper perspective by the 1st respondent/MoEF while issuing the impugned EC.

55. The issuance of SRO No. 185/2011 dated 24.02.2011 referred to in paragraph 7(i) of the EC itself is illegal as the EC is not preceded by the EC as required in paragraph 7(c) of the Schedule to the EIA Notification dated 14.09.2006. Moreover, no specific permission is granted to reclaim any paddy land by any of the competent authorities and the reclamation already made by the 4th respondent is illegal. Even assuming that the SRO No. 185/2011 dated 24.02.2011 whereby certain areas are declared as industrial area is valid, still permission under Kerala Conservation of Paddy Land and Wetland Act, 2008 is required for filling up any paddy land. In the instant case, no such permission is given to 3rd respondent for filling up paddy land. On this count also, the EC given for filling up the paddy land is illegal and unsustainable.

56. The public hearing that preceded the grant of EC was not conducted in accordance with law. As per the minutes with covering letter dated 13.05.2011 (Annexure A7), initially the public notice of hearing was published in the newspapers on 06.02.2011 after scheduling the date of hearing as 10.03.2011. Later, it was postponed to 29.04.2011 and was ultimately held on 10.05.2011. No notice was issued for the public hearing as required in paragraph 3 of the Appendix IV of EIA Notification, 2006 for the public hearing held on 10.05.2011. Since no proper notice was given, the participation of project affected people in the public hearing was very low and the entire proceedings were concluded within 120 minutes. The appellant was denied the opportunity to participate in the public hearing for want of proper information/notice while hundreds of people participated in the public hearing conducted by the Kerala State Legislative Assembly Committee on Environment.

57. From the reading of the application made by the 3rd respondent seeking EC in Form I dated 28.06.2010 (Annexure A4) and the copy of the ToR finalized by the EAC on 13.10.2010 (Annexure A5) with regard to the proposed airport project of the 3rd respondent, there was complete suppression of the fact of the establishment of the proposed airport project required filling of paddy land. The report of the Salim Ali Foundation (Annexure A2), report of the Kerala State Legislative Assembly Committee on Environment regarding Aranmula Greenfield International Airport (Annexure A17) and the letter dated 13.07.2013 submitted by the 72 Members of the Kerala State Legislative Assembly to the Hon'ble Prime Minister of India would show that the issue of paddy land reclamation is very vital to the aspects relating to the EC and is the root cause of public opposition to the project. In the

circumstances, the 1st respondent/MoEF ought to have ascertained the ground situation by obtaining a proper local inspection report before according any clearance which would have revealed the significance of Aranmula paddy land and the hollowness of the claim by the 3rd respondent.

58. By the letter dated 26.06.2012 of the State of Kerala/2nd respondent addressed to the 1st respondent/MoEF, it has been categorically informed that the portion of land which was paddy land and has been filled, which can have environmental impact. No clearance has been taken for filling up paddy land. According the Kerala State Paddy and Wetland (Conservation) Act, 2008, prior sanction of the Committee authorized for filling such areas is required. But, this crucial aspect was not even probed by the EAC or by the 1st respondent/MoEF. The EIA report was not prepared in accordance with "Environmental Impact Assessment Manual for Airports (Annexure A19) and the EIA Report for the construction of new airport at Aranmula prepared by the 5th respondent/Enviro Care India Pvt. Ltd., (Annexure A20) are factually misleading.

59. As per the Office Memorandum of the 1st respondent/MoEF bearing No. F. No. J-11013/77/2004-IA II (I) dated 30th September 2011 (Annexure A24), the application for accreditation submitted by the 5th respondent/Enviro Care India Pvt. Ltd., was rejected by the Quality Council of India. But, however, as per Office Memorandum of the 1st respondent/MoEF bearing F. No. J-11013/77/2004-IA II(I) dated 30.06.2011 (Annexure 23), the Consultants whose application for accreditation was pending were permitted to submit report/certify documents to appear only upto September 2011. As such, the EAC went wrong in considering the EIA report prepared by the 5th respondent/Enviro Care India Pvt. Ltd., in September 2011, December 2011 and in August 2012 as per the extract of the minutes of the 105th, 107th and 115th meetings of EAC (Annexure A8-A9), respectively and the EAC ought to have rejected the application made by the 3rd respondent seeking EC in Form I dated 28.06.2010 (Annexure A4) and the EIA report for the construction of new airport at Aranmula prepared by the 5th respondent/Enviro Care India Pvt. Ltd., (Annexure A20) as the application of the 5th respondent/Enviro Care India Pvt. Ltd., seeking accreditation was rejected by the Quality Council of India at the time when they considered the EIA report. Hence, the 1st respondent/MoEF was completely wrong in issuing the EC based on the EIA report prepared by an incompetent agency.

60. The validity of the EIA report prepared by a Consultant is subject to and is dependent on its accreditation/recognition by the Quality Council India. Pursuant to the Office Memorandum of the 1st respondent/MoEF bearing No. F. J-11013/77/2004-IA II (I) dated 02.12.2009 (Annexure 21) and subsequent office memorandums, applications seeking accreditation of Quality Control of India were submitted in early 2010. In view of elaborate procedure for processing the applications, the application submitted by the 5th respondent/Enviro Care India Pvt. Ltd., was processed only between June-September 2011 and this would not mean that EIA report prepared by the 5th respondent/Enviro Care India Pvt. Ltd., is valid irrespective of accreditation. If the 5th respondent/Enviro Care India Pvt. Ltd., is incompetent to submit a report after September 2011, then it is only to be found that they were incompetent throughout. In complete violation of Chapter 12 of Environmental Impact Assessment Manual for Airports (Annexure A19) and Appendix III of the EIA Notification, 2006, the 5th respondent/Enviro Care India Pvt. Ltd., refused to disclose the names of the consultants with their brief resume in the copy of the summary of EIA report circulated by the 3rd respondent/K.G.S. Aranmula Airport Ltd., (Annexure A6) as well as the Environmental Impact Assessment Report for the construction of new airport at Aranmula prepared by the 5th respondent/Enviro Care India Pvt. Ltd., (Annexure A20) and the persons who prepared the EIA report in respect of the airport project in question were not experts in the relevant sector. Even in 2013 as is evident from minutes of the 94th Accreditation Committee Meeting of the Quality Council of India, dated 8th January 2013 (Annexure A25), the 5th respondent/Enviro Care India Pvt. Ltd., is neither competent to prepare an EIA report for Category A projects nor having any experts in its roll to conduct study in the airport sector and on this count of incompetency/want of expertise of persons who prepared the report also, the same is liable to be set aside.

61. No final report as required under the relevant law was prepared by the 3rd and 5th respondents (K.G.S. Aranmula Airport Ltd., and Enviro Care India Pvt. Ltd., respectively). In view of total absence of details of paddy land for reclamation for the proposed airport project, the 1st respondent/MoEF ought to have ordered to conduct a final EIA study with special reference to the paddy land reclamation and other allied aspects. The 1st respondent/MoEF has therefore went wrong in clearing the project without a final EIA report that covers all relevant environmental aspects.

62. As is evident from the reply made by the representative of the 3rd respondent/K.G.S. Aranmula Airport Ltd., (referred to in Annexure A7 'Notes of Public Hearing') they already committed to undertake a comprehensive environmental impact assessment study in continuation of EIA report for the construction of new airport at Aranmula prepared by the 5th respondent/Enviro Care India Pvt. Ltd., (Annexure A20). The 3rd respondent/K.G.S. Aranmula Airport Ltd.,). The 1st respondent/MoEF was wrong in issuing the impugned EC without obtaining the final EIA report. The terms of reference are insufficient and inadequate. The same went wrong in identifying the significance of *puncha* land where the proposed project was sought to be established. Similarly, the significance of environmental and biological etc., of the area were not even adverted to. The same is vitiated by complete non application of mind.

63. Hence, the appellant herein seeks the intervention the Tribunal:

- i) *To set aside the EC granted to the proposed international airport at Aranmula;*
- ii) *To set aside the application made by the 3rd respondent seeking EC in Form I dated 28.06.2010 (Annexure A4) and the copy of the Terms of Reference finalized by the EAC on 13.10.2010 (Annexure A5); and the Environmental Impact Assessment Report for the construction of new airport at Aranmula prepared by the 5th respondent/Enviro Care India Pvt. Ltd., (Annexure A20);*
- iii) *To direct the respondents to conduct the public hearing for the proposed Aranmula Airport Project in accordance with law after finalizing fresh terms of reference.*

64. The 1st respondent, namely the MoEF, per contra, stated in the reply affidavit and which can be treated as reply to the other appeals also, as follows:

65. According to Form I and EIA report submitted by the project proponent, the site is situate almost 2 km from Pampa River. There is a small rivulet namely *Kozhithodu* passing through the project site which starts from uphill areas and joins the Pampa River. Due to poor maintenance over the years, it is blocked at various points creating small water bodies in different parts of the project site. The proponent informed that there is no wetland and due to blockage of the rivulet water logging occurs and forms a few shallow water bodies in the project area. The Minor Irrigation Department of Kerala was entrusted to study and streamline the flow of rivulet and the department has studied and has suggested measures to maintain the rivulet. Conditions have been stipulated in the clearance to implement the measures suggested by the Minor Irrigation Department in letter and spirit. Based

on the complaints against the inclusion of wetland and paddy fields in the project and public objections for conversion, a factual report was sought from the Environment Department of Government of Kerala and the project proponent. In the reply dated 01.03.2012, the proponent has stated that the Government has notified 500 acres of land for development of the airport. There is no paddy cultivation for the past ten years. Further, according to the letter dated 26.06.2012 of the State Government, 500 acres of land was declared as an industrial area vides notification in SRO. No. 185/2011 dated 24.02.2011.

66. The Government of Kerala, in its letter dated 01.06.2013, has stated that some factual mistakes in the report of Salim Ali Foundation are worth noting and the report says that there are extensive wetlands in the village. However, there is no identified wetland in Aranmula village as per the report of the Centre for Earth Science Studies which prepared the list of wetlands in Kerala. As per the definition of the Kerala Conservation of Paddy and Wetlands Act, 2008, paddy land is not wetland and the provisions of the Central Wetland Act are also similar.

67. The averment that the EIA study has not covered flora and fauna is denied. The 1st respondent/MoEF states that the same is covered under Chapter-III of EIA report. The location of the site with respect to Vembanad Kol, Ramsar site and Silent Valley were sought and the Proponent has informed that the site is not located in the upstream of Vembanad and neither silent valley nor ecological diversity areas are located anywhere near the site. The proponent had informed that only minimum area required for runway, apron, taxiway etc., would be filled and the remaining area would be preserved in its natural form. The previous owner had filled the runway of 1000 × 150 m for airstrip and hence only the area required for runway 1000 × 150 m would be filled with 1 m height and the soil required for land filling would be met from elevated area of about 14.5 acres available within the site itself. When a contour map was called for confirming the availability of source for soil within the site, as per the contour map submitted, the level of elevated area varies from 3 m to 11.5 m with average height of 3.5 m. The soil available in 14.5 acres is 205375 m³ as against the 1,50,000 m³. Further, the EAC has suggested the following condition in the above EC:

"(iii) Though the site is not a wetland, in view of the presence of various plants and species, the proponent shall fill only minimum area required for the runway, apron, taxiway etc., and the remaining area will be preserved in its natural form as committed. Only the area required for runway 1000 × 150 m shall be filled with 1 m height. The soil required for land filling shall be met from elevated

area of 14.5 acres available within the site itself. Necessary permission for leveling should be taken."

68. Denying the allegation with regard to the rehabilitation and resettlement, the 1st respondent/MoEF would state that as per letter dated 26.06.2012 of the State Government; the project proponent has stated that seven houses in the proposed area may require rehabilitation, which they have already purchased. The approach road is proposed from Aikkara junction to the terminal building of KGS Aranmula Airport for which the land is to be acquired. Similarly, the road from Parumootupadi junction to Aikkara junction is also to be widened for smooth vehicular traffic to the proposed airport.

69. The ministry brought the accreditation for the consultants to ensure the quality of EIA report and Environment Management Plans (EMP). According to Office Memorandum dated 30.12.2010, 265 consultants including Enviro Care India Pvt. Ltd., were permitted to certify various documents as consultants such as EIA/EMP and appear before the State Level Expert Appraisal Committee/State Environment Impact Assessment Authority for Category-B projects and the EAC for Category-A projects till 30.06.2011. The ToR for the project was accorded on 13.10.2010. Public hearing was conducted on 10.05.2011 and the proponent has submitted the final EIA on 26.06.2011 after incorporating the issues raised during the public hearing within 30.06.2011.

70. The project was considered by the EAC in its meeting held from 21st - 23rd September, 2010 and the ToR was finalised including the conduct of public hearing. The ToR for the project was accorded on 13.10.2010. Public hearing was held on 10.05.2011 at Pathanamthitta District Collectorate. Major issues raised during the public hearing were regarding filling up of paddy fields, restoration of *Kozhithodu*, the tributary of Pampa River etc. The project proponent has committed that minimum area required for runway, apron, taxiway etc., will be filled and the remaining area will be preserved in its natural form while *Kozhithodu* will be maintained in consultation with the Minor Irrigation Department of the State of Kerala. The proposal along with the final EIA report and the minutes of the public hearing were examined by the EAC in its meeting held on 21st - 23rd September, 2011. After deliberation, the EAC sought additional information viz., Noise level modeling impact analysis especially on traffic, waste water treatment and disposal, energy conservation risk management, EMP etc. The details submitted by the project proponent were examined by the EAC in the meeting held on 15th - 16th December, 2011 and the EAC recommended the proposal for grant of EC subject to certain environmental safeguards. While processing the proposal for EC, news items alleging inclusion of

wetlands and conversion of paddy fields in the project area had come to the notice and a report in this regard was sought from the State Government and the project proponent. The project proponent submitted reply in letter dated 01.03.2012 according to which the Government has notified 500 acres of land for development of airport and there is no paddy cultivation in the area for the past ten years. However, the project proponent was asked to submit the details of wetlands/water bodies or land having the characteristics of wetlands at or in the vicinity of project site along with their conservation plan and the project required soil filling which was not properly addressed in the EIA report to submit supplementary information reading the details of area requiring filling, source of filling material, its likely impacts on environment and drainage system, the project proponent submitted the details and the proposal was again referred to the EAC to examine the details submitted by the project proponent. The EAC in the meeting held on 16th - 17th August, 2012 after deliberations stipulated conditions. As regards the commencement of land filling work even before the grant of EC as alleged in the news reports, there were no developmental works at that site by then. However, the original owner of the site had carried out minor developmental works.

71. All issues have been considered by EAC and MoEF and there have been representations, news items, joint petitions from MLAs and a report from the Salim Ali Foundation against the project. Major allegations are inclusion of wetlands and conversion of paddy fields, filling up of wetlands and paddy fields that will disturb the ecosystems and environmental balance of the area, the project proponent facing criminal and vigilance cases, violation of Central and State Acts like Kerala Land Reforms Act, 1963 (in regard to the land ceiling provision), Kerala Conservation of Paddy Land and Wetland Act, 2008, findings of the Legislative Committee, commencement of the land filling work at the site prior to EC, non-obtaining of no objection certificate from the Defence, competition to existing airports, inadequate EIA, non-inclusion of source of earth for filling the land, 212 species of plants including 27 that are endemic and 110 that are economically important have been recorded in the area and these are said to have been affected. The comments on the above representations/issues were sought from the project proponent and the State Government of Kerala. The project proponent replied in the letters dated 20.06.2011, 01.03.2012 and 23.08.2012. The comments were also received from the Principal Secretary, Environment Department, Government of Kerala vide letters dated 26.06.2012, 01.06.2013, and 21.08.2013 and from the Additional Chief Secretary, Environment Department, Government of Kerala vide letter dated 13.09.2013. The following issues are noted from the letter of the project proponent:

- (i) *There are no developmental works at this site by them. However, the original owner of the site had carried out minor developmental works. The semi-developed site was purchased from Mt. Zion Educational Trust.*
- (ii) *Ministry of Defence has granted NOC vide letter No. 19(79)/11 (DN-11Ops) (669) dated 24.08.2011.*
- (iii) *There is a small rivulet Kozhithodu passing through the project site. This rivulet collects water from uphill areas and joins with Pampa River. Due to poor maintenance over the years, it is blocked at various points causing small water bodies in different parts of the project site. The Minor Irrigation Department of the Kerala was entrusted with the study to streamline the flow of rivulet and the Department has studied and suggested measures to maintain the rivulet. It is noted from the report of the Minor Irrigation Department of Kerala that after due alterations that are suggested and carried out in the Kozhithodu, the water logging in the upstream paddy fields will not occur.*
- (iv) *Only minimum area required for the runway, apron, taxiway etc., would be filled and the remaining area will be preserved in its natural form. The previous owner had filled the runway of 1000 × 150 m for airstrip. Therefore, only the area required for runway 1000 × 150 m will be filled to a height of one meter and the soil required for land filling will be met from the elevated area of 14.5 acres available within the site itself. When a contour map was called for confirming the availability of source for soil within the site, as per the contour map submitted, the level of elevated area varies from 3 m to 11.5 m with average height of 3.5 m. The soil available in 14.5 acres is 205375 m³ as against the 1,50,000 m³*
- (v) *Aranmula is declared by the UNDP as a 'heritage village' due to Uthirattadhi Boat Race and Aranmula mirror which are unique to this village and not based on environmental or physical features. This airport once commissioned will showcase these unique cultural aspects globally and will ensure international visibility ensuring tourist flow.*

72. The following are noted from the letters of the Government of Kerala:

- (i) *The State Government vide Notification in SRO No. 185/2011 dated 24.02.2011 had declared approximately 500 acres of land as industrial area, the reclamation was done during pre 2008 period when the Kerala Paddy Land and Wetland Conservation Act was not in force there and hence, the above Act is not applicable. The ecological damages which have already set in unmindful river sand mining during the last three decades that lowered the bed of*

Pampa River to almost below sea level, among other environmental facts causing degradation, resulted in lowering the ground water table in the riparian areas. Putting the blame of lowering the ground water table on the reclaimed portion of the paddy field would be illogical. The paddy field is left fallow and the natural irrigation facilities have been encroached upon or blocked at several places.

- (ii) No instance or details of the criminal/vigilance cases referred to have been furnished. Further in the order dated 29.03.2012 in Writ Petition (C) No. 3407 of 2012 filed before the Hon'ble High Court of Kerala by the Project Proponent, it has been directed that the Police Department shall maintain law and order at the work site, if disturbance of any nature is caused for any of the works done by the petitioner. Moreover, the Application No. 38 of 2013 (SZ) filed by Aranmula Heritage Village Action Council represented by its Patron Shri Kummanam Rajasekharan, who is also the signatory in the instant petition was withdrawn and the Tribunal awarded a cost of Rs. 25,000/- payable by the applicant to the respondent's side.*
- (iii) The Legislative Committee on Environment has not categorically expressed any reservation against the project as such, but also on the other hand, it has recommended that the excess land notified in industrial area except the land under the process of KGS Group may be denotified urgently and orders issued.*
- (iv) The report of Salim Ali Foundation says that there are extensive wetlands in the village, but there is no identified wetland in Aranmula Village as per the report of the Centre for Earth Science Studies which prepared the wetlands in Kerala. As per the definition of the Kerala Conservation of Paddy and Wetlands Act, 2008, paddy land is not wetland. The provisions of the Central Wetland Act are also similar.*
- (v) The State Government would like to have modern infrastructure facilities in the State with least disturbance to environment and as such the State Government is in favour of the project. The objections against the vital infrastructure and employment generating development projects, which would be a boon to the educated unemployed in the State and such employment generating projects in a State like Kerala with its teeming educated unemployed cannot but be welcomed in the larger public interest and the economic interest of the country, of course, subject to all environmental protection measures as per law. The State Government has decided to take 10% equity in this project vide G.O. (Ms).No. 4/2013/Trans dated 16.01.2013.*

73. As regards the allegation by the Salim Ali Foundation that the

EIA report is inadequate, did not recognize the fertile, wetlands on the flood plains of River *Pampa* and presence of endemic and economically important species in the area, non-inclusion of source for filling the land, the EAC has suggested ToRs and the EIA has been prepared as per the ToRs. The EAC has sought additional information on noise level modeling, analysis of impact, traffic management, NOC from Civil Aviation etc., before recommending the project. The ministry has also called for additional information on the details of the area required to be filled, source of material, likely impact and referred back to EAC. The EAC again in August 2012 examined and recommended. The EIA study covered the flora and fauna under Chapter III of the EIA report.

74. The 1st respondent, therefore, concludes that the EAC after due consideration of the relevant documents submitted by the Project Proponent and additional clarifications furnished in response to its observations, recommended for the grant of EC to the project and accordingly, the MoEF granted necessary EC for the project as per the provisions of the EIA Notification, 2006 and its subsequent amendments subject to strict compliance of the terms and conditions.

75. At the outset the 2nd respondent/Secretary to Government, Environment Department, Kerala Government took preliminary objection with regard to the maintainability of the appeal on the grounds of jurisdiction and *locus standi* and submits that the above appeal is not maintainable either in law or on the facts and circumstances of the case. The appellant has no locus standi to file the above appeal and the tribunal has no jurisdiction to decide the same in an application filed by the Appellant.

76. The interim order has been passed not in accordance with the procedure established by law. The appellant herein is a total stranger to the EC proceedings and does not have any right under the statute to challenge the same. In the present appeal, the appellant has not revealed complete facts, suppressed material facts and therefore the appeal itself is liable to be dismissed at the threshold itself. The issue regarding the construction of Airport at Aranmula by the 4th respondent and the allied issues are already pending consideration of the Hon'ble High Court of Kerala in W.P.(C) No. 6004/2013 filed by the appellant along with others and also in W.P.(C) No. 8794/2013, W.P.(C) No. 14220/2013, W.P.(C) No. 15101/2013 as well as D.B.P. No. 145/2013 pending before the Hon'ble High Court of Kerala. The grounds raised and the reliefs sought for in the above Writ Petitions and the present appeal relates to the same and the identical matter.

77. The EIA is the important management tool for integrating environmental concerns in development process and for improved decision making. The very EIA notification issued by MoEF on

14.09.2006 as S.O. 1533 purports to impose certain restrictions and prohibitions on new projects or activities or on the expansion of the existing projects or activities based on their potential environmental impacts as indicated in the schedule to the notification, and as per the procedure specified therein. Environment Impact Assessment Notification of 2006 has categorized the developmental projects in two categories, i.e., Category **A** and Category **B**. The 'Category A' projects are appraised at national level by EAC. The MoEF has constituted the State Level Environment Impact Assessment Authority (SEIAA) and State Level Expert Appraisal Committee (SEAC) to decentralize the environmental clearance process. These institutions are responsible for appraising certain categories of projects, termed as 'Category B' projects, which are below a prescribed threshold level. 'Scoping' is the primary essential element of consideration of the application for prior EIA clearance by which the EAC determine detailed and comprehensive Terms of Reference (ToR) addressing all relevant environmental concerns for preparation of the EIA report in respect of the project for which environmental clearance is sought. Approved ToR shall be displayed in the website of the MoEF. Therefore, the State Government has no role in the environmental clearance regime.

78. The policy understood as declared by MoEF is that the infrastructure shortages of one country has impeded its investment flow and constrained economic growth. Therefore, for ensuring sustainability of the growth process, it is imperative to remove the infrastructure constraints particularly in energy, roads, ports, airports and urban and rural infrastructure. Thus, projects such as airports are possible and necessary as sustainable development projects in the economic interest of the country. In the case of Kerala such development projects compatible to environmental protection are warranted in consideration of the growing unemployment as well.

79. The Environment Policy of the State (2009) unequivocally declares the matter of environmental considerations in the development process of the State as follows:

'1.7. The policy has been designed to suit the specific local conditions of the state of Kerala and to help reorient its development in conformity with environmental perspectives so as to make the development sustainable.'

1.8. This policy document provides a frame work within which conservation and development can be achieved simultaneously with a view to maximise the quality of life for everyone in the state, optimising the ecological load on the natural systems as well as building up the state's economy while minimising environmental degradation.'

80. Thus, the environmental fall out, if any, of the airport project at

Aranmula can be minimised or prevented by appropriate interventions by the measures depicted in EC granted by the MoEF. In the EC itself several measures are prescribed for mitigation and minimising the probable environmental fallouts. There are well settled substantive and procedural guidelines for environmental clearance. It is understood that the application for EC was processed by the 1st respondent as per the usual procedure for clearance. The EC will not be accorded to development projects that may result in irredeemable environmental degradation. So also, the developmental activities facilitating employment generation in the State having high educated unemployed and unlikely to create large scale environmental impacts or which could be mitigated cannot but be implemented. The MoEF has notified the EIA Notification 2006, under the Environmental (Protection) Act 1986 encompassing environmental conservation, sustainable development, generational equity etc. It is the Expert Advisory Committee constituted as per the provisions of the above notification recommended to the Ministry as early as on 16.12.2011 that the application for prior EC for the Aranmula Airport project is eligible for clearance subject to certain conditions. The recommendation of Expert Advisory Committee was after consideration of the duly prepared EIA report and following the due procedure.

81. The EIA study which is a part of the proceedings can be undertaken only by an accredited agency of the MoEF. It is for the project proponent themselves to arrange for the EIA study through an accredited agency and to submit the report to the Ministry. The public hearing and eliciting the response of the general public are integral parts of the proceedings before the report is submitted for clearance. It was after strictly adhering to all the statutory requirements that the report was prepared and decided upon by the statutory agencies. It is the decision of the EAC what matters. It was 24 months after the EAC report; the decision was taken on environment clearance to the project. The Ministry took the final decision in further consultation with the EAC on all aspects including the petitions received and reports in media against the project. The EAC had as early as on 15/16.12.2011 had taken the decision based on the EIA study Report, which duly considered the environmental/ecological aspects as per the ToR. The EIA report is the *sine qua non* in EIA clearance procedure. It is understood that the MoEF has taken the decision only on objective, statutory and policy considerations, and not overwhelmed by any extraneous considerations. The environmental and ecological considerations to be appraised in such projects are a function of the EAC. This project appraisal was duly and repeatedly complied with. Thereafter, decision favourable to the project was taken but with conditions what was intimated much earlier. In the appraisal of airport

projects the EAC is required to consider the required general information at the outset. All the required environmental and ecological aspects of the project will be duly appraised by the EAC. The EIA was on the basis of probable impacts assessed on *in situ* spatial and temporal considerations and not on what the site was a few decades back. In the case of this project the EIA report which is the statutory material on the environmental/ecological status of the location had been considered by the EAC of MoEF and decision communicated to the Ministry. The MoEF has accorded final clearance to the project after religiously following the procedure contemplated. It is worthwhile to extract a portion of the same for reference:

'Regarding the allegation by the Salim Ali Foundation that the EIA report is inadequate, did not recognise the fertile wetlands on the flood plains of river Pampa, and presence of endemic and economically important species in the area, non inclusion of source of earth for filling the land, it is stated that EAC has suggested ToRs and the EIA has been prepared as per the ToR. EAC has sought additional information on noise level modelling, analysis of impact, traffic management, NOC from Civil Aviation etc., before recommending the project. Ministry has also called for additional information on details of the area in August 2012, source of material, likely impacts and referred back to EAC. EAC again in August 2012 examined and recommended. It is noted that EIA study covered the flora and fauna under Chapter—III of the EIA report'.

82. As regards the contentions of the appellant based on report of Salim Ali Foundation, the circumstances under which such a study was commissioned and the agency to which it is submitted etc., are conspicuously not disclosed in the appeal. It is not an accredited agency to conduct EIA study for environmental clearance. The appellant is estopped from producing or relying on the Salim Ali Foundation report in impugning the EC granted by the MoEF. In so far as his main objection to EC is that the agency that prepared the EIA is not an accredited one by the Ministry of Environment & Forests. The Salim Ali Foundation (Annexure A2) report is prepared only in just 4 days. More importantly, the very report the appellant relies to bring home and to prove his allegations against the EC is seen to have been prepared with the active involvement of the appellant himself as is duly acknowledged in the Salim Ali Foundation Report (at page no. 12 of Annexure. A2). In page No. 5 of Annexure A2 also, it is stated that 'the map was prepared by Shri. Sreeranganathan of Aranmula' (appellant). Annexure A2 has no evidentiary value and cannot be relied on Annexure A2 may be rejected outright as biased. The EC (Annexure A1) would reveal that the apprehensions and the allegations are unfounded. Those not covered by the actual project particulars as given in Annexure A1 need

not be taken for consideration, for whatever works and activities not categorically cleared at the site as per EC have not been considered for EC and cannot be implemented. It is after a detailed study in which environmental and ecological considerations were duly considered and appraised and that the representations against the project were duly examined that the MoEF has accorded final EC to the project. The date of receipt of application for EC was 27.06.2011. It is seen that the EAC had recommended the project for EC on 16.12.2011 itself. Thereafter, the case has again been recommended on 17.08.2012. It is only after 2 years of the date of receipt for clearance, i.e., on 18.11.2013 that the final clearance was given by the Ministry. It is to be pointed out that the environmental and ecological considerations have been duly taken care of in the EIA in all the matters related to the environmental aspects of the project, what holds the field is the EC.

83. The project site was a paddy land years ago and now waterlogged. A portion thereof has been reclaimed during the pre 2008 periods when the Kerala Paddy land and Wetland Conservation Act, 2008 was not there. The Principal Agricultural Officer Pathanamthitta has reported that due to the increased seepage from the Pampa Irrigation Canal there is permanent water logging in the paddy fields of Aranmula, Kidanganloor and Mezhuveli villages which resulted in a situation where paddy fields became unfit for cultivation. The biodiversity of the area is typical of the middle stream of river *Pampa*. There are no endemic species in Aranmula puncha (fields). It is due to the environmental degradation of Pampa river and encroachment of canals and streams that connected the paddy fields which were spawning grounds of fishes, to the river that the native aquatic biodiversity dwindled. It is submitted that all the relevant environmental concerns expressed in the EIA report and the petitions filed against granting clearance have been duly taken care of and remedies were stipulated in the final Environmental Clearance. The MoEF has consented the project with 20 specific conditions, ensuring mitigation of the environmental concerns so far raised, with other 7 conditions on maintenance of the rivulet, (*Kozhithodu*), passing through the site. The rivulet portion coming under runway is directed to be constructed with three spans of 15 m × 3.2 m vent. As for biodiversity, the condition is as follows:

'Though the site is not a wetland, in view of the presence of various plant species proponent shall fill only minimum area required for runway, apron, taxiway etc. and the remaining area will be preserved in its natural form as committed. Only the area required for runway 1000 × 150 m shall be filled with 1 m height. The soil required for land filling shall be met from elevated area of about 14.5 acres available within the site itself. Necessary permission for

levelling shall be taken'.

84. Thus, the project has been environmentally cleared only with stringent impact minimisation conditions, and makes those justifiable in the context of the verifiable ground situations. The clearance stipulations take due care of the environmental and ecological implications if any that may manifest. Whatever environmental concerns now being raised against the project had been flagged in the public hearing and duly recorded. Initially there was not much opposition at the local level and it is subsequent to the public hearing that the opposition to the project was orchestrated. All the aspects that had to be appraised have been duly considered and mitigation or remedial actions stipulated in Annexure A1. It may be seen from Annexure A1 that all the objections and media reports against the project subsequent to the public hearing on environmental matters had been duly examined by the Ministry in consultation with the EAC and appropriate impact minimisation measures suggested to be implemented.

85. The statement that the proposed airport area is 'mainly paddy land and wetland,' which essentially is the flood plains of river Pampa' is not fully correct and hence denied. Wetlands cannot be reclaimed, whereas paddy lands may be filled up for public purpose in accordance with the procedure in the 2008 Act. A place cannot be paddy land and wetland at the same time. Due to the ecological damages already set in, in river Pampa nearby now there is no regular flooding of the plains as earlier, as the flood water confines to the river channel itself, and such paddy fields are unable to function in such situations as flood plains of the river. As regards loss of ecosystem services, the site is now a degraded land. That the fallow land by its ecosystem services would sustain a larger section of the people than 'the meager benefits of a few people for their comforts' is only an unduly speculative and biased approach. It may be noted that it is the owners of the paddy fields (who apparently had no benefits out of the land) that sold it by their own for non-agricultural activities.

86. The contention that the airport being set up at Aranmula for which EC is given is on the banks of river pampa is not fully correct. It is true that the river is near to the site. The Aranmula Parthasarathy temple referred in the memorandum comes in between the site and the river. The site has no special significance than any other similar paddy fields in the surrounding areas left fallow. The further contention that the project site is a 'pristine environmental area' is not correct. It was a fallow paddy land now abandoned and waterlogged. It is not a paddy field where paddy cultivation is going on. Paddy cultivation had been discontinued in the entire area for years due to various reasons. It is on consideration that it is a project that does not create irreparable

environmental damages that the EAC of the MoEF has recommended the project with conditions and all necessary conditions incorporated in the EC. The appellant has no case that the conditions and mitigation measures enumerated in the EC are ineffective or insufficient to remediate the probable environmental impacts at the site.

87. The Kerala State Biodiversity Board has reported that there are no endemic species in this area. The Board also has proposed mitigatory measures which could take care of the probable ecosystem impacts. The repeated reference to 'wetlands' in the Salim Ali Foundation Report (Annexure A2) report might be with reference to the rivulet. Wetland does not include paddy land and river. No such wetlands have been identified here in the wetland map specially prepared for the purpose of the Wetland Conservation Rules 2010. As per Section 2(xii) of the Kerala Conservation of Paddy land and wetlands Act, 2008, '*Paddy land*' means all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy cultivation but uncultivated and left fallow, and includes its allied constructions like bunds, drainage channels, ponds and canals. It may be the ponds (Chaal, Thalakkulam etc.,) in the vast paddy fields which are natural or constructed water storage and drainage structures forming part of the paddy land that is being mistaken as 'wetlands'. The intangible ecosystem services of wetlands as mentioned in Annexure A2 report seem wholly irrelevant at the site. The contention that the project area could fetch fish worth Rs. 335 - 440 Crore per year from paddy fields which would be dry at some spells (if the drainage system functions) and flooded at other by the river waters are not correct and hence denied. The other statements on dislocation of families, loss and damage to ancestral heritage, etc. are not borne out by facts and cannot refute a scientifically prepared EIA report following the ToR.

88. The environmental safeguards stipulated by the MoEF in the EC would enable the proposed project with the least disturbance to the ecology and providing more tangible social and economic benefits than leaving the land fallow. The airport projects get EC, on being assessed by experts and decided by the Ministry of Environment and that the impacts as identified that will not cause grave environmental problems could be mitigated. The comparative benefits are what matters in such cases. The State Government would like to have modern infrastructure facilities in the state having appreciable employment generation opportunities with least disturbance to environment and as such the state Government has recommended the project. In this context, it is relevant to point out that the Ministry has already granted EC to the Greenfield Airport at Kannur. The objection against the vital infrastructure and employment generating development project which

would be a boon the educated unemployed in the state, on arbitrary environmental considerations is ill-advised and baseless. Such employment generating projects in a state like Kerala with its teeming educated unemployed cannot but be welcomed also in the larger public interest and the economic interest of the country, subject of course to all environmental protection measures as per law. While recognizing that environmentally disagreeable activities in ecologically pristine locations shall not be permitted, the environmental fall out of this project, if at all any, can be duly mitigated, through balanced and nuanced measures, creating an enabling process to promote the environmentally sound development project that benefit local livelihoods and economy, than leaving the once fertile paddy lands fallow and abandoned causing more grave environmental problems. The comparative gains of the proposed project would favour its establishment for which the central Government has already consented under the relevant statutes with necessary conditions.

89. In consonance with the avowed policy of State Government for Care and Development, State Government is keen to ensure that the development needs of the State are complimentary to the appurtenant environmental considerations. There cannot be development ignoring environment and State cannot develop until it grows sustainably incorporating environmental concerns in developmental aspects. Towards this end, greater scientific rigour has been incorporated into environment impact assessment of projects. A project environmentally cleared following all the statutory proceedings and extra examination in further consultation with the EAC of the MoEF may not be assailed on biased, arbitrary and speculative considerations. The second respondent is of the stand that the project could be allowed at the site complying with all the environmental and other conditions stipulated in the EC. Hence, the 2nd respondent herein prays that the impugned EC may be upheld and to dismiss appeal.

90. The 6th respondent, namely the Secretary to Government, Environment Department of the State of Kerala would state in reply to Appeal No. 174 of 2014 (SZ) and adopted in other appeals as well as below:

91. By virtue of Annexure A1 order, the 18th respondent/MoEF accorded EC for the Airport project as per the provisions of EIA Notification, 2006. The Appellant also further seeks for a direction against respondents 17 and 20 to conduct a public hearing. The appellant also seeks for a direction directing the State Government to complete the proceedings initiated against 19th respondent, namely K.J. Abraham of Kozhencherry Village in Pathanamthitta District in the State of Kerala for restoring the reclaimed paddy land. All the

allegations raised in the memorandum of appeal are denied except to the extent to which they are admitted hereunder.

92. At the outset the 6th respondent/Secretary to Government, Environment Department, Kerala Government took preliminary objection with regard to the maintainability of the appeal on the grounds of jurisdiction and *locus standi* and submits that the above appeal is not maintainable either in law or on the facts and circumstances of the case. The appellant has no *locus standi* to file the above appeal and the tribunal has no jurisdiction to decide the same in an application filed by the Appellant. The appellant herein is a total stranger to Annexure A1 proceedings and does not have any right under the statute to challenge the same. In the present appeal, the appellant has not revealed complete facts, suppressed material facts and therefore the appeal itself is liable to be dismissed at the threshold itself. The issue regarding the construction of airport at Aranmula by the 18th respondent is already pending consideration of the Hon'ble High Court of Kerala in W.P.(C) No. 8794/2013 and W.P.(C) No. 14220/2013 filed by the appellant herein before the Hon'ble High Court of Kerala and also in W.P.(C) No. 6004/2013, W.P.(C) No. 15101/2013 as well as D.B.P. No. 145/2013 pending before the Hon'ble High Court of Kerala. The grounds raised and the reliefs sought for in the above Writ Petitions and the present appeal relates to the same and identical matter.

93. Moreover, the appellant herein has already filed an application in Application No. 38 of 2013 (SZ) before this Tribunal to stop all construction activities in Aranmula in which contentions regarding filling up of wetland, proceedings under Land Reforms Act etc. were advanced. However, after hearing the State, the appellant withdrawn the application in which he was directed to pay cost of Rs. 25,000/- to the respondents. The appellant has also filed writ petition Nos. 8794/2013 and 14220/2013 before the Hon'ble High Court of Kerala raising various contentions including direction against Government of India not to grant EC also the State Government to resume excess land. It is submitted that appellant is abusing the process of the Court under the garb of a public spirited person before this Tribunal which is the creation of a Statute. Primarily, the appellant has no *locus standi* to challenge the present order. Secondly, the prayers raised in the appeal cannot be brought under the jurisdiction of this Tribunal as per Section 16 of the National Green Tribunal Act.

94. The impugned EC has been issued by Government of India after analyzing the pros and cons of the project. The EIA report, which is in fact the primary requirement for obtaining EC, had been placed before the Government of India on 16.12.2011. However, the final clearance

was issued by the Ministry only on 18.11.2013, i.e., only after two years of the date of receipt of EIA that the final clearance was given by the Ministry. Therefore, the challenge raised against Annexure A1 on the grounds like non-application of mind is absolutely false and hence denied.

95. The EC is self-explanatory. In the opening paragraph itself, it is stated that the proposal has been appraised as per the prescribed procedure in the light of the provisions of the EIA Notification, 2006 on the basis of mandatory documents. As per Annexure A1, the EAC met on 21st to 23rd September 2011, 15th to 16th December 2011 and 15th to 16th August 2011. It was also explained in Annexure A1 that the project was considered by the EAC in its meeting held on 21st to 23rd September 2011 and the ToR was finalized including the public hearing. It was also stated in Annexure A1 that ToR for the project was accorded on 13.10.2010 and public hearing was conducted on 10.05.2011 at District Collectorate, Pathanamthitta. It is stated in the EC that major issues in public hearing were about filling up of paddy field, restoration of Kozhythodu a tributary of Pampa River etc. As per the EC, the Project Proponent committed the minimum area required for runway, apron, taxi way etc., and the remaining area will be preserved in its natural form while Kozhythodu will be maintained in consultation with the Minor Irrigation Department, Government of Kerala. It was stated in the EC that representations, news items, joint petition from MLAs and also a report from Salim Ali Foundation against the project were considered and comments on the issues projected in the representations were sought from the project proponent and Government of Kerala. Comments were provided promptly by Government of Kerala and the issues raised in the representations were considered by Government of India before issuing the EC. The EC was issued only after considering the various objections raised against the project. Therefore, the primary argument of the appellant that the EC was issued without considering the various allegations against the project is not correct.

96. The Government of India has issued the EC considering the fact that the EAC after due consideration of the relevant documents submitted by the project proponent have recommended for the grant of EC for the project. The EC was issued subject to the strict compliance of the terms and conditions set forth therein. Accordingly, the EC depicts in paragraph 10, twenty specific conditions and in paragraph 11, thirty one general conditions. Among the specific conditions, Government of India has directed conditions to prevent any degradation to environment. The specific conditions stipulated as per paragraph 10 of EC are as follows:

- (i) The consent to establish shall be obtained from the Kerala State Pollution Control Board and a copy shall be submitted to the Ministry before starting construction work at the site.*
- (ii) Despite the proponent informed absence of any wet land, the Minor Irrigation Department of the State of Kerala was entrusted to study and streamline flow of Kozhithodu riverlet and on the result of such study, the measures recommended by the department to maintain the riverlet (rivulet) was directed to be carried out with (in) letter and spirit.*
- (iii) Despite the finding of absence of any wet land, in view of the presence of various plant species proponent was directed to fill only minimum area required for runway, apron, taxi way etc. and the remaining area was directed to be preserved in its natural form. (Area required for runway = 1000×150 metres at 1 metre height). Soil required for filling shall be met from the elevated area within the site itself and necessary permission for leveling should be taken.*
- (iv) Prohibition of disposal of solid or liquid waste in Kozhithodu.*
- (v) State Government shall consider the observation of 'Legislative Committee on Environment' about de-notification of excess land except land under the possession of the KGS Group and appraise the Ministry.*
- (vi) Project proponent shall have a master plan for the project and other related facilities. Other facilities shall be considered by the competent authority after a cumulative Environment Impact Assessment is carried out.*
- (vii) Commitments like Maintenance of Kozhithodu, minimum filling of site etc. made through public hearing shall be strictly complied with.*
- (viii) Sewage and other liquid flow generated from the airport should be treated as per the norms laid down from the Pollution Control Board and recycled. Auto conservation fixtures shall be provided.*
- (ix) Solid waste generated shall be properly collected, segregated and disposed as per the provisions of Solid Waste Management and Handling Rules 2000.*
- (x) Recommendations of Environmental Impact Assessment (EIA), Environmental Management Plan (EMP) and Disaster Management Plan shall be strictly complied with.*
- (xi) Installation and operation of DG Sets, if any, shall comply with the guidelines of Central Pollution Control Board.*
- (xii) Energy Conservation Measures shall be taken up as per Energy Conservation Building Code (ECBC) 2009.*
- (xiii) Parking provision shall be provided as per National Building*

Code of India 2005.

- (xiv) Switches used for outdoor lighting, generally do not take variation and hence the timer should be used as sensitive to season variations and on the basis of actual length of day/night.*
- (xv) All cooling equipments should meet the minimum efficiency requirements as specified in Energy Conservation Building Code 2007.*
- (xvi) Terminal building shall incorporate features of local architecture in and around area as well as special measures to highlight the Indian antiquity through a museum like corner depicting the same.*
- (xvii) Land use around the airport complex shall be recollected though a plan to control unauthorized development, which may create problems in the operation of the airport.*
- (xviii) Necessary permission shall be obtained for flowing of ground water from competent authority prior to the construction or operation of the project.*
- (xix) Legal action shall be initiated against the project proponent if it was found that construction was started without obtaining Environmental Clearance.*
- (xx) Project proponent will set up separate environmental management cell for effective implementation of the stipulated environmental safeguards under the supervision of a senior executive.*

97. Therefore, the EC was issued after considering the entire objections raised from various quarters and after incorporating preventive and mitigating measures to ensure least environmental degradation.

98. As per Section 16 of the National Green Tribunal Act, the Tribunal can exercise its appellate jurisdiction only in the circumstances enumerated under Sections 16(a) to 16(j) of the Act. The prayers sought by the appellant as prayers b and c at paragraph 7 of page 32 of the memorandum of appeal cannot be considered in an appeal filed under Section 16 exercising the appellate jurisdiction of the Hon'ble National Green Tribunal. As regards prayer (a) sought by the appellant, such prayer cannot be raised by a person like the appellant as per Section 18 of the NGT Act, 2010. The appellant has not sustained any injury by virtue of Annexure A1. No damage has been caused to appellant's property, no death has been resulted from damage if any, appellant is not an agent duly authorized by any owner of such property or any of the legal representatives of the deceased, appellant is not at all a person aggrieved. Though the appellant purports to challenge the order granting environmental clearance, majority of the averments

pertains to disputes relating to the nature of the land, filling of the land, application of Conservation of Paddy Land and Wet Land Act, 2008, invocation of Kerala Land Reforms Act, nature of public hearing etc. None of the grounds raised on the basis of nature of land, application of various state statutes like Conservation of Paddy Land and Wet Land Act, 2008, application Kerala Land Reforms Act etc. cannot be agitated and maintained in the present appeal since such matters are not covered under the NGT Act, 2010. Moreover, all the allegations pertaining to the state statutes and nature of land etc., are repeatedly alleged and agitated by the appellant before the Hon'ble High Court of Kerala in W.A. No. 8794/2013 as well as in W.P.(C) No. 14220/2013.

99. As per *Bhopal Gas Peedith Mahila Sangathan v. Union of India*, (2012) 8 SCC 326, the Hon'ble Supreme Court has declared that only those environmental issues and matters covered under the National Green Tribunal Act, Schedule-1 should be instituted and litigated before the National Green Tribunal. It has been declared that such approach is necessary to avoid likelihood of conflict of orders between the High Courts and NGT. However the Hon'ble Supreme Court did not transfer a case which required administrative supervision connected to Bhopal Gas tragedy to the NGT in the above case. Therefore, the issues raised in the appeal need not be considered by this Tribunal since the appellant has already invoked the Hon'ble High Court of Kerala on the same and similar set of facts regarding allegation of operation of State statutes. As already pointed out appellant cannot agitate any contentions against the EC since he is not a person aggrieved as per the Act.

100. The appellant has not raised any grounds against the conditions on which EC has been given. On the other hand, the allegations raised by the appellant revolves around factors regarding reclamation of land, application of Kerala Land Utilization order, finding regarding non existence of any wetland, application of Conservation of Paddy Land and Wet Land Act, actual extent of land possessed by the proponent, exemption under the Kerala Land Reforms Act etc. Primarily, in the matter of grant of EC, the pivotal issue is the report of the EAC. The report of the committee cannot be assailed on the basis of any authority or organization who are not competent to comment on ecological matters. It is pertinent to point out that the EAC has already been apprised of the fact that the project site was in paddy land, which required reclamation. The aspect that the proposed site is a paddy land is already intimated to EAC as reflected in EC. Further, the 6th respondent/Department of Environment, State of Kerala had corresponded with EAC, the 17th respondent i.e., Department of Environment of Forest, Government of India. By the letter dated

26.06.2012, the 6th respondent had categorically informed that it is to be examined by the Government of India that whether the mitigative measures, if any suggested would be sufficient. Apart from the above, as regards the alleged depletion of ground water level due to filling it was reported that there were water recharge methods. These factors have been duly included in the final environmental clearance issued and the EC permits reclamation of paddy land with necessary permission to the extent of 1000 × 150 meter × 1 meter (height) in addition to the land already filled up and sold by the 19th respondent. Therefore, the Government of India has duly considered the representations, petitions, comments etc., received for and against the project, and the important environmental concerns were addressed as reflected in the EC. The appellant has no case that the specific conditions as per paragraph 10 and general conditions as per paragraph 11 thereto are not sufficient or relevant so as to mitigate the probable environmental degradation.

101. The allegation raised by the appellant that Government of India has proceeded on the assumption that the proposed site is a dry land is not correct and hence stoutly denied. The allegation that the word 'wet land' is used opposite to the word dry land is misconceived. It is submitted that the term 'wet land' is defined under the (Wet Land Conservation and Management) Rules 2010 as per Rule 2(g). According to Section 2(g) Wet Land means*"an area of marsh, fen, peat land or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh brackish or salt, including areas of marine water, the depth of which at low tide does not exceed 6 metres and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wet land and zone of direct influence on wet lands that is to say the drainage area or catchment region of the wet lands as determined by the authority, but does not include many river channels, paddy fields and the coastal wet land covered under the notification of the Government of India in the Ministry of Environment and Forest, S.O. number 114(E) dated the 19th February 1991 published in the Gazette of India, Extraordinary, Part II, Section 3. Sub-section (ii) dated the 20th February 1991."*

102. The Wet Land Conservation Management Rules has been notified by the Central Government as per the Gazette Notification No. GSR 951(F) dated 04.12.2010 to enhance the wetland conservation and management efforts in the country. These rules have been issued in exercise of powers conferred by Environment (Protection) Act 1986. As per Rule 8(2) of the Rules, the State Government had designated the Department of Environment and Climate Change as the nodal agency for regulating the use of wetlands in the State as per GO (Rt) No.

51/11/Env. Dated 30.05.2011. As per Rule 6(2) of the Wet Land Conservation Management Rules, the State Government shall prepare within a period of one year from commencement of rules, a 'brief document' identifying and clarifying the wetlands within their respective territories in accordance with the criteria specified under Rule 3. Rule 3 stipulates those wetlands which shall be regulated under the rules and their classifications. Therefore, by virtue of notification dated 30.05.2011, the Department of Environment and Climate Change has prepared an inventory by incorporating the guidelines such as geographical dealiation of wetlands, demarcation on the basis of the zone of influence along with proper maps, calculated the size of the wetland and given an account of preexisting rights and privileges consistent or not consistent with the ecological health of the wetland. It is worthwhile to mention that proposed project site for which the EC clarification has been granted under the Annexure A1 is not a wetland as per the inventory prepared under the Wetland Conservation Management Rules, 2010. The project site is only a paddy land which is now waterlogged and degraded and which was lying as unfit for paddy cultivation for the past so many years. It is also stated that the EC has been issued after considering all the relevant facts and circumstances of the environmental issues and for issuance of EC, no orders and consent of the State Government other than those required as per the notification dated 14.09.2006 on enviornmental clearence is necessary. It is submitted that the EIA proceedigns are completed and *de novo* hearing is not requiried. The aspects of public hearing narrated by the petitioner were already considered for the EC and Governemnt of India has considered not only the report of the enviornmental assessment committee but also the objection raised from various quarters by sending representaitons, petitons etc., to various departments of the Government of India. The EC also reflects consideration of the same.

103. As per the instructions from the Kerala State Pollution Control Board, public hearing was fixed for 10.03.2011 by the KSPCB after consulting with the District Collector of Pathanamthitta. Wide publicity was given on 06.02.2011, in a national and two regional vernacular dailies, in the manner and within the time specified in the Notification. More than 30 days' time was given between the date of publication and the date of hearing and the notice was published in the dailies. However, due to the declaration on 01.03.2011 about the forthcoming Elections to the Kerala State Legislative Assembly on 13.04.2011, the date of public hearing was postponed to 29.04.2011 by the answering respondent after consulting the District Collector. Wide publicity was again given through the same national and regional vernacular dailies on 27.03.2011. More than 30 days time was again given between the date of publication and the date of hearing. The date of public hearing

had to be again postponed to 10.05.2011 due to a *hartal call* at Pathanamthitta on 29.04.2011. This postponement was also given wide publicity through the same National and Regional vernacular dailies. This publication was made on 28.04.2011.

104. The soft copies of the draft EIA report and the Malayalam and English versions of its executive summary were made available for public scrutiny in the State Pollution Control Board's website www.keralapcb.org and its hard copies were made available at the following offices:—

- a. District Collectorate, Pathanamthitta
- b. District Industries Centre, Kozencherry
- c. District Panchayat, Pathanamthitta
- d. Elanthoor Block Panchayat
- e. Aranmula Grama Panchayat
- f. Mezhuveli Grama Panchayat
- g. Mallapuzhassery Grama Panchayat
- h. Science Technology & Environment Department, Thiruvananthapuram
- i. Pollution Control Board, Pathanamthitta District Office
- j. Pollution Control Board, Head Office, Thiruvananthapuram

105. The Draft EIA report and the Malayalam and English versions of its executive summary were made available for public scrutiny at the above places for more than eighty days from 06.02.2011 to 10.05.2011. Thus, the documents were made available for more than the mandatory 30 days for the public to furnish their responses. The Public Hearing as announced was held at 11.00 AM on 10.05.2011 at the Conference Hall of the Pathanamthitta District Collectorate. The venue was selected considering its proximity to the project site and the facilities available at the Conference Hall to conduct the hearing. The distance from the project site to the venue was only 15 km. There were 80 participants in the public hearing and most of them were from Aranmula and adjoining areas. The hearing was presided over by the District Collector. The proceedings of the public hearing, representations in original received before and during the hearing and video recording of the hearing were forwarded to the MoEF as required under the EIA Notification, 2006. The proceedings of the public hearing were prominently displayed at the Head Office and Pathanamthitta District Office of the State Pollution Control Board and action was also taken to similarly display the Proceedings at the offices listed above. Thus, it is submitted that the allegation that the public hearing was not conducted in accordance with rules is not correct and hence denied.

106. Hence, the 6th respondent in this appeal, namely the Secretary to Government, Department of Environment, Government of Kerala

states that the EC has been issued after following the procedure established by law and seeks to dismiss the appeal.

107. K.G.S. Aranmula International Airports Ltd., has filed a common reply affidavit in respect of all the appeals referred to above and the gist of the reply of this respondent can be stated thus:

108. The State of Kerala is internationally renowned for its lush, green vegetation, its untouched and pristine forests as well as its ancient temples and hoary tradition. The state lies along the coastline, to the extreme south west of the Indian peninsula, flanked by the Arabian Sea on the west and the mountains of the Western Ghats on the east. The Western Ghats, bordering the eastern boundary of the state, form an almost continuous mountain wall, and as such, almost the entire state is characterized by hilly terrain. The backbone of the economy of this densely populated state has always been tourism, and the emphasis on the same has only intensified over the recent past.

109. The above unique features of the state have made better transport facilities fundamental to the sustained growth and development of Kerala. The hilly terrain of the state means that undulating and winding roads are a feature of road travel in Kerala, frequently traversing steep and narrow sections of ghat roads. The roads are also frequently subject to monsoonal storms, and as a result, travelling on these roads takes far longer than similar distances elsewhere and is also far more dangerous and strenuous for passengers. In the Pathanamthitta District of Kerala lies the temple of Lord Ayyappa in Sabarimala, which is one of the most important and 2nd most visited religious centre in the world. The annual pilgrimage to Sabarimala undertaken by devotees has been estimated as the largest in the world. Hence, the need and demand for improved connectivity and accessibility to the area is not merely a state priority, but also assumes national and international significance. The location of an airport near the town of Sabarimala is therefore, not only a necessity in the context of the needs of devotees, the spurt to the local economy and the convenience for every stakeholder. The development of the area immediately surrounding the Ayyappa temple is impossible as the entire hill and indeed, the surrounding areas are of immense religious, cultural and historical significance as well as being densely forested. In fact, a significant extent of the entire district is covered by forest. As such, there remain very few locations which can even be considered for the construction of an airport. Moreover, the region is also home to a large population of emigrant *Keralites* who have settled in foreign lands and hence, the need for an international airport in the area is widely felt in the local as well as non-resident communities. The need for the present project and the objections that have been raised against the

same have to be considered in the above context. The fundamental principle of environmental law in general is that of sustainable development. It is submitted that the law of environmental protection does not insist that man ought not to change the surroundings he lives in to his advantage. It is only necessary that the same is tempered with and balanced by due regard to protecting vitally important aspects of the environment.

110. In the state of Kerala, which as explained above, is a small but fertile region, an insistence on an extent of 500 acres of contiguous lands without vegetation as a precondition for any large development, however necessary, is unreasonable and impracticable. The project is one of national importance as evinced by the announcement of approval for the Aranmula Airport Project by His Excellency, the President of India in his address of the joint session of both the Houses of Parliament on 21.02.2013. The land for the proposed project has been carefully selected as one where there is no irreparable damage caused to the environment. The land required for the project was bought from the land owners directly by this Respondent by paying the market price without involving any eviction or compulsory acquisition or displacement of any houses, commercial areas or places of worship. The proposed international airport will generate direct employment to 1500 and indirect employment to more than 6000 people. The project will provide a boost to the State of Kerala in the field of tourism, pilgrimage, trade and industry and other spheres, thereby bringing sizable sum of revenue to the State and local Government departments, and shall be advantageous to the numerous expatriates who are hailing from the Central Travancore. The airport location is close to multiple tourist destinations such as Kumarakom, the backwaters of Alappuzha and high ranges. This proposed Airport is only one hour drive from Sabarimala, the second largest pilgrim centre in India and fourth largest in the world with annual pilgrims of around 4.5 crore. This airport facility will considerably reduce the traffic and related pollution during the peak season. The majority of non-resident Indians (NRI) passengers and non-resident Keralites (NRK) passengers of Trivandrum and Kochi Airport originate within 50 km radius of this site. 40% of the Kerala air traffic is hailing from the influential zone of the airport. It is expected to serve four districts in Kerala State namely Pathanamthitta, Kottayam, Idukki and Alappuzha.

111. This airport will considerably reduce the road traffic to Kochi and Thiruvananthapuram. The consequential benefits of the airport will extend to poorer devotees and pilgrims to Sabarimala as well in as much as the demand for and traffic in other forms of public transport such as rail and road transport will reduce. The airports play a vital role in the development of industry and commercial trade as they offer

crucial services for transportation of goods and passengers from one place to another. They are also essential for domestic and international tourism, where limitation of time is the key factor. While airports play catalyst to economic development, the economic developments in turn generate demand for the former. As a result, the aircraft fleets of airlines are growing at a rapid speed with improved technology, better speed, time, capacity, etc., to cater to ever-increasing demand. Thus, continuous improvement of airports needs airport management for planning, developing and operating efficiently and profitability to meet the present and future need of air travel; both, domestic and international. It is submitted that the people of Kerala would like to have modern infrastructure facilities in the State with least disturbance to environment and as such the State Government, representing the public interest, is in favour of this project. The objections against the vital infrastructure and employment generating development projects, which would be a boon to the educated unemployed in the State, are baseless. Such employment generating projects in a State like Kerala, with its teeming educated unemployed, cannot but be welcomed in the larger public interest, and in the economic interest of the Country as a whole and the respondent is following the guidelines and procedure for setting up of this Greenfield Airport. There is phenomenal growth in air traffic that has been enabled by liberalized policies of the Government of India. The growth rate of passenger traffic has steadily increased. This rapid growth in passenger traffic has put enormous pressure on airport infrastructure causing severe congestion at major airports. The anticipated investment in airport development during the Eleventh Plan is over Rs. 40,000/- crore, both from public and private sources, including for Greenfield airports according to Greenfield Airports Policy adopted by the Central Government. The project is supported by an overwhelming majority of persons living in and around Aranmula and that only a few persons with vested interests are opposed to the same. The present appeals under reply are not maintainable either on law or on facts. The appellants have no *locus standi* to file the present appeals. Smt. Sugathakumari, Shri. Sreerenganathan and Shri. Induchoodan have already approached the Hon'ble High Court of Kerala in WP (C) No. 6004/2012 challenging the same matter, wherein this Appellant (in Appeal No. 172/2013) is the 2nd Petitioner in the said case. In the Relief Portion, the Relief No. 2 Prayer "to declare 9th Respondent (this Respondent herein) or others have no authority to establish a Green Field Airport at Aranmula in the land covered by the notification declaring the project area as industrial area and environmental clearance if any, obtained by the 9th Respondent (this Respondent herein) is neither legal nor valid or sufficient raising almost

the same environmental issues raised in this Appeal. The said matter is an issue pending consideration by the Hon'ble High Court which had arisen directly and substantially between the parties or their privies. This is a clear abuse of the process of law. The filing of this case itself is oppressive. These appeals lack bona fides and are frivolous, vexatious & oppressive and will result in miscarriage of justice. This Appellant (in Appeal No. 172/2013) is *sub silentio* regarding the 2nd Relief sought in WP (C) No. 6004/2012 pending before the Honourable High Court of Kerala. The Proposed Airport as stated by the Appellants is not on the banks of River Pampa. The said Airport is situated almost 2 Kms. from the Pampa River as can be clearly seen in the EIA Report and will be located at Aranmula, Kidanganoor and Mallapuzhassery Villages, Kozhencherry Taluk, Pathanamthitta District. Aranmula was declared by the UNDP as a "Heritage Village" due to *Uthirattathi* Boat Race and Aranmula Mirror which are unique of this Village and not based on environmental or physical features. This Airport project once commenced will showcase these unique cultural aspects globally and will ensure international visibility, ensuring tourist flow. This respondent will definitely preserve the rich heritage of the area and the sanctity of Sree Aranmula Parthasarathy Temple. Further, it is submitted that the fears of damage to the structure of the temple are completely unfounded and speculative. These allegations have been made even though they fall outside the scope of the enquiry of this Hon'ble Tribunal in a mischievous attempt to prejudice this Hon'ble Tribunal. This Respondent has purchased the fully developed land where no agricultural operation was being conducted. The statement to the effect that Mallapuzhassery, Aranmula and Kidanganur Villages where the airport is to be set up are agricultural villages with paddy being the crop is incorrect and misleading. The property was purchased by this respondent as completely reclaimed with no agricultural operation, for the last 3 decades, as is certified by the Agricultural Officer, besides the dry land and Rubber Plantations. A portion of the water logged land might have been filled about ten years back by the prior owner. Therefore, any legal action ought to be taken only against the prior owner and the present respondent cannot be punished for the same. The appellants were aware of the said situation at that time but were silent regarding the said conversion at that time and did not raise any objection regarding the said conversion before any authority. The State of Kerala vide GO (MS) No. 30/12/Agri dated 16/02/2012 granted permission for filling up an area of 429.28 ares (10.62 acres) in the adjoining "Aranmula *Punja*", declaring the so called wetland as not cultivatable. This was because the character of the land had been permanently altered and no agricultural activities were done for several years and permission was therefore granted for the purpose of starting

Cape Engineering College and it is also learnt that District level Committee has also recommended for filling an area of 10 acres for Aranmula Vasthu Vidya Gurukulam in the same Aranmula *Punja*. The Agricultural Officer, Pathanamthitta by its letter dated 29/02/2012 certified that the said 429.28 ares of land is not cultivatable and without any agricultural activities whatsoever for the last so many years. The present proposal involves development of the airport at Mallapuzhassery, Aranmula and Kidanganoor Villages, Kozhencherry Taluk, Pathanamthitta District, Kerala on a plot area of 500 Acres which includes certain water logged fallow land, dry land and Rubber Plantations. After purchasing the land, this respondent had not converted or reclaimed any part of land in its possession or made any attempt to fill up the land. Enviro Care India Pvt. Ltd. is an ISO Certified company approved by the MoEF. At the time of presentation, there was no QCI implemented accredited Scheme (NABET) and all the consultants enlisted and approved by the first respondent were eligible for conducting EIA. The Office Memorandum issued by Government of India, MoEF clearly provides accreditation of the EIA Consultants and after the review of the accreditation progress by the QCI/NABET, the competent authority has approved a list of 265 consultants, wherein said Enviro Care India Pvt. Ltd., is arrayed as Sl. No. 73 and they are permitted to appear before State Level Expert Appraisal Committee/State Environment Impact Assessment Authority (SEAC/SEIAA) for Category "B" Projects and the EAC for Category "A" Projects till 30th June 2011. These 265 Consultants will also be permitted to certify various documents, as consultants, such as EIA/EMP. The MoEF after evaluating the EIA Report submitted by Enviro Care India Pvt. Ltd. is completely aware that the said agency is competent to prepare an EIA report since the said agency already submitted EIA reports for Chennai, Raipur and Vadodara Airports. Hence the statement to the effect that EIA has not been prepared by an accredited agency and the EIA submitted by the present Respondent is inadequate, misleading and is a fraud perpetrated by this Respondent, is totally false, misleading and is denied *in toto*.

112. The Kerala State Pollution Control Board conducted public consultation as provided in Clause 111 stage 3. As provided thereunder a public hearing was conducted by the Kerala State Pollution Control Board with the District Collector, Pathanamthitta in Chair. The Kerala State Pollution Control Board issued public notices in vernacular dailies *Malayala Manorama* dated 06.02.2011, *Mathrubhumi* daily dated 06.02.2011 and *Kerala Kaumudi* dated 06.02.2011 about the hearing to be held on 10.03.2011 at Collectorate Conference Hall, Pathanamthitta. The notice was published in English daily as well. The notice was also published in the website of the Kerala State Pollution Control Board. On

10.03.2011, the public hearing has been adjourned and the same has been published in the daily dated 09.03.2011. Since the General Election to Kerala Legislative Assembly 2011 was declared, public hearing was adjourned to 29.04.2011 (because a *harthal* has been declared on that day by the Left Parties) and again to 10.05.2011 on the basis of the direction of Election Commission, since the Model Code of Conduct is enforced from the date of announcement of election schedule by the Election Commission and only on the basis of the directions given by the Election Commission, Public hearing was conducted on 10.05.2011. For the adjourned hearing also public notices were published in news papers dated 28.04.2011. The notice of hearing was affixed in all public places like Village Office, Panchayat Office, Collectorate and so on. The notices were published at public places by hoardings and banners. The public hearing was conducted on 10.05.2011 at Conference Hall, Collectorate, Pathanamthitta with the District Collector in chair. In the meeting, representatives of the people and public were present. Hence the statement to the effect that the Public Hearing conducted for the purposes of the Airport in a clandestine undemocratic manner in violation of the EIA Notification, 2006 is absolutely false and denied *in toto*. The appellants were aware of the entire proceedings and did not raise any objection regarding the non participation in public hearing before any authority or in the Writ Petition pending before High Court of Kerala in WP (c) No. 6004/2012. The date of public hearings and its adjourned hearings are clearly notified in news papers. The Order of the Taluk Land Board declaring 232 acres of land purchased from the previous owner as excess land has been set aside by the Hon'ble High Court in CRP(LR) No. 187/2013 on 27.11.2013 and the Hon'ble Court has directed the Taluk Land Board to hear the matter afresh. Since the appeal is pending before Government of Kerala to exempt the land required for the airport project under Section 81(3) of KLR Act, the Hon'ble High Court has directed this respondent not to construct in 232 acres, which form part of a larger extent, till the decision of TLB is taken within six months or otherwise terminated. The statement to the effect that we have not disclosed about the cases pending before the High Court is absolutely false and denied. The Aranmula Heritage Village Action Council in page No. 10 of their Appeal have admitted that whatever litigations stated to have been filed against this Respondent were not pending at the time of submitting the application on 28.06.2010. As per the impugned order, only the minimum area is required for filling. Moreover, all the cases mentioned in the Writ Petitions are not admitted so far and also no interim order also passed against this Respondent. Moreover in paragraph 5 of the Appeal filed by the Aranmula Heritage Village Action Council, they have also admitted that only the Hon'ble High Court of

Kerala has got jurisdiction to entertain any issue relating to the State Acts. For the proposed project, the EIA Report was prepared and ToR finalized on 13th October 2012. The public hearing was held at District Collectorate, Pathanamthitta on 10th May 2011 and the EAC recommended the project for clearance on 15.12.2011. This Respondent has also furnished periodical information called for by the Ministry of Environment & Forests from time to time and answered all queries raised by the Ministry in this regard. The issues dealt with are briefly summarized herein under.

A. Aranmula, Pathanamthitta District is connected by a good network of State Highway Roads. These roads have two-line riding surface of minimum 35 ft. with adequate space on the sides for future expansion. Following are the four vital arteries that pass through Aranmula:—

- (a) *Pathanamthitta-Aranmula.*
- (b) *Thiruvalla-Aranmula.*
- (c) *Chengannur-Aranmula.*
- (d) *Pandalam-Aranmula.*

B. Good connectivity from Alappuzha, Kottayam and Idukki Districts exists towards Pathanamthitta District. They further gain importance due to non-resident Malayalies of above four districts, Sabarimala pilgrims during season, Sabarimala pilgrims proceeding to shrine every month, pilgrims converging at *Maramon* Convention every season, tourists (domestic and foreign) and regular traffic. The Airport will have a proper network of road communication around it. The allegation that the EIA must also include within its scope roads that may or may not be built in future by the State or Central Governments, which are completely different entities and which are governed by different norms and regulations, is clearly unsustainable. It is submitted that providing roads is a public function which is governed by different standards and policies and there is no requirement of an EC for such state activities.

C. Airport Land is interspersed with a small rivulet '*Kozhithodu*' which is crossing the runway. This rivulet eventually merges with the famous Pampa River. A cross vent of 20 × 2.5 m underneath the runway is planned to maintain free flow of water in *Kozhithodu*. General lay of the land is towards *Kozhithodu* from South and North which facilitates free flow of water from both ends of run way towards *Kozhithodu* and the proposed drain.

D. Energy Conservation methods:

Energy conservation is a global concern and this Respondent will endeavor to implement all energy saving programmes

conforming to nation's clean energy future while undertaking Airport construction.

Following are certain measures proposed to be implemented:—

- (a) *Solar energy. It is one form of energy which helps in maintaining the ecological balance. Maximum use of Solar Energy will be adopted through PV system and solar power plant processes for external/internal electrification.*
- (b) *Buildings are responsible for 40% of energy use in India and they are said to be major contributors to global emissions. Essential guidelines at micro level in line with the proposed Energy conservation building code will be complied with in respect to internal lighting, refrigeration, electronic/electrical gadget usage etc., through a Standard Operating Procedure (Dos & Don'ts).*
- (c) *Construction sector has enormous environmental impact. Current trend of making structures "green" will be transplanted in true spirits on to ground while carrying out the Airport construction. Primary focus will be on salient aspects like preserving terrain, retention of green coverage, maximising natural cooling/natural lighting and minimum use of unsustainable building materials. Wastewater recycling, eliminating reliance on external source like water harvesting etc. Moreover, periodic energy audit by experts will be in place to monitor the programme.*

E. Land Filling:

The Company has purchased about 300 acres of land in a single block, from the owners in a more or less developed form, the development of which was completed in 2000-04. The area required for building the runway to a distance of almost 1500 meters have already been developed as part of the original plan by the then owner of certain lands to have a flying club in the area. Certain areas of the project land purchased by us are dry land and Rubber Plantations. There is not and never has been any proposal to fill up the entire project area (500 acres) and our filling will be restricted to runway and terminal building sites, leaving the remaining in its natural form.

F. Plan for site filling:

The present respondent will be developing an additional area of 1000 meters for the runway with a maximum width of 150 meters and to a height of 1 meter. The soil required for this filling is calculated as under; $1000 \times 150 \times 1 = 150000 \text{ m}^3$ of soil.

G. Source of Soil:

There is an elevated portion at the site which is the source

for filling. This elevated area is around 10 to 12 acres of land, with an average height of 3 to 5 metres. Quantity of Soil available by leveling this elevated portion will be about 2 million cubic meters. The soil available at this elevated place is laterite and identical with the soil at the site. Hence there is no need to bring soil from outside. The Appellants claim that the present respondent is leveling hills for the purpose of leveling the surface is completely fanciful and is denied. No such leveling has been carried out by the respondent.

H. Impact of filling:

As the present project requires filling the bare minimum area required for safe airport operation, leaving the remaining area in its natural form, there will be no environmental impact due to this activity. The recharge also remains unaffected. On the whole, the minimum filling with the local material ensures environmental homogeneity and produces no impact on environment.

I. Wetland Conservation:

There are a few patches of water logged area at this site, due to poor flow. There is no notified wet land in the project site. But, there is an accumulated water body which remains scattered in different parts of the project site. This is mainly due to the fact that for the last more than 30 years, there was no agricultural operation in the area, which has resulted in frequent flooding during rainy seasons and remaining as wasteland during summer. Further, there is a small rivulet (*Kozhithodu*) which is passing through the project site. This rivulet collects water from uphill areas and joins the Pampa River, down below. The flow in this rivulet due to poor maintenance over the years is blocked at various points causing small water bodies in different parts of the project site. The flow in this rivulet is also blocked by silting and by growth of African weeds. In fact it is submitted that it was at the instance of the present respondent that the Minor Irrigation department, Government of Kerala has cleared the blockage of *Kozhithodu* by dredging for about 8 km from uphill upto the Pampa River. When the present respondent purchased the land from the original owner, the whole area was remaining wasteland with patches of water bodies and some of the portion of *Kozhithodu* (rivulet) partially blocked. It was the present respondent which ensured minimum interference with the environment and topography of the area. To ensure smooth flow of water through *Kozhithodu* (rivulet), this respondent has entrusted the work to the Minor Irrigation Department of

Government of Kerala to study the topography, water flow, and to ensure that the accumulated water in the project site is systematically collected and smoothly flows through the *Kozhithodu* (rivulet) down to Pampa River. This will increase the water table in the vicinity. Accordingly, the Department has devised ways and means to ensure smooth flow of water to Pampa River and to avoid flooding of the area during monsoon. The expenses required will be met by this respondent as per Government norms. This project design will be put in place during the implementation of the project. In order to protect and preserve the natural flow of *Kozhithodu* (rivulet), which will be cutting across the runway, it has been designed in such a way that this *Kozhithodu* (rivulet) passes right under the runway without any hindrance. This respondent has also planned excellent drainage system along the runway and around the terminal building to ensure traffic safety coupled with protection of environmental factors. These measures will ensure a comprehensive conservation plan for the water flow in the area and a systematic drainage system so that there is no flooding in and around the airport, which is an imperative security prerequisite. The water requirement will be only 7550 litres/day which is not on large scale as specified. The present ground water potential is sufficient for the water requirement. The area receives plenty of rainfall and natural recharge will take care of water replenishment. The proposed project has been planned with utmost care to ensure minimum interference with the environmental factors. The present respondent also undertakes that this project will be implemented with extreme care and with comprehensive conservation plan with strict adherence to the guidelines issued by the MOEF and in accordance with the MoEF's Environmental Impact Assessment Guidance Manual for Airports. The allegations that data on sensitive habitats, wild or endangered species in the project area 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 is wholly misleading as there is no data to show that any such species or habitats are native to the project site. The proposed airport is in the public interest and for the development of the country. There will not be any destruction of any ecosystem. The recommendations made by the Salim Ali Foundation report do not reflect the actual prevailing environmental situation of Aranmula. It depends largely upon certain suppositions and conjectures in arriving at the conclusion and highly arbitrary

and without any proper scientific basis. The particular land, which is a fallow land, could be productively used for this ambitious airport project. Salim Ali Foundation appears to have taken up the study about the environmental impact of Aranmula Airport suo motu. Unfortunately, it is not a competent agency recognized by the Airport Authority of India, to study the environmental impact of Airports in India. The Report by Salim Ali Foundation on the whole is too vague, superficial, incomplete and most unscientific. The report per se reflects distorted background of the project, whims and fancies of the researchers and does not explain the research methodology, which has been adopted for this study. This very fact makes this project report totally unscientific, biased and hence cannot be relied up on. The list of flora and fauna recorded as part of the study is all of generic nature, which is available throughout the State of Kerala and hence have no preservative value. It is a mere reproduction of standard material with little relevance to the project site. The Salim Ali Foundation report does not disclose the size of the population, sample collected, sampling technique adopted and the reasoning for arriving at any definite conclusion, which are most crucial to any scientific report.

113. The criticism about the EIA report prepared by the Enviro Care in light of the supposed findings of the Salim Ali Foundation is superficial and without any basis in data, statistical analysis and qualitative appreciation. It is also pertinent to note that none of the members of the Salim Ali Foundation had cared to associate with this Project during the EIA study, Public hearing or in any other way till this date, and to ventilate their points/concerns, for reasons best known to them. The gross inadequacies, total lack of systematic research methodology presumptions and assumptions have been summarized as 14 recommendations submitted at the end of the study by Salim Ali Foundation. All these recommendations are mere suggestions without any scientific background or substantiating evidence. It appears to be a more emotional report on hearsay evidence, false press reports, inadequate or total ignorance about airport projects and above all without even an attempt at a scientific approach to the whole issue. There is not a single recommendations substantiated by scientific data or authenticated reports. The commercial viability of a fifth airport, flight frequency etc., as mentioned in the recommendations of the Salim Ali Foundation are commercial questions which are irrelevant to the appellants. The very fact that the entire funding is met by the investor without a single Rupee of public fund makes these contentions totally baseless and irrelevant. The utilization of the land for Airport

project where there was no agricultural operation for more than two decades and which has been lying as a fallow land for more productive, employment oriented and infrastructural development project for the overall development of the State of Kerala with special reference to Pathanamthitta District is a boom to economic growth of the State. This respondent have taken every care and caution to protect and preserve the natural habitat, flora and fauna, rivulets and such other natural features, in the best possible form, with least interference during the implementation of the Airport Project. The Government of Kerala after evaluating the whole project in toto, developmental contribution, employment potential, better connectivity and nature friendly has taken 10% stake in this Greenfield Airport Project. The appellants have attempted to claim that there are wetlands in the area which will be affected by the project. But there is no identified wet land in Aranmula Village as per the Report of the Centre for Earth Science Studies (CESS). The CESS has prepared a report on wetlands in Kerala in which there is no mention of any wetland in the Pathanamthitta district. Thus, the allegation that the present Respondent has purchased consent for the proposed project is vehemently denied. It is submitted that the irresponsible manner in which such serious allegations have been made by the appellants is indicative of the frivolous nature of the present appeals. As the definition of the Kerala Conservation of Paddy and Wet Land Act, 2008, Paddy Land is not wet Land. The provisions of Central Wet Land Act are also similar. Therefore, it seems the authors of the Report of Salim Ali Foundation have confused Paddy Land with Wet Land.

114. Regarding the allegation raised by the appellants based on the Salim Ali Foundation Report that the EIA Report is inadequate, did not recognize the fertile, wetlands on the flood plains of river Pampa and presence of endemic and economically important species in the area, non inclusion of source of earth filling the land, it is stated that EAC has suggested ToR's and the EIA has been prepared as per the TOR's. EAC has sought additional information on Noise level modeling, analysis of impact, Traffic management, NOC from Civil Aviation etc., before recommending the Project. The MOEF has also called for additional information on the details of the area required to be filled, source of material, likely impacts and referred back to the EAC. The EAC, again in August 2012 examined and recommended the approval of the project. It is noted that the EIA study conducted by Enviro Care India Pvt., Ltd., covered the methodology of EIA, scope of EIA, study period, air environment, noise environment, water environment, land environment, eco-system, socio-economic development, project description, disaster management plan, basic infrastructure required, existing environmental status, ambient air quality, noise environment,

water quality, soil quality, land environment, biological environment, socio-economic environment, identification and prediction of impacts, positive environmental impacts, negative environmental impacts, environmental management plan, environmental impact statement etc., by adopting sampling locations, micrometeorology, temperature, rainfall, relative humidity, wind direction, wind speed, dust fall etc., These were all dealt with extensively by the report and the attempt of the appellants to contradict the findings of this extensive study on the basis of flimsy material is clearly untenable. A habitat or an area comprises of different kinds of Plants and animals within its boundary. The distribution of flora and fauna in the given area represents the biological environment. The biological portion of the environment includes, what is present in the study area, its values, and its responses to impacts description of community uniqueness, the dominant species, and an evaluation of rare or endangered species. The study was conducted by Enviro Care Pvt. Ltd., like the field monitoring stations were installed in four different locations in 10 km radius area. The bio-diversity studies were carried out in seventeen transacts point of 10 km radius. Thus, the EIA study covered the flora and fauna under Chapter-III of the EIA Report. The EAC, after due consideration of the relevant documents submitted by this respondent and additional clarifications furnished in response to its observations, have recommended for the grant of EC for the project as per the provisions of EIA Notification, 2006 and its subsequent amendments, subject to strict compliance of the terms and conditions envisaged in the impugned order. The impugned order passed by the MOEF is a speaking order and this respondent declares that it will adhere and follow strictly the specific conditions laid down in the said order. The said order is not given overnight, but was granted after a detailed and exhaustive analysis of all the environmental aspects. The method of assessment of impact including studies carried out, modeling techniques adopted to assess the impact where pertinent has been elaborated in the EIA Report. The report details the impact of the baseline parameters, both during the construction and operational phases and suggests the mitigation measures to be implemented by this respondent. The report also covers the planned environmental monitoring program and has provided the overall justification for implementation of the project and has explained how the adverse effects will be mitigated. It is submitted that therefore factors such as noise pollution, which are a natural consequence of any human activity, especially airports, have been duly considered before granting the impugned EC. All efforts will be made to mitigate these effects but it is humbly submitted that the principle of sustainable development governs the decision to permit a project in the public interest such as the present project and the application of the

said principle by the MoEF in the present case has been most satisfactory. The allegation that more than 50 items were taken up on the day and that hence, there could be no application of mind is clearly incorrect in so far as the additional material which was specifically requested by the MoEF before clearance was granted shows that the decision was taken over a period of time and that only the formal approval was finally given on the same day. The decision making process was carried on over a long period and over elaborate deliberations. The Ministry of Civil Aviation published the Greenfield Airport Policy enabling private establishments to establish and operate airports in India and accordingly this respondent had decided to establish an airport at Aranmula, Kozhencherry Taluk, Pathanamthitta District. By virtue of Clause 2.4(b) of Greenfield Airport Policy, a company registered under the Companies Act, 1956 and having its place of business in India and having the criteria prescribed thereunder is an "Airport Company" entitled to set up an airport. This respondent satisfies all the conditions in Clause 2.4 of Greenfield Airport Policy and is an Airport Company defined thereunder. The appeal for setting up of an airport at Aranmula under the Greenfield Airport Policy was submitted to the proper authority. The Airports Authority of India by the letter dated 15.10.2009 recommended the site for the International Airport. This Respondent then applied to the State of Kerala for a *No Objection Certificate* for establishing Airport at Aranmula. This respondent after cabinet clearance by order dated 08.09.2010 issued no-objection Certificate for establishment of the airport. The respondent State of Kerala in exercise of powers conferred under Sections 2 and 5 of Kerala Industrial Single Window Clearance Boards and Industrial Township Development Act, 1999 (Act 5 of 2000) declared the proposed area in which the Airport is to be established as an Industrial area of the State and constituted a Single Window Clearance Board for the said area to be known as "*Greenfield Airport, Aranmula Single Window Clearance Board*" for the purpose of speedy issue of various licenses, clearances or certificates required under the various State enactments and constituted 15 Member Board. The Government has appointed the Secretary to Government (Industrial Promotion), Industries Department to be the Chairman of the Board and the Managing Director, KINFRA as convener. On 12/11/2010, Government of Kerala after evaluating the comprehensive developmental impact which this Airport project will bring to the State of Kerala were pleased to give direction to the District Collector to initiate every action to commence the construction of the project including the registration of the land in the name of this Respondent and based on this District Collector has given direction to the Additional Tahsildar, Kozhencherry for mutating the property in the company's name. Accordingly this

respondent purchased the land required for the project and mutation was effected in the Company's name, based on the permission given by the District Collector, Pathanamthitta. The District Collector also gave direction to the Sub Registrar, Aranmula to effect registration of properties in the name of this Respondent.

115. The Ministry of Defence, Government of India by its proceedings dated 24.08.2011 addressed to the MoEF gave NOC for setting up of airport at Aranmula. Since the proposed airport is within 150 km within the existing airports, the respondent obtained consent from the MoEF for establishing the Green Field Airport at Aranmula. It is submitted that if the proposed Airport is beyond 150 km of an existing Civilian Airport prior approval of the Central Government is not necessary by virtue of Clause 9.1 of Exhibit R4(b) Policy. Clause 9.1 of Exhibit R4(b) Policy makes it clear that the Director General of Civil Aviation (DGCA) is the competent Authority to give clearance for the setting up of a new Airport within 150 km from an existing civilian airport. Thus, the Exhibit R4(j) consent issued by the MoEF satisfies the requirement under Clause 9.3 of Exhibit R4(b) Policy. Kerala Traffic has grown five times in last eight years from two million to 10 million. Kerala economy depends on foreign remittance of Rs. 60,000 crores per year. One out of three Keralite uses Airport facility and out of 3 crore population, 1 crore people has travelled by air. Recently, the first respondent has given Environmental Clearance for the Kannur Airport in Kerala, which is situated only Eighty Five Kilometers from the existing Calicut and Mangalore Airports. This respondent has purchased the fully developed land where no agricultural operation was being conducted. The property was purchased by this Respondent as completely reclaimed with no agricultural operation, for the last 3 decades, as is certified by the Agricultural Officer, besides the dry land and Rubber Plantations. The State of Kerala *vide* GO (MS) No. 30/12/Agri dated 16/02/2012 granted permission for filling up an area of 429.28 ares (10.62 acres) in the adjoining "*Aranmula Punja*", declaring the so called wet land as not cultivatable. This was because the character of the land had been permanently altered and no agricultural activities were done for several years and permission was therefore granted for the purpose of starting Cape Engineering College and it is also learnt that District level Committee has also recommended for filling an area of 10 Acres for Aranmula *Vasthu Vidya Gurukulam* in the same Aranmula *Punja*. The Agricultural Officer, Pathanamthitta by its letter dated 29/02/2012 certified that the said 429.28 Ares of land is not cultivatable and without any agricultural activities whatsoever for the last so many years. The statement to the effect that construction of the airport is in violation of the provisions of the Kerala Conservation of Paddy and Wet Land Act, 2008, Kerala Land Reforms Act, 1963, Environment Protection

Act, 1986, Land Acquisition Act etc. are false and denied *in toto*. In any event, the present Tribunal is not concerned with alleged violations of state enactments as they fall beyond the purview of the Scheduled enactments to the National Green Tribunal Act. This respondent does not make any representation of facts and it is the appellants which are continuously suppressing material facts and defaming the image and reputation of this respondent through media and unnecessarily dragged this respondent into litigation with ulterior motive. This respondent has purchased the property starting from 27.12.2010 from Kozhencherry Charitable Educational Society and others. In that deed the nature of property is stated as "dry land". At the time of purchase of the property itself, the nature of land which was purchased from Kozhencherry Charitable Educational Society was in a developed state. The major portions of the land are rubber plantations. After purchasing the land, this respondent had not converted or reclaimed any part of land in its possession or made any attempt to fill up the land. This respondent has not done anything whatsoever till this date to fill/reclaim the purchased land or convert any *poramboke thodu* or filled any *Kozhithodu* (rivulet) as alleged by the appellants. The revenue authorities also confirmed that this respondent has not filled any land. The present respondent had purchased certain lands, which were already converted prior to enactment of Conservation of Paddy Land and Wet Land Act, 2008. The Aranmula Grama Panchayat has passed a resolution dated 22.09.2004 and also issued a letter to the Prior owner of certain lands supporting conversion of land. The Kozhencherry Charitable Educational Society owned 232 Acres of land spread over in three villages-Aranmula, Mallapuzhassery and Kidanganoor Villages in Pathanamthitta District. This respondent cannot be held liable for the conversion of land by a prior owner before the enactment of the Act. Hence, the allegation to the effect that this respondent is continuing the illegal activity of filling paddy and wet lands is denied *in toto*.

116. This respondent had approached the Hon'ble High Court of Kerala for granting adequate and sufficient police protection for its employees and workers in their duties in connection with the establishment of Aranmula airport project. The Hon'ble High Court vide its order in W.P.(C). No. 3407 of 2012 dated 15.02.2012 has directed the police authorities to give necessary and adequate protection to proceed with the work, after examining all the documents/sanctions received from both Central and State Governments and hearing the Advocate General. In the aforesaid judgment, the Hon'ble High Court has reiterated that the very establishment of International Airport at Aranmula is for "public utility". The Writ Petition filed by this appellant before Hon'ble High Court as W.P. (C). No. 6004/2012 has been tagged together along with W.P. (C). No. 3407/2012 and the Hon'ble High

Court have again reiterated that sufficient police protection should be granted for any construction work being done in our property.

117. The present project has received support from all government at every level as evidenced by the letter of the Government of Kerala dated 26.09.2011 addressed to the Ministry of Civil Aviation expressing its support to the establishment of the Airport at Aranmula. This respondent who is implementing the project has purchased the land in a more or less developed form and we have obtained all clearances as per the Greenfield Airport Policy, promulgated by the Government of India. Considering the statutory and constitutional position of the State Committee, this respondent has agreed to carry out all the recommendations, applicable to this respondent in letter and spirit. This respondent is committed to do this developmental infrastructure project strictly in accordance with law, absolute transparency and all out protection to the nature and environment.

118. The Kerala State Pollution Control Board conducted public consultation as provided in Clause 111 stage 3. The Kerala State Pollution Control Board had issued the summary of the details of the proposed project and public consultation including the details of executive summary and EIA Report of the project and made available for reference in the following offices like District Collector, Pathanamthitta, District Industries, Kozhencherry, District Panchayat Office, Pathanamthitta, Elanthoor Block *Panchayat* Office, Elanthoor, Pathanamthitta, Aranmula Grama *Panchayat* Office, Aranmula, Pathanamthitta, Mallapuzhassery Grama *Panchayat* Office, Pathanamthitta, Science, Technology & Environment Department, Sasthra Bhavan, Pattom, Thiruvananthapuram, District Office, Kerala State Pollution Control Board, Makkamkunnu, Pathanamthitta and Head Office, Kerala State Pollution Control Board, Thiruvananthapuram. In the said notification, it is clearly mentioned that all concerned persons are welcome to communicate comments on environmental aspects of the project within 30 days of the date of publication or to participate in Public Consultation. As provided there under a public hearing was conducted by the Kerala State Pollution Control Board with the District Collector, Pathanamthitta in the Chair. The Kerala State Pollution Control Board issued public notices in vernacular dailies *Malayala Manorama* dated 06.02.2011, *Mathrubhumi* daily dated 06.02.2011 and *Kerala Kaumudi* dated 06.02.2011 about the hearing to be held on 10.03.2011 at Collectorate Conference Hall, Pathanamthitta. The notice was published in English daily as well. The notice was also published in the website of the Kerala State Pollution Control Board. The environmental public hearing was scheduled on 10.03.2011. But due to the announcement of the date for General Election to Kerala Legislative Assembly 2011, the Chief Electoral Officer instructed to defer the public

hearing till the election process was over. In accordance with that, the public hearing was postponed to 29.4.2011. Since a *harthal* has been declared on that day by Left Parties, the Public Hearing has been re-adjournd to 10.05.2011. Since the General Election to Kerala Legislative Assembly 2011 was declared, public hearing was adjourned to 29.04.2011 (because of *harthal*) and again to 10.05.2011 on the basis of the direction of the Election Commission, since the Model Code of Conduct is enforced from the date of announcement of election schedule by the Election Commission and only on the basis of the directions given by the Election Commission, public hearing was conducted on 10.05.2011. The Election Commission is entitled to issue such directions under Article 324(1) of the Constitution of India as it thinks fit, for conducting free and fair elections and for maintaining the purity of election process. Election Commission is a constitutional authority under Article 324 of the Constitution having plenary of power and directed to defer till the election process is over. For the adjourned hearing also public notices were published in newspapers. The notice of hearing were affixed in all public places and public places like Village Office, Panchayat Office, Collectorate and so on. The notices were published at public places by hoardings and banners. The public hearing was conducted on 10.05.2011 at Conference Hall, Collectorate, Pathanamthitta with District Collector in the chair. In the meeting representatives of the people and public were present. This respondent who is implementing the project has purchased the land in a more or less developed form and we have obtained all clearances as per the Greenfield Airport Policy, promulgated by the Government of India. Considering the statutory and constitutional position of the State Committee, this respondent has agreed to carry out all the recommendations, applicable to this respondent in letter and spirit. This respondent is committed to do this developmental infrastructure project strictly in accordance with law, absolute transparency and all out protection to the nature and environment.

119. The entire meeting was video graphed and sent to the MoEF. Amongst 250 people participated in the hearing of whom 80 persons signed in the minutes book. Moreover, there is no prescribed quorum for the public hearing as contemplated under the Appendix IV of 6.2 of the procedure for conduct of Public Hearing. It is submitted that in pursuance of the public hearing held on 10.05.2011 and on the basis of the minutes of the meeting and all relevant records and the subsequent detailed scrutiny by the EAC recommendations were made to the MoEF, the first respondent. On the basis on the recommendation made by the said Board, the EAC, Government of India has recommended the EC for the airport project. After hearing and perusing documents, video and other connected records, EAC recommended the project for EC to the

first respondent, MoEF. Thus, the stipulations in Exhibit R4(b) have been fully complied with and also as per Schedule-IV for the Procedure for Public Hearing and since the Model Code of Conduct is enforced in the State of Kerala by the Election Commission and only on the basis of their directions only, Public hearing was conducted on 10.05.2011. This appellant failed to file any objection or raise their concerns regarding the said Public Hearing or any environmental impact, if any to the Kerala State Pollution Control Board within 30 days of the date of publication of the notice which have been already produced and marked as Exhibit R4(q). The impugned order has been passed by the MoEF after reviewing the adequacy of the consultation process and examined the procedure followed as per MoEF notification.

120. There will not be any environmental hazard as alleged by the appellants. Enviro Care India Pvt. Ltd., is an ISO certified company approved by the Airport Authority of India. The said Company conducted detailed impact study on the establishment of the airport at Aranmula and submitted report. This respondent made the presentation about the environmental aspects before the Expert Appraisal Committee of Ministry of Environment and Forests. After satisfying that the proposed Airport does not have any environmental impact, recommended to the Government as per Exhibit R4(O). The procedure adopted is an elaborate one. There are several stages for obtaining EC. Firstly, we have to identify an agency approved by Airport Authority of India, who is competent to study environmental impact assessment and submit an EIA report. Enviro Care is an ISO Certified Company and approved by Airport Authority of India at that time. Secondly, the company so engaged will conduct a field study for one year touching all aspects of nature, climatic conditions, flora and fauna, water, air, pollution aspects, noise, visibility, rainfall etc. Thirdly, based on the primary data collected in the year, they will prepare EIA. This will be submitted to MoEF, the first respondent through Kerala State Pollution Control Board. The first respondent after examining the EIA report and evaluating our presentation before them will finalize the ToR. These aspects will be again studied and report will be submitted to EAC along with this respondent's presentation. If the report and presentation based on the ToR is approved by EAC, then they will direct for holding a public hearing at the District Headquarters after giving wide publicity through print and publishing media including hoardings, newspaper advertisements etc. During the public hearing, any person of the locality who has any interest whatsoever in the project can come and present his point of view regarding the project and all such points will be addressed satisfactorily. Thereafter, the minutes of the meeting prepared by District Collector, Pathanamthitta, will be read out and was unanimously passed by the Public so assembled. This minute along

with the video recording of the proceedings will be forwarded to MoEF, the first respondent, by the Kerala State Pollution Control Board to EAC. The EAC after scrutiny of the minutes and attending the presentation by us, if satisfied will recommend the project for clearance to the MoEF. The present respondent has undertaken the whole process satisfactorily and successfully. The impugned order has been passed by the MoEF after reviewing the adequacy of the consultation process and examined the procedure followed as per MoEF notification.

121. The statement to the effect that evacuations of families will take place as a result of the project are totally baseless, false and far from truth. Not a single person was evicted so far and this is a deliberate false propaganda to create fear psychosis among the local people and to provoke them to agitate against this project, which will definitely bring sustainable development to the State of Kerala. The statement to the effect that there are more than 1000 families residing in the said region is absolutely false and denied *in toto*. The major portions of the land are rubber plantations and fallow lands. The averments that there are about 700 houses in the proposed airport land are false and hence denied. There will not be any eviction, acquisition or displacement of any houses. As directed by the Government, this respondent has negotiated with land owners and land has been purchased in conformity with the prevailing market value in the locality. The Google Map produced pertains to the entire locality consisting of more than 3000 Acres. The proposed airport area is limited to 500 Acres. Hence, the question regarding evacuation of people historically, culturally and economically connected with the region does not arise and there is no violation of the right to life as guaranteed by Article 21 of the Constitution of India. The Government of Kerala after evaluating the project *in toto* including connectivity, infrastructure development, employment potential and comprehensive development to the State were pleased to take 10% equity in the project and also ordered that Government *puramboke* land essential for the operations of the airport shall be given to the Company after levying market price vide G.O.(Ms). No. 04/2013/Trans dated 16/01/2013. In fact, the local people are in favour of this airport. The Governments have given permission to proceed with this airport project and is a continuing policy of both the Governments. Persons having vested interest are raising objections. Already employment for several persons has been given by the Company. Several skilled and unskilled workers are working for the Company for the purpose of establishing this Airport. The impugned EC has been issued by the 1st respondent only after a proper study of the extensive EIA submitted by this respondent. The allegations that the EIA Report is invalid as Enviro Care Pvt. Ltd., is not a qualified agency is clearly untenable. True Copies of the Office Memorandum issued by

Government of India, Ministry of Environment and Forest dated 28.06.2010 and dated 31.12.2010 regarding accreditation of EIA consultants is produced. The allegations regarding the basic information submitted by this respondent are absolutely false and denied. At the time of giving basic information on 28.06.2010, what all are stated in the information are true and correct. As already stated, the present respondent has purchased the land in a developed state and most of the lands are lying as water logged fallow land, dry land and Rubber Plantations. The previous owner Kozhencherry Charitable Educational Society owned 232 acres of land spread over in three villages-Aranmula, Mallapuzhassery and Kidanganoor Villages in Pathanamthitta District. As per the Wetlands (Conservation and Management) Rules, 2010, List of Wetlands in India Identified as *Ramsar* Sites under *Ramsar* Convention on Wet Land, wherein no portion of the airport project has been identified as "Wet Land" in the appended Schedule. Moreover, there is no protected Wetland in the Project area as per the said rules. It is true that there is no pending litigation against this respondent at the time of submission of information in Form I of the appeal. Hence, the statement to the effect that this respondent had made false statement regarding the pending litigation against the Project at the time of submission of the appeal is absolutely false. There is no local land use plan. Moreover, there is no zonal classification in the airport area and hence the land will be used only for the airport purpose with strict adherence to the conditions stipulated in the impugned order. There is no need for any demolition as there is no structure in the project area. There is no need for any further reclamation as the project area has been purchased in a developed state. There is no need for any reclamation work in this project. Most of the project site is in a developed form/rubber plantation and dry land. The purpose regarding the sensitive man-made land uses (like hospitals etc.) are to be interpreted as items directly or indirectly affecting the operation of the airport. It is necessary to identify the presence of such obstructive structures, for which the present respondent has separately conducted Obstruction Study before embarking on the project, after the submission of the basic information. This will complement the appeal. The aerial distance is for the purpose to identify any man-made structures like hospital that would interfere the operation of the Airport. This study was conducted by a comprehensive and mandatory obstruction study by Aero Survey, G-11, Second Floor, Green Park Extension, and New Delhi, who is a recognized agency for conducting Obstacle Study for Airport Project by Civil Aviation, Airport Authority and DGCA. There is no protected monument within the area which will be affected by the proposed project. Hence, there was no misrepresentation by the respondent. Kaviyoor temple, Aranmula

temple and other monuments are not affected by the temple and are not monuments officially protected by the Archeological Survey of India.

122. Challenging the very same grounds raised by the appellants, an appeal was filed by Aranmula Heritage Action Council represented by its Patron Sri Kummanam Rajasekharan, who has also challenged the same before the First Respondent, as Appeal No. 38/2013 before this Tribunal has been withdrawn and this Tribunal awarded a cost of Rs 25000/- payable to the respondent's side. Further, the Kerala State Legislative Committee on Environment has not expressed any reservation against the project as such but on the other hand, it has recommended that the excess land notified as Industrial Area, except the land under the possession of this respondent is to be de-notified and orders issued. The Committee consisting of 8 Members of the Legislative Assembly under the chairmanship of Shri C.P. Mohammed examined the allegations and submitted their report on 12.06.2012. The main findings and recommendations of the Committee have been answered by this respondent to the MoEF, the first respondent which is as follows:—

123. A. The project should be implemented after considering the Topography environmental study and discussion with the concerned departments:—

This Project has complied with all the above recommendations. The EIA study was carried out by Enviro Care India Pvt. Ltd., Madurai, which is a recognized agency for conducting and preparing EIA report. Thereafter, the ToR were formulated by the EAC in the 91st EAC Meeting held on 21st to 23rd September, 2010 and intimated to us vide MoEF Letter No. 10-51/2010-IA. III dated 30th October 2010. The public hearing was held on 10.05.2011 with the District Collector, Pathanamthitta in the Chair and cleared by the EAC on 21st to 23rd September 2011. Thereafter, based on the article in news paper "The Hindu" dated 02.01.2012, the issues raised were again re-examined on 105th Meeting of the EAC held on 16th to 17th August 2012 and cleared the project. Hence, all the formalities stipulated by the first respondent has been complied with.

B. The opinion of the local public has to be considered:

Public hearing which was held on 10.05.2011 with the District Collector in chair was attended around 250 local people and all of them have unanimously supported the project. The minutes of the meeting has been submitted along with video graph by the Kerala State Pollution Control Board vide Kerala Pollution Control Board vide Letter No. PSB/HO/PTA/04/2011 dated 13.05.2011. Further, it has been certified by the Agricultural Officer, Pathanamthitta that there

is no paddy cultivation in that area for so long and hence the land identified for the project is waste land.

C. There is a Government land in the project site and action should be initiated to recover the same:

The Government vide G.O.(Ms). 04/2012/Trans dated 16.02.2013 has already taken 10% stake in the project and have decided to transfer the Government land within the project site to this respondent at market price.

D. The rivulet (*Kozhithodu*) passing through the project site is seen blocked due to silting. This may be addressed and natural flow restored.

This respondent has conducted a Hydrological study of rivulet (*Kozhithodu*) with reference to Aranmula airport through the Department of Minor Irrigation, Government of Kerala and as per their recommendations, the blockade in the *Kozhithodu* has been removed and natural flow restored.

E. Efforts to be made for reviving agriculture in the area which has been lying as wasteland due to shortage of water:

No Economic Agriculture/Operation is possible in the area as the land has already been reclaimed and the local farmers abandoned the agriculture for the past so many years.

F. The Kerala Government should hold discussion with all connected departments before declaring any areas Industrial Zone.

The project area has been declared as Industrial area as per G.O. (P) No. 54/11/ID dated 24.02.2011, after observing all formalities. The recommendation of the committee has been accepted by the Government.

G. The Government may examine the various judgments by High Court of Kerala regarding the filling of Agricultural land and earnest efforts must be made to implement the same.

The Government has accepted this recommendation.

H. The Government should initiate action against persons who has filled and blocked the *Kozhithodu*.

Action has already been initiated against the miscreants who had filled and blocked the *Kozhithodu*. An agreement has signed between the KGS Group and the Assistant Executive Engineer, of Aranmula Minor Irrigation sub division and as per the agreement; dredging has already been done for smooth running of water.

I. The area outside the project which has been notified as Industrial area may de-notified:

The Government has already initiated action to de-notify the excess land from the notified area.

J. The action has to be initiated against person who had converted agricultural land in the area:

The Government has already initiated appropriate action against the persons as directed.

K. The EAC of the State Government has not conducted any study about the project site. Hence, the Govt. may examine the circumstances under which the State Pollution Board has recommended the Project to Government of India.

124. The Pollution Control Board has recommended this Project after observing all the formalities and after examining the EIA Report prepared by the Enviro Care India Pvt. Ltd., Madurai. The public response recorded during the public hearing, after visit to the site and perusal of all the connected records.

125. All these suggestions have been taken on board by the present respondent and that the proposed project will be constructed strictly in accordance with the provided by the MoEF and the terms thereof. The project area has been declared as "Industrial Area" by the Government of Kerala under due process of Law thereby stipulating all formalities. The appeal period for challenging the notification is 30 days and nobody till date has challenged the said notification within the stipulated period. The statement to the effect that the MOEF had granted the impugned order without application of mind is vague and totally false and frivolous. There is no acquisition of land as alleged by the Appellants.

126. The suggestion that the proposed runway cannot possibly be constructed in the proposed site is plainly absurd which is based upon an early map of a much smaller extent of land. The proposed project is within a 500 acre area and the same can easily accommodate a 2800 m runway and the detailed plans of the proposed project clearly demonstrate the same.

127. The present respondent has not violated the EIA Notification, 2006 as alleged. The airport has been proposed in an area of 500 acres, of which this Respondent had purchased more than 350 acres as preliminary step. Simultaneously, this respondent have to work out the orientation of the runway, lay out for the taxiway, apron, fire and rescue facility etc. which are primary aspects associated with the implementation work. The preliminary work includes feasibility study, financial viability, hydro graphic study, land survey, budgetary allocation and identification of suitable site etc. The impugned order passed by the MOEF is a speaking order and has been passed after considering all relevant environmental factors, and after due consideration of the relevant documents submitted by this respondent and additional clarifications furnished in response to its observations. The EIA has only thereafter recommended the grant of Environmental

Clearance for the project as per the provisions of EIA Notification, 2006 and its subsequent amendments, subject to strict compliance of the terms and conditions as envisaged in the impugned order. The present respondent hereby undertakes that it will comply with the specific conditions envisaged in the impugned order in letter and spirit.

128. On the above grounds, the respondent namely K.G.S. Aranmula Airport Projects Pvt. Ltd., seeks to dismiss the appeals.

129. Enviro Care India Pvt. Ltd., the 5th respondent in Appeal No. 19 of 2014 (SZ) in reply would state as follows:

This respondent is a company who has been actively involved in developing cleaner environment throughout the country, more particularly in the region since 2004 and an I.S.O. 9001 certified company having Bureau of Indian Standards (BIS) accreditation and having laboratory facilities accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL) and the Department of Science and Technology for chemical and biological testing. The company is having National Accreditation Board's certification for Education and Training (NABET) from Quality Council of India (QCI) and the respondent is also doing consultancy services such as EIA/EMP study, risk assessment, detailed project report proposals and environmental audit and training for several turnkey projects.

130. The EIA study conducted by this respondent for the airport project covered recognized and accepted methodology of EIA, scope of EIA, study period, study period, air environment, noise environment, water environment, land environment, eco-system, socio-economic development, project description, disaster management plan, basic infrastructure required, existing environmental status, ambient air quality, noise environment, water quality, soil quality, land environment, biological environment, socio-economic environment, identification and prediction of impacts, positive environmental impacts, negative environmental impacts, environmental impact assessment, environmental management plan, environmental impact statement etc. by adopting sampling locations, micrometeorology, temperature, rainfall, relative humidity, wind direction, wind speed, dust fall etc., This respondent has already EIA reports for Chennai, Raipur and Vadodara airports and it was based on these reports the said projects were successfully completed.

131. At the time of submission of the report and presentation, there was no QCI implemented accredited scheme (NABET). As per the provisions of law and other regulations governing the conduct of environmental study and consequent submission of the EIA report, all consultants enlisted and approved by the MoEF are eligible for

conducting EIA and this respondent is also an enlisted and approved by the MoEF. The Office Memorandum issued by the MoEF clearly provided accreditation of the EIA consultants listed therein and after the accreditation process by the QCI/NABET, the competent authority has approved a list of 265 consultants wherein this respondent is arrayed as serial No. 73. These 265 consultants are also permitted to certify various documents such as EIA/EMP in their capacity as recognized and accredited consultants.

132. This respondent has conducted a detailed impact study regarding the establishment of an airport at Aranmula and submitted a detailed report to the authorities. The said report is submitted based on the ToR approved by EAC. This respondent had also attended the public hearing held at the conference hall of the District Collector, Pathanamthitta. This respondent had done a field study from July 2010 to October 2010 for collection of base line data. After submission of the application on 02.07.2010 by the Company, this respondent had started the study from July itself for one season (three months) which is also included in the ToR. This respondent had conducted field studies touching all the aspects of nature, climatic conditions, flora and fauna, water and air pollution aspects, noise, visibility rainfall etc. The EIA study was conducted covering prescribed methodology of EIA and etc., as aforesaid and adhered to the ToR prescribed by the EAC. A habitat or an area comprises of different kinds of plants and animals within its boundary. The distribution of flora and fauna in the given area represents the biological environment. The biological part of the environment includes, what is present in the study area, its values, and its responses to impact description of community uniqueness, the dominant species and an evaluation of rare or endangered species. During the course of the study conducted by this respondent, field monitoring stations were installed in four locations in 10 km radius area. The bio diversity studies were carried out in seventeen transacts points of 10 km radius and the EIA study carried by the respondent covered the flora and fauna under Chapter-III of the EIA report. The EAC consists of experts in disciplines such as eco system management, air/water pollution control, water resources management, flora and fauna conservation and management, land use planning, social sciences/rehabilitation, project appraisal, ecology, environment health and other subjects area specialists and other representatives. The said Committee twice recommended for the EC for this airport project after satisfying themselves after viewing the presentation and the EIA report of this respondent and after due consideration of the relevant documents submitted by various parties, agencies and other authorities and after additional clarifications were furnished in response to the observations/queries raised by various persons/organizations and

authorities as the case may be. The appellant is trying to give an impression that approval was granted in a lackadaisical manner which is false. This process is going on for years and this respondent has done a valid and thorough study of environmental impact of setting up the said airport at the location to the ecology, environment, flora and fauna, land etc., and submitted the report which presents the correct position and the generalities as it exists at the location of the study.

133. The EAC has recommended for the grant of EC for the project as per the provisions of EIA Notification, 2006 and its subsequent amendments. The EIA study has been conducted and report submitted based on the ToR pertaining to Aranmula site. This report covers the planned environmental monitoring programe and provided overall justification for implementation of the project and it also explained how the adverse effects can be mitigated. This respondent has downloaded the Google Map and enclosed in the EIA report to give the actual status of the present condition of the site and to mention the lie of the land and nature of the site. The entire field study was made during July 2010 to October 2010 and the same covers all the relevant aspects. The water requirement is only 7550 litres/day which is not on a large scale and the present ground water table potential is sufficient for the water requirement. The area receives plenty of rainfall and the natural recharge will take care of water replenishment. The designed capacity of the actual sewage is 7M³ per day and after taking into account the future expansion, the designed capacity of STP is 50M³ per day. As per the EIA Notification, 2006, the study area should be within 10 km radius of the site and the study has been conducted based on ToR and as per Chapter IV regarding description of EIA guidelines for airports. The method of assessment of impact includes studies carried out, modeling techniques adopted to assess the impact which has been elaborated in the EIA report. The report gives the details of baseline parameters, both during construction and operational phases and suggests mitigation measures to be implemented by the airport company. The air sampling equation was done and is set out in page No. 62 of the report and followed the necessary parameters as set out in page No. 74. As per clause 3.9.3 of the report, particulate matter-PM 10, PM 25, Sulphur di oxide and oxides of nitrogen are within limits in and around the project site. Carbon monoxide is very limited in the area and this respondent has conducted the ambient air quality standards as per the new norms. The hydrocarbons can be reduced by developing a green belt and air environment and noise impact have been mentioned at page No. 101 and 102 of the report. The disposal of hazardous waste and the solid waste generation can be made as per the guidelines prescribed from time to time. In any case, the airport company has to obtain necessary consent to establish and consent to

operate from the Kerala State Pollution Control Board. The ToR has been prepared for the airport sector after duly catering to the commonly expected environmental concerns and the identification of specific issues by the proponent company and the ToR has been prepared the EIA report upon the approval of the ToR by the EAC and this respondent in the EIA report has studied various environmental parameters which would occur during construction and operational phases of the airport project for assessment of the impact on the surrounding environment. No part of the project area of 500 acres is wetland and the revenue records would evidence to this effect. There is no need to reclaim any part of the said area and further no cultivation has taken place in that area for several years. As per the Wetlands (Conservation and Management Rules), 2010, a list of wetland in India identified as *Ramsar* Sites under the *Ramsar* Convention of Wetland is set out and no portion of the land included in the Aranmula airport project is found in the identified wetland and the repeated contention of the appellants that the project site consists of wetland is not supported by record.

134. The rivulet which was identified as passing through the land was blocked and clogged and water was not flowing for years and the water was flowing in the said rivulet now and the same has been and will continue to safeguarded. The paddy lands can be reclaimed for public purposes as per Kerala Conservation of Paddy land and Wetland Act, 2008. The project land is a degraded land with water logging and invasive plant species affecting native bio diversity and the project site has no ecological/geographical significance other than the fact that the said land was paddy land more than 20 years ago and is now a fallow, water logged land unfit for paddy cultivation as is evident from the report of the Agriculture Officer. The paddy lands are not wetlands.

135. The area is not a heritage site due to any aspect of the land or the people and the heritage status has not been granted for any of the environmental sectors. The heritage status is granted to the area only due to 'Uthirattadhi Boat Race' and the 'Aranmula Mirror' which are unique to this village and which will not affected by the establishment of an airport in the project area. There are no protected monuments in the project area which will be affected by the establishment of an airport and though the temple and the must are not monuments protected by the ASI, they will be protected and will not be affected by the airport project. The alleged issues raised in the report of the Salim Ali Foundation could erode the validity of the EIA study are denied by this respondent.

136. The ToR along with the compliance report is clearly mentioned in the EIA report after examining the following aspects:

(i) *baseline environmental quality along with projected incremental*

- load to the proposed project activities such as ambient air quality,*
- (ii) analysis and submission of details of comprehensive risk assessment and disaster management plan including emergency evacuation during natural, man-made disaster integrating with airport such as fire detection and fighting, bomb threats, earthquake, and oil spillage,*
 - (iii) Examining separately the details of construction and operational phases both for Environmental Management Plan and Environmental Monitoring Plan with cost and parameters,*
 - (iv) Examining road/rail connectivity to the project site and impact on the traffic due to the proposed project/activities,*
 - (v) Examining the details of aforestation measures indicating land and financial outlay, landscape plan, green belts and open spaces, and a thick green belt has been planned all around the nearest settlement to mitigate noise and vibration etc., if any,*
 - (vi) Examining and submitting the details of noise modeling studies and mitigative measures,*
 - (vii) Examining the details of water requirement, use of treated waste water, preparation of a water balance chart and source of water vis-à-vis waste water to be generated along with treatment facilities to be proposed.*
 - (viii) Details of rain water harvesting proposals which should be made with due safeguards for ground water quality by maximizing recycling of water and utilization of rain water,*
 - (ix) Examining the details of solid waste generation treatment plant and its disposal,*
 - (x) Identification, prediction and assessing the environmental and sociological impacts on account of the project/activities and*
 - (xi) Submission of details of corporate social responsibilities etc.,*

137. In view of the above mitigative measures are more than adequate dealt with and hence, the averments contained in the appeal grounds are nothing but a figment of the appellant's imagination and this respondent has provided required Environment Monitoring Programme as required in the Manual.

138. This respondent has dealt with all issues arising out of Chapter 7 of the Manual. In any case, additional studies have been conducted by the company through various qualified experts qualified to conduct the study such as feasibility study by KITCO, a comprehensive and mandatory obstruction study by Aero Survey, New Delhi which is a recognized agency for conducting obstacle study for airport project by Civil Aviation, Air Ports Authority and Director General of Civil Aviation wherein experts have dealt with the steps taken regarding the obstructions providing adequate remedial measures whereby it was

suggested to displace the threshold of the runway by 285 m.

139. The Office Memorandum dated 1st September 2010 and 30th November 2011, the period for getting accredited has been extended from 30th June 2010 to 1st October 2011. An anomalous situation occurs if the interpretation given by the appellant to these office memorandums in that an unqualified person whose accreditation is rejected and if he gives a report before 1st October 2011, the said report is valid whereas this respondent who is qualified to do Category A projects, but chooses not to do them in future and applies for accreditation only for Category B projects, when they give a report after 30th June 2010, the same will be considered invalid.

140. The accreditation memo is not signed by a competent authority and hence, is not binding on this respondent. In as much as there exists no terms which provides for accreditation, the same cannot be imposed by way of an office memorandum. The said memo is not even an executive instruction under Article 73 and Article 162 of the Constitution of India, being issued not by the State or the Union but by an instrumentality. Even assuming that the office memorandum is binding on the respondent, it is merely a procedural formality which is directive in nature and unless the appellant proves that this respondent is incompetent and that hardship has been caused to him by virtue of the lack of accreditation to the respondent for Category A project. Procedural provisions are directory and it can be enforced to set aside the order only in the eventuality of hardship being proved by the party alleging the same. In any case, this project was commenced by this respondent well before the office memorandum regarding accreditation was issued and they submitted the report in the month of October 2010. In spite of being adequately qualified and having satisfactorily submitted reports in the construction of airports at Chennai, Raipur and Vadodara and various other prestigious projects, merely because this respondent applied for accreditation for Category B projects, more particularly for thermal projects for purely techno-commercial reasons, the same does not disqualify this respondent from giving a valid EIA for a project assigned to them even before the issuance of the office memorandum introducing accreditation for the consultants. Hence, denying the averments made in the appeal that it was incompetent on the part of this respondent to submit EIA report based on that the impugned EC was made, this respondent, namely Enviro Care India Pvt., Ltd., seeks to uphold the EIA report submitted by them for the said project.

141. The Kerala State Pollution Control Board, arrayed as 3rd respondent in Appeal No. 172 of 2013 (SZ), 4th respondent in Appeal

No. 1 of 2014 (SZ) and 6th respondent in Appeal No. 19 of 2014 (SZ) states in the reply affidavit as follows:

142. The Project Proponent, the fourth respondent, requested the Kerala State Pollution Control Board (KSPCB) to organize the public hearing as part of the Environmental Clearance process for their project on 02.02.2011 to construct a new airport at Aranmula in Ptahtanamthitta District of Kerala along with sufficient copies of the draft EIA and Malayalam and English version of its executive summary. In consultation with the District Collector of Pathanamthitta. The public hearing was fixed at 11.00 AM on 10.03.2011 at the conference hall of the District Collectorate at Pathanamthitta. Wide publicity was given on 06.02.2011 in a national and two regional vernacular dailies in the manner and within the time specified in the notification. More than 30 days time was given between the date of publication and the date of hearing.

143. However, due to the declaration on 01.3.2011 of elections to the Kerala State Legislative Assembly on 13.04.2011, the date of public hearing had to be rescheduled by the District Collector with approval from the Election Commission. The public hearing was postponed to 29.04.2011 and Wide publicity was again given through the same national and two regional vernacular dailies on 27.03.2011. More than 30 days' time was again given between the date of publication and the date of hearing. On account of a sudden call for *hartal* in Pathanamthitta on 29.04.2011, the public hearing had to be postponed further and it was decided to hold it on 10.5.2011 at 11.00 AM at the Conference Hall of District Collectorate, Pathanamthitta. This postponement was also published on 28.04.2011 in the same dailies.

144. The soft copies of the draft environment impact assessment report and the Malayalam and English versions of the executive summary were made available for public scrutiny in the Board's website and its hard copies were made at the District Collectorate, Pathanamthitta, District Industries Centre, Kozhencherry, District Panchayat, Pathanamthitta, Elanthoor Block Panchayat, Aranmula Grama Panchayat, Mezhuveli Grama Panchayat, Mallapuzhassery Grama Panchayat, Science, Technology and Environment Department, Thiruvananthapuram. Pollution Control Board, Pathanamthitta District Office and Pollution Control Board, Head Office, Thiruvananthapuram and the draft environmental report in Malayalam and English versions of its executive summary were made available for public scrutiny at the above places for more than eighty days from 06.02.2011 to 10.05.2011. Thus the documents were made available for more than the mandatory 30 days for the public to furnish their responses.

145. The public hearing was held at 11 am on 10.05.2011 at the conference hall of the Pathanamthitta District Collectorate. The venue

was selected considering its proximity to the project site and the facilities available at the conference hall to conduct the hearing. The distance from the project site to the venue was only 15 km. There were 80 participants in the public hearing and most of them were from Aranmula and adjoining areas. The hearing was presided by the District Collector. The proceedings of the public hearing, representations in original received before and during the hearing and video recording of the hearing were forwarded to the MoEF as required under the EIA Notification, 2006. The proceedings of the public hearing were prominently displayed at the head office and Pathanamthitta District Office of the Board. Action was also taken to similarly display the proceedings at the offices listed above. Thus, the KSPCB has faithfully discharged the obligations under the EIA Notification, 2006. Hence, the KSPCB seeks to dismiss the appeal.

146. As seen above, all these appeals challenge the EC given by the MoEF of the Union of India dated 18.11.2013 in favour of K.G.S. Aranmula International Airport Ltd. and for consequential direction to the authorities. Hence, all the appeals are taken up jointly. Since the array of the parties varies in each of the appeals, for the sake of convenience, the array of parties is shown hereafter as found in Appeal No. 19 of 2014. On the pleadings of the parties, following questions are formulated for consideration by the Tribunal:

- (1) Whether the appeals are not maintainable since the appellants are neither persons aggrieved nor have any *locus standi* to prefer the appeals and also on the grounds of the Tribunal not having the jurisdiction.
- (2) Whether the EC is to be set aside on the grounds that the EIA is prepared by an unqualified agency.
- (3) Whether the Form I submitted by the 3rd respondent/Project proponent suffers due to inadequacy and false statements.
- (4) Whether the impugned EC is liable to be set aside on the ground that as the public hearing was not conducted as per the mandatory provisions of the EIA Notification, 2006.
- (5) Whether the EC granted to the 4th respondent, Aranmula International Airport Pvt., Ltd., by the 1st respondent/MoEF is liable to be set aside for non application of mind of the EAC in making the approval.

147. Elaborate arguments were made by Shri T. Mohan, the learned counsel appearing for the appellant in Appeal No. 172 of 2013 (SZ), Shri Asok M. Cherian, learned counsel for the appellant in Appeal No. 173 of 2013 (SZ), Shri R. Krishna Raj, the learned counsel appearing for the appellant in Appeal No. 174 of 2013 (SZ), Shrimati Mallika Srinivasan, learned counsel appearing for the appellant in Appeal No. 1

of 2014 and Shri Harish. V the learned counsel appearing for the appellant in Appeal No. 19 of 2014 (SZ). Heard also the learned Advocate General of the State of Kerala Shri K.P. Dhandapani, appearing for the respondent No. 2 and 4, State of Kerala and the District Collector, Pathanamthitta District, Kerala State, Shrimathi C. Sangamithirai, learned counsel appearing for the 1st respondent/MoEF, Shri T.R. Rajaogpalan, the learned Senior Advocate appearing for Aranmula International Airport Ltd., respondent No. 3, Shri P.S. Raman, learned Senior Advocate appearing for Enviro Care India Pvt., Ltd., 5th respondent and Shri M. Ajay, learned counsel for the Kerala State Pollution Control Board, 6th respondent. The 4th respondent, namely Kozhencherry Charitable Education Society was given up during the course of the proceedings. The Tribunal also paid its anxious considerations to the averments made in the grounds of appeals and the materials made available.

148. Point No. 1: Whether the appeals are not maintainable since the appellants are neither persons aggrieved nor have any *locus standi* to prefer the appeals and also on the grounds of the Tribunal not having the jurisdiction.

- i) At the outset, Shri K.P. Dhandapani, the learned Advocate General of the Government of Kerala questioning the maintainability of all the appeals, would submit that the appeals are not maintainable either in law or on facts. Under the circumstances of the case, the issues raised by the appellants can be broadly classified into two broad categories. (i) Challenge is made in the appeals which would fall under the Kerala Land Reforms Act, Kerala Conservancy of Land Act, Kerala Conservancy of Paddy Land and Wetland Act, which cannot be raised and agitated before this Tribunal for lack of jurisdiction, (ii) Challenge made in the appeals would fall in Appellate Jurisdiction conferred under section 18 of the National Green Tribunal Act, 2010. The first set of appeals is outside the purview of the jurisdiction of this Tribunal and hence, they cannot be considered. In so far as the 2nd set of appeals is concerned, the appeals can be initiated only by a person aggrieved. But, the appellants are not aggrieved persons and hence, all the appeals have got to be dismissed. An aggrieved person is a person who has a legal right to enforce and whose rights are adversely affected or jeopardized. In order to substantiate his contentions, the learned Advocate General relied on the decision of *Ayubkhan Noorkhan Pathan v. State of Maharashtra*, (2013) 4 SCC 465. After the analysis of the various provisions of the Administrative Tribunal Act, the Hon'ble Apex Court held in *Dr. Duryodhan Sahu v. Jithendra Kumar Mishra* reported in (1998) 7 SCC 273 that a

Tribunal can be approached by a person aggrieved by an order as defined. Placing reliance on the above decision, the learned Advocate General would state that the appellants are total strangers to the proceedings in issuing the EC and did not have right under statutes to challenge the same. None of the appellants own even an inch of land in the present site and hence, all the appeals have to be got dismissed on that ground.

ii) Answering the above contention, the counsel for the appellants would submit that the appellant in Appeal No. 1 of 2014 (SZ) is Aranmula Heritage Village Action Committee while the appellants in other appeals though are individuals, all are working for the protection of natural resources and ecology of Pathanamthitta district including Aranmula where the proposed airport project is being set up. They constitute a social and environment group with the objective of working for the welfare of the local community and small land holders and have been creating awareness on environmental issues. Hence, the contention putforth by the respondents that the appellants do not own any land in that area or they did not participate in the public hearing has to be rejected. When the EC to the project proponent is likely to affect directly or indirectly, the organization or every citizen can prefer an appeal since they are aggrieved persons and hence the appellants can well maintain the appeals. Equally in so far as the contention that the Tribunal has no jurisdiction to enquire the appeals, each and every averment made in the appeals would clearly indicate that the EC has been granted for the airport project to the applicant without taking into consideration the ecological impact and environmental degradation which would be caused by the project and hence, the issues to be decided in all the appeals would fall squarely within the jurisdiction of the Tribunal. Hence, the said contention put forth by the respondents' side has to be rejected.

iii) As seen above, the 2nd respondent/State of Kerala has raised two preliminary objections questioning the jurisdiction of the Tribunal to enquire the appeals apart from stating that the appellants cannot maintain the appeals since they are not aggrieved persons as envisaged under the provisions of the NGT Act, 2010. Speaking on the jurisdiction of the Tribunal, section 14 of the NGT Act, 2010 reads as follows:

"14. Tribunal to settle disputes:— (1) The Tribunal shall have the jurisdiction over all civil cases where substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such questions arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the question referred to in sub-section (1) and settle such disputes and pass order thereon”.

iv) A reading of the above would make it clear that this clause confers on the Tribunal a very wide jurisdiction in cases where a substantial question relating to environment including enforcement of legal rights relating to environment is involved. No doubt, such question should arise out of the implementation of enactment specified in Schedule I of the Act. In Schedule I to the NGT Act, 2010, 7 enactments are enumerated which are:

1. The Water (Prevention and Control of Pollution) Act, 1974
2. The Water (Prevention and Control of Pollution) Cess Act, 1977
3. The Forest (Conservation) Act, 1980
4. The Air (Prevention and Control of Pollution) Act, 1981
5. The Environment (Protection) Act, 1986
6. The Public Liability Insurance Act, 1991
7. The Biological Diversity Act, 2002

v) Pointing to the above provisions, the learned Advocate General, Kerala State would contend that the appeals are with respect to the other State Acts such as, Kerala Land Reforms Act, Kerala Land Conservation Act, Kerala Conservancy of Paddy Land and Wet land Act etc., which fall outside the jurisdiction of seven enactments shown in Schedule I of the NGT Act, 2010 and hence, the appeals would fall outside the jurisdiction of the Tribunal. Attractive though, the argument put forth as above at the first sight, it will not stand the scrutiny of law. All these appeals as seen above have been filed challenging the grant of EC for the impugned airport project. While assailing the same on different grounds *inter alia*, it is averred and contended by the appellants that for the purpose of ascertaining the environmental impact, a definite idea about the nature of the land in which the proposed airport was going to be set up should have been formed. It is the specific stand of the appellants that there is a serious dispute regarding the nature of land. The project proponent purposefully has suppressed the material facts, but has placed incorrect and false information and by doing so, the project proponent did not place necessary facts enabling the EAC or MoEF to come to an independent conclusion about the environment impact. In order to substantiate their contentions, the appellants have produced various reports of the revenue officials, agriculture officers, district collector and proceedings of the Taluk Land Board. Relying on those documents, the counsel for the appellants pointed out that the predecessors of the project proponent, converted a part of the

proposed site illegally and due to such conversion the cultivation in the entire area adjacent to the propose site became impossible due to environmental impact caused by the reclamation of the portion of the proposed site. It cannot be disputed that the reports may and the proceedings initiated against those alleged acts are under a number of enactments like the Kerala Land Reforms Act, Kerala Land Conservation Act, Kerala Conservation of Paddy Land and Wetlands etc. It is pertinent to point out that none of these appeals has been preferred under any one of these enactments. All these appeals concentrate in challenging the EC granted in respect of the Aranmula airport project. Basing their cases on all the environmental impact if the project is allowed to be setup as per the grant of EC, it leaves no doubt that the appellants have raised substantial question relating to environment and the issues involved remain to be decided by the Tribunal and the said questions arise out of the implementation of the enactments specified in Schedule I to the Act and it will be futile to contend that the challenges are made by appellants with respect to other State laws mentioned above and hence, the contention putforth by the respondent/State of Kerala that the appeals are not maintainable before the Tribunal for lack of jurisdiction has to be rejected as devoid of merits.

vi) Equally so is the other contention that the appellants cannot maintain the appeals since none of the appeals is preferred by a person aggrieved. The NGT Act, 2010 came into force by the repealing the National Environment Appellate Authority Act, 1997 Under appeals to authority in sections 11(1) and 11(2) the reading is as follows:

"11. Appeals to Authority:— (1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carryout or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed:

Provided that the Authority may entertain any appeal after expiry of the said period of thirty days but not after ninety days from the date of aforesaid, if it is satisfied that the appellant was prevented by sufficient cause from filing of the appeal in time.

(2) For the purposes of sub-section (1), "person" means—

(a) any person who is likely to be affected by the grant of environmental clearance;

*(b) * * **

(c) any association of persons (whether incorporated or not) likely to

be affected by such order and functioning in the field of environment;

- (d) * * *
- (e) * * *

From the reading of the above provisions, any person 'aggrieved' by the EC can prefer an appeal before the NEAA within the time stipulated therein. According to Section 11(1), the word 'person' employed in Section 11(1) would mean not only any person who is likely to be affected, but also an association of persons likely to be affected by such an order and functioning in the field of environment. In the instant case, both the appellants are association of persons and have been functioning in the field of environment for a long time. While so, the appellants must be able to show they are 'likely to be affected'.

By repealing the NEAA Act, 1997, the NGT Act, 2010 came into force. Speaking of the appellate jurisdiction, Section 16 of the NGT Act, 2010 reads as follows:

"16. Tribunal to have appellate jurisdiction:— Any person aggrieved by.—

- (a) * * *
- (b) * * *
- (c) * * *
- (d) * * *
- (e) * * *
- (f) * * *
- (g) * * *

(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 Environment (Protection) Act, 1986 (29 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environmental (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of Biological Diversity Act, 2002 (18 of 2003), may within a period of thirty days from the date on which the order, or decision or direction, or determination is communicated to him, may prefer an appeal to the Tribunal;

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

149. Both under Section 11 of the NEAA Act, 1997 and Section 18 of the NGT Act, 2010 any person aggrieved by the grant of EC as shown above can maintain an appeal. The 'aggrieved person' as contemplated in the Act came up for interpretation before the Tribunal in a number of cases. An aggrieved person contemplated in the above provisions would refer to the substantial grievance as to denial of some personal, pecuniary or property right or imposing an obligation on a person. The grievance so ventilated should not be either fanciful or sentimental, but must be substantial. A person calling himself as an 'aggrieved' must have suffered a legal grievance that he has been wrongfully deprived of something or refused wrongfully. The aggrieved person can either be aggrieved either directly or indirectly. In so far as the environmental matters are concerned, it cannot be stated that the person really aggrieved should alone be permitted to initiate an action. It is not necessary that the person, who initiates action, is a resident of that particular area wherein the proposed industrial site is located. It is true that the appellants have not participated in the proceedings of the public hearing. It is true that it is necessary to scan the credentials of the appellants as to their intention and motive. Even assuming that the appellants have not participated in the proceedings of the public hearing, they would not lose their right to challenge the approval or the EC. If the appellants come forward with a case apprehending damage and danger to environment and ecology if the project in question was not properly envisaged and did not satisfy the Principles of Sustainable Development and Precautionary Principle, they can maintain the appeal and be allowed to agitate as to the correctness of the study made in respect of ecology and environment. In the instant case, nothing substantial has been demonstrated in order to doubt the credentials of the appellants. What are all stated by the respondents is that the appellants are not residents of that area or they do not have any piece of land and hence they are not aggrieved persons. The appellant in Appeal No. 174 of 2014 (SZ), namely the Aranmula Village Heritage Action Council is an organization while other appellants are individuals. It is contended by them that they are social activists with the objective of working for the welfare of the local communities for creating awareness on environmental issues. While in the matter of ecology and environment everyone is directly or indirectly affected and also interested person in exercise of his right can prefer and maintain an appeal ventilating the grievance. It is specifically alleged that the EC granted to the project proponent is likely to affect either directly or

indirectly and can prefer an appeal ventilating the grievance. Hence, the appellants are to be termed as aggrieved persons as envisaged under the provisions of the NGT Act, 2010 who can maintain appeal and thus, the question is answered in favour of the appellants.

150. Hence, for the reasons stated above it is held that the appellants can well maintain the appeals and this Tribunal has jurisdiction to entertain the appeals.

151. Point No. 2: Whether the EC is to be set aside on the grounds that the EIA is prepared by an unqualified agency.

- i) Criticizing strongly the EIA prepared by the 5th respondent, Enviro Care India Pvt. Ltd., Madurai, Shri T. Mohan, counsel would submit that according to the EIA Notification, 2006, the airport projects would fall under Category A and only a duly accredited EIA consultant could appear before the EAC or prepare the EIA report. The present agency is found in Serial No. 47 of the QCI list (Annexure A-5). As per the accreditation, the 5th respondent was authorized only to conduct an EIA for Category B projects. This aspect was never considered by the 1st respondent/MoEF while granting the impugned EC. The 1st respondent has placed reliance of the Office Memorandum dated 30.12.2012 to state that the consultants who had applied including the 5th respondent were permitted to act as consultant and certify EIA/EMP and appear before the State Level Environment Appraisal Committee (SEAC) and State Level Environment Impact Assessment Authority (SEIAA) or EAC as the case may be. But, in the instant case, the 5th respondent/Consultant did not even apply for certification for airport category, but has applied only for thermal power projects which fact is admitted by the 5th respondent in the reply affidavit. The present EIA report has been prepared by an organization that was not qualified to do so. In any case, Annexure A-15 filed by the applicant/consultant made it clear that the application itself was submitted only on 21.11.2011. Hence, it would be clear that the 5th respondent/consultant did not make the application that resulted in accreditation for Category B projects pending during the time when the EIA report was prepared and submitted. Even the application made by the 5th respondent/consultant was also rejected. A person who has merely applied for certain sectors cannot be said to have blanket power to prepare EIA reports and appear in respect of all categories and sectors without reference to the category applied for and the consequent accreditation. Whether the consultant had prepared the EIA report for those

sectors earlier had no relevance and it is open to the 5th respondent/consultant to challenge the issue as to whether the accreditation is legal or not in the present petition. It is not correct to state that at the time of presentation, there was no QCI implemented accreditation scheme. From 2009, the Ministry has imposed guidelines on preparation of EIA and presentation to EAC. The fact that the 5th respondent/consultant was found in the list of 255 applicants would not entitle him to certify the reports pertaining to the sectors unconnected to their application. It is also evident from the Annexure submitted along with the appeal memo in Appeal No. 19 of 2014 (SZ) that the application of the 5th respondent/consultant was rejected and subsequently a new application was made. Hence, the pendency of the application which was rejected cannot even be considered as a factor that would qualify the consultant to prepare the said EIA report. The EIA report prepared by an unqualified consultant cannot form basis of grant of the impugned EC which the 1st respondent ought not to have granted and it liable to be set aside.

- ii) The learned counsel Shri. Jacob P. Alex appearing for the appellant in Appeal No. 19 of 2014 (SZ) would submit that the 5th respondent/consultant did not have the competence or expertise to prepare the EIA report for the airport project. Chapter XII of EIA Guidance Manual for Airports would show that it is mandatory to disclose the accreditation details of the consultants. But, in this case there was no disclosure of consultants engaged as mandated. The minutes of the accreditation committee meeting dated 08.01.2013 would show that the 5th respondent/consultant was granted accreditation to Category B projects that too not in airport sector. Similarly, the list of experts in Annexure A-25 would show that the 5th respondent/consultant did not employ any expert who is competent to prepare the EIA report for airport projects. The scheme of accreditation of EIA consultants can apply only to a maximum of 5 sectors for accreditation. Accordingly, the 5th respondent/consultant had already applied for 5 sectors. But, he did not apply for accreditation in airport sector.
- iii) Countering the above contention of the appellant's side, the learned Senior Advocate Shri P.S. Raman would submit that the 5th respondent/consultant was not competent to submit EIA report is incorrect and unfounded. The Hon'ble Apex Court in the judgment of *T.N. Godhavarman Thirumalpad v. Union of India* (2014) 4 SCC 61 delivered in the year 2013 has declared that the provision of compulsory accreditation was prospective. The

concept of accreditation was suggested by the Hon'ble Supreme Court of India in *Lafarge Umiam Mining (P.) Ltd. v. Union of India* (2011) 7 SCC 338 and the judgment in *T.N. Godhavarman Thirumalpad v. Union of India* (2014) 4 SCC 61 set out the guidelines for future cases. The Hon'ble Supreme Court of India issued directions for appointment of a regulator. But, the regulator is yet to be appointed. A perusal of the office memorandum issued subsequently on 01.11.2010, 31.12.2010 and 30.09.2011 would show that the last date of filing of the application for accreditation was extended till 31.12.2011 and all the applications submitted till then were valid. The 5th respondent/consultant was registered with the QCI as a qualified EIA consultant and successfully completed two green field airports in the past at Raipur and Vadodara and they were the consultants for the construction of phase II of the Chennai airport. Therefore, the 5th respondent/consultant has experience in the field of airport projects and more particularly in Greenfield Airports. The 5th respondent/consultant has expressly stated in the reply that an ISO certified company who has been actively involved in developing cleaner environment throughout the country, more particularly in the region since 2004. The 5th respondent/consultant is an ISO 9001 certified company having BIS accreditation and having laboratory facilities accredited by NABL and Department of Science and Technology for chemical and biological testing. The 5th respondent/consultant is having National Accreditation Board Certification for Education and Training (NABET) from QCI. It is also doing consultancy services such as EIA, EMP, Risk Assessment, Detailed Project Reports and Environmental Audit and Training and has done several turnkey projects. The 5th respondent/consultant though being adequately qualified and having satisfactorily submitted the reports in the construction of airports at Chennai, Raipur and Vadodara and various other prestigious projects, pursued their application for accreditation for Category B projects alone, more particularly for thermal projects for purely commercial reasons and it did not meant that the 5th respondent/consultant from giving a valid EIA report for a project assigned to them even before the issuance of the office memorandum introducing accreditation for the consultants. It is highly ironic and ridiculous on the part of the appellant to suggest a party who has filed to secure accreditation in Category A on merit can issue a valid report for the airport sector till December, 2011. Whereas the 5th

respondent/consultant who has ample experience in the airport sector and issued well within December, 2011 was not valid because for the future the 5th respondent/consultant wanted to restrict themselves to thermal power sector for purely commercial reasons.

- iv) When the project proponent enquired with the AAI for guidance for appointment of an EIA consultant, the AAI for the above reasons recommended the 5th respondent/consultant to the project proponent. Even assuming while denying that there was a need for compulsory accreditation even prior to the appointment of the 5th respondent as a consultant for the project, the 5th respondent/consultant submits that the accreditation memo was not signed by a competent authority and hence, it was not binding on the 5th respondent/consultant. In as much as there existed no norms which provided accreditation, the same cannot be imposed by way of an office memorandum. The said memorandum is not even an executive instruction under Articles 73 and 161 of the Constitution of India. The office memorandum is merely a procedural formality which is directory in nature. Unless the appellant proves that the 5th respondent/consultant was incompetent and that hardship has been caused to him by virtue of lack of accreditation of the 5th respondent/consultant for Category A projects, the contentions put forth by the appellant have to be rejected. Thus, the report of the 5th respondent/consultant was valid and lack of accreditation was a subsequent event which has no consequence to the EIA report submitted them. Equally the 2nd argument of the appellant's side that the EIA report is not valid since ToR was issued on 13.10.2010, the study was conducted by the 5th respondent/consultant for collecting primary data for the period July, 2010 to October, 2010 is not correct since as soon as the process for issuance of the ToR started, the project proponent engaged the 5th respondent as the consultant and the 5th respondent started collecting samples as per the usual practice. When the ToR was issued by the authority, the investigation was underway and the 5th respondent/consultant also took into account the parameters set out in the ToR prior to preparation of EIA report. Hence, no illegality was committed in the manner and conduct of investigation and the EIA report cannot be attacked on that ground. Therefore, the 5th respondent/consultant was competent to give the EIA report and the same was given by

them as per the guidelines and also in good faith and the EIA report has got to be upheld.

- v) All the appellants have vehemently attacked the EIA report prepared by the 5th respondent/consultant as invalid and unsustainable and in view of the same, the EAC should not have acted upon the same and granted the impugned EC. Among other grounds, the appellants have challenged the EIA as the one prepared by an unqualified agency. Admittedly, according to the EIA Notification, 2006, the airport projects fall under Category-A. From the available materials, it is seen that the 3rd respondent/project proponent has submitted the application on 02.07.2010 and the same was considered by EAC in the 91st meeting on 21.09.2010. The ToR was finalized on 13.10.2010. According to the 5th respondent/consultant the field study was done during July-October 2010 and the EIA report was submitted as per the reply of 5th respondent/consultant in October, 2010. While the matter stood thus, the 1st respondent/MoEF decided only two consultants who had applied for accreditation till 30.11.2010 be permitted and certify the documents before SEAC, SEIAA and EAC till 30.11.2011. Office Memoranda were issued on 01.11.2010, 31.12.2010 and 30.09.2011 which would show that the last date of filing the application for accreditation was extended till 31.12.2011. While it is contended by the appellants' side that the 5th respondent/consultant was not competent and he should not be allowed to have the benefit of pendency of the application for accreditation. Contrarily, the 5th respondent/consultant would submit that they were competent to prepare EIA report in view of the office memoranda of the 1st respondent/MoEF extending the date for filing application for accreditation till 31.12.2011 and also the effect of that report till then is valid. In the instant case, the 5th respondent/consultant has prepared the EIA report, participated in the public hearing and also has appeared before the EAC which recommended the EIA report given by the 5th respondent/consultant for grant of EC for Aranmula airport project. The Tribunal is afraid whether it can agree with the contention of the 5th respondent/consultant that it was competent to prepare the EIA report. It is not in controversy that as per the EIA Notification 2006, the airport projects would come under Category A. Needless to say that placing the projects and categorizing them as A and B should have importance and significance. Expectation of accreditation for the consultant with a

view to ensure that the EIA coordinator and functional area expert is a person with sufficient skill and experience in the relevant field. It is not the case of the 5th respondent/consultant is found in serial No. 47 of the QCI list. As per the accreditation, the 5th respondent/consultant was authorized to prepare EIA reports only for Category B projects. It is true that the 1st respondent/MoEF 255 consultants who applied for accreditation till 30.09.2011 to appear or certify documents to SEAC, SEIAA and EAC till 30.09.2011. It is also true that the last of the submission of the said applications was extended to 31.12.2011. The 5th respondent/consultant cannot be permitted to take advantage of this permission granted by the 1st respondent/MoEF for the simple reason that the application made by the 5th respondent/consultant for accreditation was rejected on 30.09.2011 and the EAC recommended for EC on 16.08.2012. It is true that the 5th respondent/consultant made another application on 15.12.2011 after the first application for accreditation was rejected. Under the said application, the 5th respondent/consultant sought for accreditation and was granted the same for Category B project which did not include the airport sector.

- vi) As per the scheme of accreditation of EIA consultants, an EIA consultant can apply to a maximum of 5 sectors for accreditation. It is candidly admitted by the 5th respondent/consultant that though he applied for the 5 sectors, his application did not include airport projects. The only explanation tendered by the 5th respondent/consultant is that in view of commercial reasons he did not apply for accreditation for airport sector though he has sufficient experience in the field. This explanation cannot be accepted even for a moment. Admittedly, the 5th respondent/consultant has not applied for accreditation for airport projects falling under Category A. Mere pendency of an application for accreditation for Category B projects would not cloth him with a right to make a study, field survey and preparation of EIA reports in respect of the airport projects which according to notification is categorized as Category A. If this contention has to be accepted, the very purpose of importance and significance of placing airport projects under Category A itself would be defeated. It is contended by the 5th respondent/consultant that the guidelines manual is only recommendatory and not mandatory. But that is not the case in so far as EIA Notification, 2006 is

concerned. Much was contended by the 5th respondent/consultant that he has completed studies on two green field airports at Raipur and Vadodara and he was the consultant for the construction in phase II of Chennai airport and his experience in the field would speak volumes of his competence. This contention has to be rejected for two reasons. Firstly, the competence of the 5th respondent/consultant has to be tested from the view point of EIA Notification, 2006 which governs the field. While airport project is categorized as A to which neither the 5th respondent/consultant has applied for nor was granted any projects under Category A and in particular the airport projects. On the contrary, he applied twice and obtained accreditation only for the projects under Category B. Hence, he is incompetent. Secondly, in so far as the alleged experience of the 5th respondent/consultant is concerned, there are no materials placed before the Tribunal to indicate the nature of works that was undertaken by the 5th respondent/consultant in respect of the three airport projects. Even assuming that the 5th respondent/consultant had experience, that would not qualify him as a competent consultancy agency in view of the mandatory provisions of the EIA Notification, 2006. Hence, it has got to be held that the 5th respondent/consultant was not competent to make a study and prepare an EIA report for the airport project. As rightly pointed out by the appellants, the EAC at the time of meeting never considered this vital aspect of the matter, but has recommended for the issuance of EC. This would certainly shake the very bottom of the recommendation made by the EAC since it was based on the EIA report given by the 5th respondent/consultant, an incompetent agency.

152. For the discussions made above, it is held that the 5th respondent/consultant was not competent to prepare the EIA or appear before the EAC in respect of the Aranmula airport project.

153. Point No. 3: Whether the Form I submitted by the 3rd respondent/project proponent suffers due to inadequacy and false statements.

- i) The contentions put forth by the appellants' side that the proposed site for Aranmula airport is a wetland is not correct both factually and legally. According to Section 2(g) of the Wetland (Conservation and Management) Rules, 2010 'wet land' means*"an area of marsh, fen, peat land or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh*

brackish or salt, including areas of marine water, the depth of which at low tide does not exceed 6 meters and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wet land and zone of direct influence on wet lands that is to say the drainage area or catchment region of the wet lands as determined by the authority, but does not include many river channels, paddy fields and the coastal wet land covered under the notification of the Government of India in the Ministry of Environment and Forest, S.O. number 114(E) dated the 19th February 1991 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii) of dated the 20th February 1991." The Wet Land Conservation Management Rules has been notified by the Central Government as per the Gazette Notification No. GSR 951(F) dated 04.12.2010 to enhance the wetland conservation and management efforts in the country. These rules have been issued in exercise of powers conferred by Environment (Protection) Act 1986. As per Rule 8(2) of the Rules, the State Government had designated the department of environment and climate change as the nodal agency for regulating the use of wetlands in the State as per GO (Rt) No. 51/11/Env. Dated 30.05.2011. As per Rule 6(2) of the Wet Land (Conservation Management) Rules, the State Government shall prepare within a period of one year from commencement of rules, a 'brief document' identifying and clarifying the wetlands within their respective territories in accordance with the criteria specified under Rule 3. Rule 3 stipulates those wetlands which shall be regulated under the rules and their classifications. Therefore, by virtue of notification dated 30.05.2011, the department of Environment and Climate Change has prepared an inventory by incorporating the guidelines such as geographical dealiation of wetlands, demarcation on the basis of the zone of influence along with proper maps, calculated the size of the wetland and given an account of preexisting rights and privileges consistent or not consistent with the ecological health of the wetland. It is worthwhile to mention that proposed project site for which the environmental clarification has granted is not a wetland as per the inventory prepared under the Wetland Conservation Management Rules 2010. The Project site is only a paddy land which is now waterlogged and degraded and which is lying as unfit for paddy cultivation for the past so many years. It is also worthwhile to point out that EC has been issued after considering all the relevant facts and circumstances of the environmental issues. It was further contended by the learned Advocate General that in as much as the Appellants contended that the site is wet

land they tried to mislead the Hon'ble Tribunal. Concealment of material facts amounts to suppression of facts which is actually abuse of process of the Tribunal. In such an event, as held by the Hon'ble Supreme Court in *K.D. Sharma v. SAIL*, (2008) 12 SCC 481, that if there is no candid disclosure of relevant and material facts or the Petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold.

- ii) State of Kerala supports the Project for several reasons including the job opportunities it can provide. Therefore, the State Government as a policy supports the project and wanted the project to be finished in a time phased manner. A balance has to be struck down between public opinion, national policy, economic growth and apprehension. A balance has to be struck down between public opinion, national policy, economic growth and apprehension, however legitimate it cannot override the justification of the project as held by the Hon'ble Supreme Court in *G. Sundarrajan v. Union of India*, (2013) 6 SCC 620.
- iii) The Project Proponent has taken every care and caution to protect and preserve the natural habitat, flora and fauna, rivulets and such other natural features, in the best possible form, with least interference during the implementation of the Airport Project. The Government of Kerala after evaluating the whole project in toto, developmental contribution, employment potential, better connectivity and nature friendly had taken 10% stake in this Greenfield Airport Project. This by itself speaks about the essentiality and importance of this Airport to the State of Kerala. Some factual mistakes in the report of the Salim Ali foundation are worth noting. The report says that there are extensive wetlands in the village. But there is no identified wet land in Aranmula Village as per the Report of the Centre for Earth Science Studies (CESS). As the definition of the Kerala Conservation of Paddy and Wet Land Act, 2008, paddy Land is not wet Land. The provisions of Central Wet Land Act are also similar. Therefore, it seems the authors of the Report of Salim Ali Foundation have confused Paddy Land with Wet Land. This Respondent had purchased the land in a developed state and most of the lands are lying as water logged fallow land, dry land and rubber plantations. The Company has purchased certain lands, which was already converted prior to enactment of Conservation of Paddy Land and Wet Land Act, 2008. The Prior owner Kozhencherry Charitable Educational Society owned 232 Acres of land spread over in three villages-Aranmula, Mallapuzhassery and Kidanganoor Villages in Pathanamthitta District. If the land was converted prior to enactment of Act, nature of property cannot be looked into taking

into consideration of ground reality existing. The legal position remains settled through various decisions of the Honourable High Court of Kerala. As per the Wetlands (Conservation and Management) Rules, 2010, List of wetlands in India identified as *Ramsar* Sites under *Ramsar* Convention on Wet Land, wherein no portion of the Airport Project has been identified as "wet land" in the appended Schedule. Moreover, there is no protected Wetland in the Project area as per the said Rules.

- iv) The project proponent required filling the bare minimum area required for safe airport operation, leaving the remaining area in its natural form, there will be no environmental impact due to this activity. The recharge also remains unaffected. The soil required for this filling is calculated as under; $1000 \times 150 \times 1 = 150000 \text{ m}^3$ of soil. On the whole, the minimum filling with the local material ensures environmental homogeneity and produces no impact on environment. Paddy lands can be reclaimed for public purposes as per the provisions of Kerala Conservation of Paddy Land and Wetland Act, 2008. Instead it has become a degraded land with water logging and invasive plant species affecting native bio diversity. The project site has no ecological or geographical significance other than it was a paddy field more than 20 years ago, and now a fallow water logged land unfit for paddy cultivation, as is evident from the report of Principal Agricultural Officer, mentioned in Page Nos. 71-75. The report shows the tragic situation in the area where not even 5 cents of the paddy land could be made under paddy cultivation. As per the Act, paddy land does not include wet land. Certain areas of the paddy field are lying as fallow and certain fallow land is lying as degraded water logged area. In Annexure A—XXIII, petition of the Land Owners' Association, the true situation of the project area is stated that "it is flourishing with mosquitoes, leeches, pythons and in the locality skin affections in the people have made life very difficult. There are many instances of leeches entering the nostrils of cattle resulting in their death. If the project complies with the condition in environment clearance, it could be executed whereby water logging can be removed, the remaining paddy fields restored, and the rivulet could be rejuvenated. A paddy land, which is not cultivable, cannot be left unutilized and would not ensure to benefit of either the State, the parties or the public and not at all advance the avowed objective of preserving the environment and maintaining ecological balance.
- v) In answer to the above the learned Senior Advocate would submit that the contentions made by the appellants side relating to the Aranmula Parthasarathy temple and the must and rituals thereon

are unfounded. The project will not have any effect in the rituals as contended by the appellants' side. Famous temples such as the Devi Temple at Sanghumukham and Sree Padmanabha Swamy Temple are in the close vicinity of Thiruvananthapuram Airport. The 'Arattu' Possession of Sree Padmanabha Swamy Temple is through the Airport. There are many Airports in India where Temples, Churches, Masjids and other places of worship are located directly below the flight path (Approach funnel) of airports, and aircraft are regularly flying over such places of worships. KITCO had conducted feasibility report (project report) about the Airport Project. This study was supplemented by a comprehensive and mandatory obstruction study by Aero Survey, G-11, Second Floor, Green Park Extn, New Delhi who is a recognized agency for conducting Obstacle Study for Airport Project by Civil Aviation, Airport Authority and DGCA. In page 5 of their Obstacle Study Report they have also noted the following obstructions with remedial measures whereby it was suggested to displace the threshold of the runway by 285 meters due to the presence of flag must of Shree Parthasarathy Temple. Airport Officials visited the site and had discussions with the Company on the obstacle Survey and Company agreed to displace the threshold by 285 m so as to protect the rich heritage and sanctity of the Temple. This project will bring glory to the Temple.

- vi) Attacking the contentions made by the counsel for the appellants to the effect that the project proponent has made false statements regarding the site pending litigations against the project, at the time of submission of the application, the learned counsel for the respondents would submit that they were absolutely false. The project proponent placed basic information on 26.10.2010. It was clearly stated that the project proponent has already purchased the land in a developed state and most of the lands are lying as water logged fallow land, dry land and Rubber Plantations. The project proponent purchased a part of the lands, which was already converted prior to enactment of Conservation of Paddy Land and Wet Land Act, 2008 and hence, they conversion cannot be attacked with the aid of the provisions of the enactment. It is pertinent to point out that no portion of the airport project was identified as wetland. Moreover, there was no protected wetland in the project area as per the rules. It cannot be disputed for the pending litigation against the project proponent/3rd respondent at the time of submission of the application in Form I. There was no local land use plan and there was no zonal classification in the airport area and hence, the land could be used only for airport project with strict adherence to the

conditions attached to EC. This airport project area has been declared as an industrial area by the Government of Kerala. Hence, the statement made by the project proponent/3rd respondent is falsely interpreted by the appellants to suit to their convenience. There is no need for any further reclamation as the Project area has been purchased in a developed state. There was no need for any reclamation work in this Project. Most of the Project sites were in a developed form/Rubber Plantation and dry Land. Aranmula, Pathanamthitta District is connected by a good network of State highway roads. These roads have two-line riding surface of minimum 35 ft. with adequate space for future expansion on the sides. Good connectivity from Alappuzha, Kottayam and Idukki Districts exists towards Pathanamthitta District. It was more clear that minimum number of vehicles for transporting raw materials. The same would not affect the existing traffic movement and hence, there is no need for any new road or other transport infrastructure during construction or operation or widening of the existing roads.

- vii) There was no need for any impoundment, damming or culverting, realignment or other changes to the hydrology of water course or aquifers. Airport land is interspersed with a small rivulet '*Kozhithodu*' which is crossing the runway. This rivulet eventually merges with the famous Pampa River. A cross vent of 20 × 2.5 m underneath the runway is planned to maintain free flow of water in *Kozhithodu*. General lay of the land is towards *Kozhithodu* from South and North which facilitates free flow of water from both ends of run way towards *Kozhithodu* and the proposed drain. The project proponent has thoroughly examined all the minor channels/canals/streams/rivulet in and around the project site and has taken due precaution to protect and preserve water flow so as to ensure free flow of accumulated water and preservation of water table in the area.
- viii) The statement regarding flora and fauna are made according to the whims and fancies of appellant by which they attempted to false acquisition. The same is vague and unscientific without mentioning specific flora and fauna probably to be affected. As per the Tropical Botanical Centre and Zoological Survey of India, there are no specific studies regarding flora and fauna conducted in Pathanamthitta District. The EAC would list out a few cases for consideration during its sittings which were for two to three days continuously and every environmental aspects associated with the project would be discussed in detail before recommending sanction. The ToR are based on the actual state of facts and on ground reality and based on which, EIA was prepared in true

sense. After hearing and perusing documents, video and other connected records, EAC of MoEF recommended the project for environmental clearance to the 1st respondent vide its minutes dated 16.12.2011 and again recommended the project for EC in its minutes dated 17.08.2012. Thus, the project was cleared twice by the EAC and the matter was referred to the 1st respondent/MoEF for final clearance. Thus, the contentions put forth by the appellants are totally false and frivolous. A reading of the impugned order EC would indicate that it is a speaking order and considering all the pros and cons of the environmental impact and after due consideration of the relevant documents submitted by the 3rd respondent, project proponent and additional clarifications furnished in response to its observations. Only after doing so, the EAC has recommended for the grant of EC for the project as per the provisions of EIA Notification, 2006 and its subsequent amendments, subject to strict compliance of the terms and conditions as envisaged in the impugned order. The 3rd respondent/project proponent undertakes that they would comply with the specific conditions envisaged in the EC in letter and spirit. The purpose regarding the sensitive man-made land uses, like hospitals etc., are to be interpreted as items directly or indirectly affecting the operation of the airport. It is necessary to identify the presence of such obstructive structures, for which the 3rd respondent/project proponent has separately conducted obstruction study before embarking on the project, after the submission of the basic information. This would complement the application. The aerial distance is for the purpose to identify any man-made structures like hospital that would interfere with the operation of the airport. This study was conducted by a comprehensive and mandatory obstruction study by Aero Survey, New Delhi, who is a recognised agency for conducting the said study.

- ix) In so far as the vigilance enquiry ordered by the Court of Enquiry Commissioner & Special Judge (Vigilance), Kottayam is concerned, it has been stayed by the Hon'ble High Court of Kerala in Crml M.A. No. 318/2014 in CrI MC No. 247/2014.
- x) Answering to the contentions put forth by the appellants in respect of sustainable development and precautionary principle, the learned counsel would submit that if both the doctrines are applied to the present factual position of the case, the EC attached with necessary conditions has to be upheld. The 3rd respondent hereby undertakes that he would follow the specific

conditions laid down in the impugned order and will be a touchstone of sustainable development and its impact on ecology has been taken care of following all national and international principles. While balancing the benefit of establishing airport, if the 3rd respondent strikes a balance, such infrastructure facilities are of extreme importance for the economic growth of the country, alleviate poverty, generate employment etc. While setting up of a project of this nature, the 3rd respondent have taken into account an overall view of larger public interest rather than unsustainable objections and allegations raised in this appeal and there is no violation of Article 21 of the Constitution. The hue and cry raised by the appellants about the possible impact of environment was fully addressed by the 1st respondent/MoEF in their impugned order. This airport project shall be on the concept of welfare and safety for the purpose of development. The employment of potential-skilled, semi-skilled and unskilled labour both during construction and operational phases of the project with specific attention to employment potential of local population is necessary for this airport Project. Socio-economic benefits of the Project mainly include provision of additional Revenue generation, triggering growth in the region, provisions of additional employment, development of ancillary industries and trade centres, improvement in quality of life etc. Needless to say, it has to be totally guided by the conception of public safety and welfare of the citizens. The term "welfare" is always related to the living generation and generations to come. Promotion of development and Protection of development are to be harmonized at the same time. By applying the principles of sustainable development, the impugned order is a balance between the developmental needs and the environmental degradation.

- xi) It is quite evident from the available materials, the 3rd respondent/project proponent, while making an application for the airport project in Form I has provided false data about the ecology in the area, resources to be used and overall impact on the environment and presence of wetland or forests. Along with the feasibility report, Form I was submitted by the 3rd respondent/project proponent on 28.06.2010. In that said Form I, the following are noticed:
1. Basic information under item No. 1.0, Sl. No. 22 states "Whether there is any Government order/policy relevant/relating to the site. The answer given was "N.A" which means Not Applicable. On that day, when such information was given, there was a declared policy and a statute passed by the

Legislature of Kerala to protect paddy lands and wetlands of the State. The Kerala Conservation of Paddy Lands and Wetlands Act, 2008 was specifically passed to for that purpose.

2. There is a Government order, namely Kerala Land Utilistion Order, 1967 which prohibits conversion of paddy lands without prior sanction of the Government. The project proponent has stated the whole of acquired land shall not be reclaimed and rest of the land other than that used for construction of runway including wetlands, paddy lands etc., shall be protected to the maximum extent. Here is an admission made by the project proponent, that the project site included paddy land and wetland and thus this was under the clutches of the above order/statute on the day when the Form I was filed. But, this fact was suppressed by the project proponent.
3. In sector 'basic information' under item No. 1, Sl. No. 24 to the question, "*Whether there is any litigation pending against the project and/or land in which the project is proposed to be set up (a) Name of the Court, (b) Case No. (c) Orders/directions of the court, if any and its relevance with the proposed project*", the answer given by the project proponent was "N.A.". A Division Bench of Hon'ble High Court of Kerala has already directed the owner of the land that the filling of the paddy land and wetlands should be done only in accordance with law and only after getting necessary statutory clearances from the authorities concerned. For illegal filling of paddy lands by the predecessor as well as the present project proponent, a number of cases were registered in respect of encroachment of public land, public streams, filling up of paddy lands etc., All these information were suppressed.
4. Under sub-heading 'Activity' in item No. 2, Sl. No. 1.1, it is stated that there is 'no' permanent or temporary change in the land use, land cover or topography including increase in the land use. Admittedly, the project area included paddy land and wetlands. Needless to say, construction of airport and other facilities, would cause a permanent change in the land use.
5. Under the sub-head 'Activity' in item No. 2, Sl. No. 1.10, the project proponent has stated that there was no reclamation work in the project site; this cannot but be false since it is admitted by the project proponent that there was reclamation of paddy lands and wetlands.
6. Under the sub-head 'Activity, item No. 2, Sl. Nos. 1.17, 1.18 and 1.19, the project proponent has declared that there will be 'no' new road or other transport infrastructure during construction or operation, there will be 'no' closure or diversion

of existing transport routes or infrastructure leading to changes in traffic movements. No doubt, the operation of the airport would definitely increase the traffic and without widening the existing roads no airport operation can be done.

7. In item No. 2, Sl. No. 2.1, the project proponent has stated that there is 'no' land especially underdeveloped or agricultural land. This information is a concealment of the fact that part of the project site is agricultural lands.
8. Under sub-head 'Environmental Security' in item No. 10, Sl. No. 2, the project proponent has declared that there is only River Pampa and that too situate at a distance of 2 km away from the project site. Admittedly, there are vast areas of wetlands in and around the project site which was acknowledged by the project proponent and recorded in the minutes of the public hearing.
9. Equally, in item No. 10, Sl. No. 9, the project proponent has declared that there were no lands occupied by the sensitive manmade land uses like hospitals within 15 km aerial distance from the proposed project location boundary. Admittedly, the Aranmula Parthasarathy temple is situate at 100 m away from the project location boundary. Thus, while filing the Form I along with the application, the project proponent has not only suppressed the existing true state of affairs, but also furnished false information in order to obtain EC for the project.

The following environmental issues related to airport project have not been addressed in the EIA report.

I. AIR

- i) Prediction of emissions from combustion of aviation fuel (unburnt fuel droplets are a source of volatile organic compounds and give rise to odours) and their impact in the zone of influence.
- ii) Vehicular emissions inside the airport and from ground service equipment (tugs for aircraft and baggage, fuel and catering Lorries, buses and vans that transport passengers etc.).
- iii) Prediction of VOC emission from fuel storage tanks and transfer facilities and its management
- iv) Impacts of pollution from Aircraft and airfield maintenance activities
- v) 5. Airport activities and Climate change

II. BIOLOGICAL

- i) Habitat loss and habitat degradation due to 'changed' and 'different' activities in the zone of influence.
- ii) Bird strikes/hits-prevention and management plan (Measures

- to control birds also extend beyond the airport boundary)
- iii) The sensitivity of wildlife and local domesticated animals to the noise of aircraft, airport ground operations and airport access roads.

III. NOISE

- i) Prediction of Noise from aircraft and from traffic going to and from airports-modelling studies. Mitigation of effects and management.
- ii) 2. Prediction of noise generated from taxiing aircrafts, the application of reverse-thrust (an optional braking aid on landing), engine tests and on-site vehicular traffic. Mitigation of effects and management
- iii) It is true that the ToR issued for the EIA study do not include the above. Notwithstanding this fact, the EIA consultant who claims long experience and expertise in the field should have addressed these issues. Undoubtedly, these issues deserve attention and analysis. Such an approach would have served the cause of environmental management at large.

154. Hence, it is held that the Form I in the application filed by the 3rd respondent/project proponent before the 1st respondent/MoEF for the Aranmula airport project was inchoate and invalid for false and suppression of materials and for inadequacy.

155. Point No. 4: Whether the impugned EC is liable to be set aside on the ground that as the public hearing was not conducted as per the mandatory provisions of the EIA Notification, 2006.

- i) Advancing the arguments on behalf of the appellants, the learned counsel would submit that the public hearing is mandatory and it should be strictly in accordance with the procedure specified in EIA Notification, 2006. In the instant case, the 3rd respondent, the project proponent has neither conducted the public hearing in accordance with law nor in a proper manner. The access to the site of public hearing was not facilitated by the project proponent or other stake holders. As a result, a majority of the people who are likely to be affected due to the setting up of the project, namely the airport were not provided an opportunity to voice their grievances. The 4th respondent applied on 02.02.2011 for conducting the public hearing, but the alleged publication in the dailies did not contain all required information as mandated by Appendix-VI of the EIA Notification, 2006. Even on that date, the EIA report was not made available for viewing or posted in the website. The public hearing was originally scheduled on 10.03.2011 and was rescheduled to 29.04.2011 and again to

10.05.2011. But, the change in the date of public hearing on 29.04.2011 and 10.05.2011 was not publicized. This fact also was borne out from the minutes of the public hearing conducted on 10.05.2011. This is in clear violation of EIA Notification, 2006 as the EIA Notification under clause 3.4 of Annexure IV clearly states that the procedure in clause 3.1 has to be followed in case of postponement. It is seen that the time difference between the postponed dates was not 30 days which is the minimum mandatory time provided and the answer given by the respondents that the period of time between the postponement was less than 30 days and hence, the postponement was not publicized cannot be accepted since this led to a situation where the public was prevented from participation effectively in the public hearing process. The minutes of the public hearing would indicate that only 26 persons were able to effectively participate in the hearing which can hardly be called participative and democratic. The tenor of the serious protests held by the people of the area was not reflected in the public hearing minutes and thus, this is violation of law by denying effective participation of the people directly affected by the project. Apart from that the public hearing was neither conducted at the project site nor anywhere in the close proximity, but a distance of more than 15 km from the project area and from the villages affected. The fact that only 80 people participated in the hearing of a project of this magnitude is indicative of both inconvenience caused by the venue and lack of adequate publicity for the same. In order to substantiate their contentions, the learned counsel relied on the judgment of Hon'ble Gujarat High Court reported in (i) *Centre for Social Justice v. Union of India* (AIR 2001 Guj. 71) and (ii) *S. Nandakumar v. The Secretary to Government, Tamil Nadu* in W.P. No. 10641 of 2009 and etc., dated 22.04.2010. The above judgments clearly described the importance of the public hearing in the clearance process and the facts of the present case makes it evident that the entire process was farce. The 1st respondent/MoEF has not considered any of the facts in the impugned clearance in view of the violation of mandatory provisions in respect of the public hearing; the EC has got to be set aside.

- ii) Arguing for the respondents' side on the question of above issue, the learned counsel for the respondents would submit that the public hearing in respect of the project in question was convened and conducted in accordance with the EIA Notification, 2006. As per the EIA Notification, 2006 and as per Annexure IV, the public hearing should be completed within a period of 45 days from the date of receipt of complete documents as required in paragraph 1.

The total number of days as per the said schedule is 90 days for completing the Process vide Notification dated 04.02.2011 and written comments are sought within 30 days of the date of publication or to participate in public consultation. The date of first public hearing was fixed on 10.03.2011 and by the letter dated 07.03.2011 a direction was issued by the Chief Electoral Officer to defer the public hearing and by another letter it was directed to be conducted after 13.04.2011. The date of 2nd public hearing was scheduled to 29.04.2011 and adjourned due to hartal. Notice of publicity was made. The public hearing was actually conducted on 10.05.2011 and 2 copies of the minutes of the public hearing were addressed to the MoEF by the Kerala State Pollution Control Board. It is pertinent to note that the time period for completion of public hearing was 45 days and for the first public hearing, 10 days time was given. The period of election process has to be excluded to comply with the 45 days period. The public hearing was conducted on 10.05.2011 and hence there was no violation in so far as the notice period is concerned. Equally in so far as the place of public hearing is concerned, the contentions put forth by the appellants side are baseless, since after giving wide publicity through print and public media including hoardings, newspaper advertisements etc. The public meeting was conducted at the District Collectorate, Pathanamthitta district. It cannot be disputed the District Headquarters (Collectorate) is centrally located at Pathanamthitta, which is about 10 Km. from the Project site and people from the Airport locality can reach the Collectorate within 15 minutes by bus and 10 minutes by car. The public hearing was conducted by the State authorities in compliance with the requirements of the EIA Notification, 2006 and hence, the contentions put forth by the appellants are devoid of merits.

- iii) The learned counsel appearing for the 6th respondent, namely the Kerala State Pollution Control Board would submit that the project proponent, the 3rd respondent, requested the Kerala State Pollution Control Board (KSPCB) to organize the public hearing as part of the Environmental Clearance Process for their project on 02.02.2011 along with sufficient copies of the draft EIA and Malayalam and English version of its executive summary. In consultation with the District Collector, Pathanamthitta, the public hearing was fixed at 11.00 am on 10.03.2011 at the conference hall of the District Collectorate at Pathanamthitta. The time and venue was fixed considering the lack of adequate facilities near the proposed airport and the convenience, facilities available and

case of travel to the District Collectorate, Pathanamthitta. The publications regarding the time, date and venue of the public hearing were made on 06.02.2011.

- iv) However, due to the declaration on 01.03.2011 of the elections to the Kerala State Legislative Assembly on 13.04.2011, the date of public hearing had to be rescheduled by the District Collector with approval from the Election Commission. The public hearing was postponed to 29.04.2011 and publication was made in the same dailies on 27.03.2011 about the new date of public hearing at the same time and at the same venue as earlier notified. On account of a sudden call for *hartal* in Pathanamthitta on 29.04.2011, the public hearing had to be postponed further and it was decided to hold it on 10.05.2011 at 11.00 AM at the Conference Hall of District Collectorate, Pathanamthitta. This postponement was also published on 28.04.2011 in the same dailies. There have been no complaints made by anyone regarding the public hearing and its postponements at any time before these appeals have been filed before this Tribunal. Neither the appellant before this Tribunal nor anyone else had approached the KSPCB stating that they needed additional time to file their objections, collect materials etc., Neither were there any complaints made whatsoever by anyone that the venue fixed for the public hearing was inconvenient, unsuitable or against the norms prescribed. These allegations have been raised for the first time at the appellate stage by appellants who had not even participated in the public hearing process.
- v) In the EIA Notification, 2006 issued by the Government of India, Clause 7 deals with the stages in the Prior Environmental Clearance Process. Stage III deals with Public Consultation. A reading of the above would make it clear that one of the components is that the public hearing should be held in the vicinity of the project for ascertaining concerns of local affected persons and the other component is obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project. 30 days time is mandated for "other affected persons" to send in their responses and not for "local affected persons" to attend the public hearing as argued by the appellants. The provisions under Clause 3.1 stipulates that the Member Secretary of the KSPCB shall finalize the date, time and venue of the public hearing and advertise the same in one major national leading and one regional vernacular daily. Thereafter, it is provided that a minimum notice period of thirty days shall be provided to the public for furnishing their responses. Clause 3.3 stipulates that the postponements of date,

time and venue if necessitated shall be published in the same national and regional dailies. The provisions under Clause 3.4 stipulate that the postponements shall be notified afresh as per the procedure under Clause 3.1. It is therefore clear that what is provided in the notification of 2006 is that the public hearing shall be conducted for ascertaining the views of the local affected persons and a minimum time of thirty days shall be given for other concerned persons to file their responses. Clause 3.4 does not mandate that in the case of postponement a further period of thirty days has to be granted for the public hearing. It only stipulates that if there is postponement of time, venue and date it shall be published in the same manner as provided in Clause 3.1, namely publication through the same dailies which originally published the notice. In the instant case a total of 85 days was available for any concerned persons to file their written responses while the Notification only prescribes a minimum period of thirty days for such objections. The period of thirty days if not remotely intended for anyone to make travel plans to the venue of the public hearing which in this case was in the same District at the District Headquarters in Pathanamthitta under fifteen kilometers from the Project site and very well connected to and from the vicinity of the Project site and from elsewhere. This is in conformity to Clause III(ii)(a) which stipulates public hearing at the site or in its close proximity, district wise. In the instant case, the public hearing was conducted in the same District at its Headquarters. The KSPCB also factored in the stipulation of time limits to complete the public hearing as set out in the Notification. If the KSPCB was found wanting, the Regulatory Authority has ample powers reserved to conduct the public hearing through any other agency as provided in Clause III. (iv) of the Notification. The fact that the procedure adopted by the KSPCB was not found fault with by the Regulatory Authority leads further credence to the legality of the public hearing process adopted by the KSPCB. Having not complained about the inconvenience or prejudice suffered by the appellants at any time before, such contentions are raised now and hence, this contention put forth in respect of the public hearing conducted by the KSPCB deserves to be dismissed.

- vi) The issues and concerns raised during the public hearing were actually noted in the minutes of the meeting and all such issues and concerns were answered satisfactorily by the project proponent. Only after carefully examining and after obtaining necessary additional information, final EIA, minutes of the public hearing and due deliberations, the EAC recommended for the EC

and after considering all parameters, the 1st respondent/MoEF granted EC subject to certain environmental safeguards. The MoEF, after making a thorough scrutiny of the EAC report and also all the materials made available and satisfied that it was a fit case for granting EC. Accordingly, the 1st respondent/MoEF issued the EC in favour of the 3rd respondent/project proponent for setting up the airport project. Hence, the appeals have to be rejected as devoid of merits.

vii) It is specifically pleaded case of the appellants that the public hearing conducted in respect of the impugned airport project of the 3rd respondent/project proponent was not in accordance with law and hence the EC is liable to be set aside on that ground. Contrarily, it is contended by the respondents that the public hearing was conducted strictly in accordance with law. The EIA Notification, 2006 on the public hearing mandates as follows:

“3.3. No postponement of the date, time, venue of the public hearing shall be undertaken, unless some untoward emergency situation occurs and only on the recommendation of the District Magistrate, the postponement shall be notified to the public through the same national and regional vernacular dailies and also prominently displayed at all the identified offices by the concerned State Pollution Control Board or Union Territory Pollution Control Committees.”

Clause 1.0 in Appendix IV of the notification clearly lays down the guidelines in relation to the conduct of public hearing as follows:

“The public hearing shall be arranged in a systematic, time bound and transparent manner ensuring widest possible public participation at the project site(s) or its close proximity, district wise by the concerned State Pollution Control Board or the Union Territory Pollution Control Committee.”

Apart from the above, the project proponent should give copies of the draft EIA report with generic structure given in Appendix III including the summary of EIA report in English and in the local languages prepared strictly in accordance with the ToR after scoping.

156. As could be seen from the available materials made available by the 5th respondent/project proponent, a notice of public hearing was published on 06.02.2011 announcing the date as 10.03.2011. On 10.03.2011, it was informed by the District Collector, Pathanamthitta that the hearing was adjourned to 29.04.2011. Even on 29.04.2011 also, the public hearing was not conducted. Admittedly, the public hearing was conducted on 10.05.2011.

157. A careful scrutiny of the available materials would clearly

indicate that the public hearing conducted on 10.05.2011 was not in accordance with law and has to be declared as invalid in the eye of law for more reasons than one.

158. Appendix IV of the EIA Notification, 2006 as seen above specifically mandates that the public hearing should be arranged in a systematic, time bound and transparent manner ensuring widest possible participation. The words 'widest possible public participation' are of wide import and necessarily include people who are likely to be affected by the environmental degradation due to the proposed airport project to be setup at Aranmula. At the very least, the public hearing should include the people living within the study area. Needless to say, the exclusion of people within the study area from effective participation is contrary to the EIA Notification, 2006. This position is emphasized by cardinal judgments of the Hon'ble Apex Court and other higher Courts speaking on the principles of sustainable development and precautionary principle. In the instant case, no material is available to indicate the issuance of any notice or information that the public hearing was to be conducted on 10.05.2011 though it is claimed that it was published in the newspapers. Materials of the public hearing in the instant case would show that only 80 persons participated in the public hearing and the entire proceedings were concluded within two hours. Admittedly, the public hearing was conducted at the Collectorate, Pathanamthitta which is situate at a distance of 15 km from the project site. Concedely, the public hearing on 29.04.2011 was postponed to 10.05.2011 on which date the public hearing was conducted. This would clearly indicate that it is in violation of EIA Notification, 2006 in respect of the mandatory time required to hold public hearing even in a case of postponement from the original date as per Clause 3.3. of Annexure IV of the EIA Notificaion, 2006 as read above.

159. Thus, from the above position it is clear that the EIA Notification, 2006 mandates even in the case of postponement of the date, the procedure as laid down in Clause 3(1) has to be followed, which would mean that the time interval between the announced date and postponed date should be 30 days. Thus, the minimum mandatory time of 30 days should be provided. But, in the instant case, the date of public hearing from 29.04.2011 was postponed to 10.05.2011 which is in violation of the mandatory provisions. Thus, it would be quite clear that instead of taking measures for the public to participate effectively in the public hearing process, the public has been prevented from participating in the public hearing process to voice their concern and place their objections on the environmental issues by not following the mandatory procedure. It is a case, where there were serious protests held by the people of that area. The procedure followed in the instant case by not following the mandatory provisions in respect of place and

notice, the public was denied and deprived of effective participation in the public hearing and the same would vitiate the proceedings and this can also be added as a ground to scrap the impugned EC.

160. Therefore, it is held that the entire public hearing proceedings is vitiated in view of violations of mandatory procedure as envisaged in EIA Notification, 2006.

161. Point No. 5: Whether the EC granted to the 4th respondent, Aranmula International Airport Private Limited by the 1st respondent/MoEF is liable to be set aside for non application of mind of the EAC in making the approval.

- i) Advancing the arguments on behalf of the appellants Shri T. Mohan, the learned counsel would submit that the EIA report contained, incorrect, false and misleading data, but the same were accepted by the 1st respondent/MoEF which resulted in granting the impugned EC. The non application of mind and lack of diligence both on the part of the EAC and the MoEF/1st respondent is clear from the materials placed by the respondents. The available materials would clearly indicate that the EAC at all stages during the consideration of the project in question was overburdened and over extended by having to consider scores of projects during each of the meetings. During the meeting on 21/22.09.2011, the present project figured as item No. 4.42. The EAC considered 4 old projects, 45 new projects, 5 recommended projects and one other item. On 15/16.10.2011, the present project is shown as item No. 3.2. In that said meeting, the MoEF considered 4 old projects, 15 new projects, 4 extra items and 12 recommended projects. During the meeting, the instant project was provisionally cleared subject to compliance of 3 conditions mentioned therein. In the meeting held on 16-17th August, 2012, the EAC considered more than 50 proposals. There is nothing to indicate whether any sub-committee was formed to consider this controversial project in teeth of several serious allegations against the project proponent in the interregnum between the EAC meetings. This would be indicative of the fact that the EAC could not have considered any project with required diligence since they were functioning under severe constraints. The EAC has not taken note of the fact the project proponent had provided different claims even on data collection. At page No. 9 of EIA, it was claimed that the baseline data was collected during July-October, 2010. But, at page No. 16, the collection of base line data was shown as October, 2010. At page No. 45, it was claimed that the majority of data on water quality, vegetation, air and noise quality were collected during field studies in August-October 2010. But, it

was claimed that the AAQ monitoring was carried out during July-October, 2010 at page No. 73. The runway length was shown differently; originally as 2300 m and subsequently shown as 2800 m. But, an aircraft cannot land and take off with the runway lengths of 2300 m or 2800 m. Nowhere, there is any mention about what would be the length of runway in Phase-II. The terminal design in Phase I was stated to be for 60 incoming and 60 outgoing passengers during peak hours at page 2, 21, 22 of the EIA. But, contrarily at page No. 23, it was shown that design during Phase I as 50 incoming and 50 outgoing passengers. Table 2.8.2 provided water requirement at 12 KLD in Phase-I and 58 KLD in Phase-II while Figure 2.3 provided 7.55 KLD in Phase-I and 31KLD in Phase-II. The EIA provided different claim in respect of STP capacity. Figure 2.2.3 at page No. 24 differs from Figure 2.6.2 at page No. 29 for parking.

- ii) Even in respect of the land use, at page No. 28 of EIA it is stated that the lands were unclassified. But, contrarily at page No. 97, it states as an airport zone. The entire EIA was confined to 10 km radius of the site beginning at page No. 15, Figure 1.8. But, at page No. 10 in the topographic map it was shown as 15 km. It is pertinent to point out that Chapter IV of the MoEF's Environmental Impact Assessment Guidance Manual for airports requires that secondary data is to be collected within 15 km aerial distance for parameters at 9(III) of Form I of the EIA Notification. No attempts were made to measure emission from aircraft as required in page No. 17(4.4) of the sector manual. The AAQ standards mentioned in Table 3.9 at page No. 73 of EIA were of the year 1998. But, they have been replaced by more stringent standards on 18.11.2009. A reading of the EIA would indicate that substantial portions were devoted to sewage treatment, solar lighting, and other peripheral issues and their likely impacts. Even blank is noticed at page No. 22 in the EIA report which reads "the city of is located..." There was no discussion on how the hazardous waste was to be handled and the solid waste generation was understood to be 27 kg/day. It is clear that the EIA proceeded on the basis that it was a factory which fact would be clear at page No. 102 (4.4.8) while discussing 'within the plant building' and at the nearest plant boundary at page No. 102 (4.4.6). The non-application of mind on the part of the MoEF is evident since it has acted on a EIA which was prepared by the consultant who was neither qualified to prepare the EIA report for the airport project nor was an accredited consultant and was also not entitled to either prepare the EIA or represent the project proponent at the EAC meeting. The EAC has also taken note of the

fact that the public hearing was not proceeded in accordance with the mandate as found the EIA Notification, 2006. The project site was environmentally sensitive and diverse supportive to flora and fauna and any disturbance to maintain the ecological balance would lead to the loss of irreplaceable resource. This fact was not taken into consideration by the EIA. The EIA had no information on animals in the area which was pointed out by the Salim Ali Foundation report. But, the same has been disregarded by the 1st respondent/MoEF on flimsy grounds. No attention was paid to rehabilitation and resettlement though the land acquisition was contemplated in the project. The project in question would affect the water flow in the area due to blocking of the water bodies. It is pertinent to point out that the website of the project proponent stated that the Aranmula airport is an international airport when the EIA report at page No. 1 stated as domestic airport. Thus, most of the information on which clearance was given was relying on self serving assertions made by the project proponent. No reasoning is given why EAC did not undertake a site visit or required in-depth third party verification on the claim made by the project proponent when there was a threat to bio-diversity, wetland area and in particular, when EIA did not provide adequate information to reach a conclusion on the allegedly benign nature of the project. The EIA report did not assess the impact of proposed activity on land, water, area and did not provide details of those as mandated by law. A mere reading of the EIA would make it apparent that it has not considered or assessed any impact whatsoever, both during construction and operational phases. In respect of each parameter of the EIA report, contains not more than 4 sentences, which is demonstrative of the manner in which the entire exercise has been carried out. This would clearly speak as to the inadequacy of the EIA report. But, the respondents have no explanation to offer on all or any of the matters.

- iii) The learned counsel would further submit that the EIA report contained many false and misleading data and the entire report was a farce which should have been rejected by the MoEF. A mere perusal of the Form No. I submitted by the project proponent would indicate that the project proponent suppressed the material facts before the MoEF. The facts that were sought to be furnished in the application as essential for MoEF to come to the conclusion are necessarily to be provided so as to come to an independent conclusion about the environmental impact. In the said process, the role of the State Government was that of an agency that is expected to assist the MoEF in coming to a fair and correct

decision with regard to the environment impact. The State Government is expected to provide necessary factual and legal inputs so that the MoEF could analyse various aspects of the matter to ascertain whether the claim of the proponent was correct or not. But in the instant case, the State Government has not pointed out the suppression of material facts by the project proponent nor submitted actual facts before the MoEF. The project proponent has suppressed several material facts and has also made false statements which have direct and serious bearing on the outcome of the proceedings of the MoEF in granting EC. In the application, the project proponent has stated that there were no Government orders or policies relevant to the site in question when it required exemption under Kerala Land Reforms Act and Kerala Paddy Land and Wetland Act for utilizing the property. The project proponent has stated in the application that there were no permanent change in the land use, land cover and topography including increased intensity of land use. But, the instant project can be implemented only by converting the paddy land and wetland by filling the same. The project proponent has stated that there was no reclamation work in the project when he admitted to the reclamation of paddy land and wetlands. The project proponent has also made a wrong statement that there were absolutely no changes in the water bodies or the land surface affecting the drainage or runoff. These false statements were made when the land required reclamation and the same would seriously affect the water containment of that area affecting the drainage. The project proponent has falsely stated in the application that there was absolutely no land undeveloped or agricultural. It is an admitted fact that except the area 42 acres filled illegally by the predecessor of the proponent when the land remained undeveloped and the same included agricultural land also. In so far as the environment sensitivity was concerned, the project proponent has stated that there are no areas to be protected under international convention, national or local legislation for their ecological landscape, agricultural or other related value. This false statement was made when the entire area was declared as a heritage site by the United Nations and there was Kerala Paddy land and Wetland Act as far as the ecological landscape value of the property was concerned. The project proponent further stated that the area is not occupied by manmade land uses such as hospitals, schools, places of worship etc. It is pertinent to point out that Aranmula Parthasarathy temple is situate within 100 m from the boundary of the proposed site and less than 400 m from the runway of the proposed airport.

There are other hospitals, schools, etc., situate adjacent to the property in question. The project proponent has stated that the area does not contain important high quality or scarce resources such as ground water, surface water source, forestry, agriculture, fisheries, tourism, minerals etc., and the area is not subjected to pollution or environmental damage, when the reports of the officials of the State Government show that the illegal filling of 42 acres of land had already caused damage to the environment. Thus, not only the project proponent has made false statement but also the State Government officials have failed to point out the same and instead of pointing out the above, they have connived with the project proponent before the MoEF.

- iv) The counsel would further add that as far as the nature of the land is concerned, from the materials available and from the stand taken by the project proponent, as well as the State Government, it can be seen that major portion of the land in question is either paddy or wetland. The only contentions put forth by the project proponent and the State Government is that the paddy land cannot be considered as the wetland and since there was no cultivation in the land for so many years, the lands remain shallow. Hence, the question to be considered is that whether there would be any environmental impact, even assuming that the shallow land was reclaimed and whether such reclamation would have an adverse impact in the remaining paddy land of that area. This is the most important criteria fixed by the Legislature in Kerala Conservation of Paddy land and Wetland Act for granting permission to fill paddy land or wetland. The officers of the revenue and agricultural departments of the Government of Kerala categorically stated that the reclamation of 42 acres of land has already caused serious damage to the cultivation in the adjacent paddy land. When such is the situation, there should have been a proper study conducted by the MoEF before granting clearance for setting up the airport with permission to reclaim paddy or wetland or shallow land. From the EC, it could be seen that the airport cannot be set up without reclaiming the land. There are disputes regarding the extent of land required to be filled. But, it is an admitted fact that reclamation was required. Even if the permission is granted by the MoEF for reclamation of land, the project proponent cannot reclaim the land without getting permission under the Kerala Paddy Land and Wetland Act. If such permission for reclamation is to be granted under section 10 of the said Act, recommendation of the Local Level Monitoring Committee with the report of the State Level Committee constituted under the Act stating that no alternate land is

available and such conversion or reclamation will not adversely affect the cultivation of paddy in the adjoining paddy land and also ecological condition in the area. In so far as the alternative land is concerned, the proponent has admitted in the Application made in Form I that it did not propose for an alternate land. It is pertinent to point out that the Local Level Monitoring Committee has already reported to the Government that the illegal reclamation of 42 acres of paddy land has already caused serious damage to ecological conditions and has adversely affected the paddy cultivation in that area and has reported further that any further reclamation will have serious adverse impact on cultivation. Without considering the same, the MoEF has granted the EC, thereby permitting the project proponent to fill the paddy and wetland. No independent study was conducted on the nature of the land and environment impact the reclamation might cause, but permission was granted for reclamation. From the minutes of the EAC and order of the MoEF granting the EC, it is clear that both the bodies have not applied their mind independently and have not collected any inputs so as to arrive at a proper decision. The authorities simply relied on the data provided by the project proponent and the State Government, but have not taken any step to independently verify the veracity of the claim. The minutes of the meeting of the EAC and the order of the MoEF would reveal that they have simply reiterated the contentions of the project proponent as well as the State Government believing the entire version as true and thus it would be quite clear that the EC has been granted without assessing the actual environment impact since sufficient materials were not placed to ascertain the same. From the report of the 5th respondent/Enviro Care India Pvt. Ltd., the agency which was entrusted with the study of environment impact, it could be seen that no study whatsoever, was made about the adverse impact on environment or the reclamation might cause. But, it is admitted that the main engagement of the people in the locality was paddy cultivation. If the reclamation affects the paddy cultivation of the locality, the project cannot be allowed at all. The fact that the temples protected by the Archeological Department of the State Government as well as the Central Government exist nearby the site was suppressed by the project proponent. No study whatsoever has been conducted to assess the impact that might have on Aranmula Parthasarathy temple if the proposed airport is set up. Admittedly, the said temple is 1500 years old and is situate in less than 400 m from the runway of the proposed airport. High frequency sound of the aircraft would break vibration

that is created while chanting *mantras* which creates a molecular ordained system and in consequence it would have serious impact to the divinity of the temple. The structure of the temple is very ancient architecture with heritage value and this structure would be damaged due to the noise created by the aircraft. The temple must is situated in the flight path and very near to the runway. If the height of the temple mast is reduced or lighting is done to the temple mast, it would seriously affect the religious sentiments of thousands of devotees of the temple and would adversely affect the divinity of the temple. Thus, there would be absolutely no material available before the MoEF to come to an independent conclusion about the environmental impact the project might cause.

v) An affidavit has been filed by the Director General of Police/Kerala before the Hon'ble High Court of Kerala in a petition filed to quash the First Information Report registered in the vigilance case initiated against the project proponent and the officials of the State Government, from which it can be seen that serious irregularities have been committed by the State Government officials and the project proponent which include suppression of material facts and forgery of documents for obtaining the EC. It is pertinent to note that the project proponent has not even acquired the title of the lands in question and the Taluk Land Board has already initiated proceedings under the Kerala Land Reforms Act to take possession of the lands in question treating the same as excess lands. The documents by which the project proponent has purchased the land itself is void as per the provisions of the Kerala Land Reforms Act. Thus, there was absolutely no justification in the action of the MoEF in granting the EC without properly assessing the environment impact the project might cause and hence, it is liable to be set aside. Thus, appraisal of the project carried out by the EAC is vitiated due to non-application of mind to relevant considerations. The minutes of the EAC recommending the grant of EC is in complete violation of law. The reading of the minutes would show that there was no detailed scrutiny of the issues involved. 13 aspects were pointed out during the public hearings which were not even addressed by EAC in its meetings. The EAC has blindly approved the explanation of the project proponent. In support of his contentions the learned counsel placed reliance of the Judgments of this Tribunal in *Samata v. Union of India* in Appeal No. 9 of 2011 and the judgment in *Utkarsh Mandal v. Union of India* of the Delhi High Court in W.P. (Civil). No. 9340/2009.

vi) Advancing the arguments on behalf of the 1st respondent/MoEF,

the learned counsel Smt. C. Sangamithirai would submit that the EIA report submitted by the project proponent was taken for consideration in three meetings of the EAC and following all the procedural formalities. The EAC after considering the pros and cons, recommended for EC and the same has been correct and accepted by the 1st respondent/MoEF and the impugned EC was granted in favour of the 3rd respondent/project proponent. The contentions put forth by the appellants are unfounded and cannot be accepted both factually and legally. The EIA study has covered the flora and fauna in Chapter 3 of its report. The case in so far as the contentions of the appellants that the project site included wetland and paddy fields and also that there are public objection to the conversion of the paddy fields and wetlands, a factual report was sought for from the Environment Department of the Kerala Government. The project proponent also sent reply on 01.03.2012 stating that the Government had notified 500 acres of land for development of the airport. There was no paddy cultivation for more than 10 years. A letter dated 26.06.2012 sent by the Government of Kerala and approximately 500 acres of land has been declared as an industrial area by a notification in S.R.O. No. 185/2011 dated 24.02.2011. Much reliance was placed by the appellants on a report of Salim Ali Foundation to the effect that there are extensive wetlands in the village. Contrarily, no wetlands were identified in Aranmula Village as per the report of the Centre for Earth Sciences which prepared the report for Kerala. As per the definition of the Kerala Conservation of Paddy and Wetlands Act, 2008, paddy land is not wetland and it is pertinent to point out that the provisions of the Central Wetland Act are also similar. The project proponent has informed that the site is not located in the upstream of Vembanad and neither silent valley nor ecological diversity areas are located anywhere near the site. The proponent had informed that only minimum area required for runway, apron, taxiway etc., would be filled and the remaining area would be preserved in its natural form. The previous owner had filled the runway of 1000 × 150 m for airstrip and hence, only the area required for runway would be filled with 1 m height and the soil required for land filling would be met from elevated area of about 14.5 acres available within the site itself. In order to confirm the statement, all the available source of soil and a contour map was called for, the same was submitted and the statement of the project proponent was found to be correct. In this regard, a specific condition was imposed in the EC. The contentions put forth in respect of rehabilitation and resettlement is totally unfounded. In view of the letter dated 26.02.2012 that

only 7 houses in the proposed area might require rehabilitation.

- vii) Countering the above contentions put forth by the appellants side, that the EC has been granted by the MoEF without any application of mind and without any due diligence, the learned counsel for the respondents would submit that the EC has been granted by MoEF after being satisfied on the recommendations of the EAC which was done after due consideration of relevant documents submitted by the project proponent. It is not a case where EC has been granted without conditions. The EC was issued subject to strict compliance of the terms set forth therein. Annexure I depicts in paragraph 10, 20 specific conditions and in paragraph 11, 31 general conditions which would clearly indicate the fact that the EC has been granted only with proper application of mind and due diligence.
- viii) Arguing for the project proponent, the 3rd respondent namely, K.G.S. Aranmula International Airport Ltd., the learned Senior Advocate Shri T.R. Rajagopalan, would submit that the appellants have contended that the impugned order has been passed without adequately considering the environmental issues that arise in the construction of an airport such as the existence of paddy lands, a minor rivulet flowing through the airfield and the existence of a temple in the vicinity. A bare perusal of the impugned order would demonstrate that all the concerns raised by the appellants have already been addressed by the MoEF in the impugned order. The EC was granted to this respondent after three meetings of the EAC. Each meeting involved the discussion of fresh issues and the various concerns raised both in the report and the public hearing. Finally, a series of special conditions have been imposed on the respondent and the clearance made subject to the strict compliance with these conditions. These conditions address every issue that has been raised in the present case. Thus, the impugned order has been passed after much deliberation and careful consideration and the same has taken into account and adequately addressed all environmental concerns. It is well settled that this Tribunal does not sit in appeal over the policy decision of whether an airport is necessary in the region. The State and Central Governments have decided that there is a need for such an airport and have adequately addressed environmental concerns through the conditions imposed on the clearance granted. As such, the present appeals are liable to dismissed *in limine*.
- ix) On scrutiny of the entire records made available by both sides, the following are noticed by the Tribunal which would clearly adumbrate the non-application of mind and lack of expected

diligence on the part of the EAC which recommended the proposal for the grant of EC by the MoEF to the 3rd respondent/project proponent.

- x) This Bench of NGT had an occasion to consider the role and responsibility of EAC while recommending an EIA for grant of EC by MoEF in *Samata v. The Union of India* reported in 2014 ALL (I) NGT Reporter (1) (SZ) 1. The relevant portions of the said judgment are extracted below:

"43. In so far as the question as to non-application of mind by both the EAC and MoEF, it would be better to look into necessary provisions in the Notification and also decision of the higher courts thereon before considering the merits or otherwise of the rival contentions. Speaking on the stages on the prior EC process for new projects, paragraph 7 of the EIA Notification, 2006 which is ruling the entire field states that it would comprise of maximum of 4 stages, which are:—

- (1) Screening (only for Category B and activities),*
- (2) Scoping,*
- (3) Public Consultations*
- (4) Appraisal,*

44. Stage-IV, Appraisal: (1) Appraisal means together with the reasons for the same. The plain meaning of the word 'appraisal' is to 'appraise the thing'. The word 'appraisal' in legal parlance is defined in Black's Law Dictionary as follows:

"Appraisal: (1) The determination of what constitutes a fair price, valuation, estimation of work, (2) the report of such determination -also term 'appraisement'.

45. Thus, the appraisal of the project requires not only evaluation, but also estimation of works in order to make an assessment or determination of the same. The process of appraisal would certainly require application of mind independently and make evaluation of the available materials to make an approval to regulatory authority to grant EC or place before the regulatory authority with the report to refuse EC. The notification makes it mandatory not only a scrutiny but also a detailed scrutiny to the EAC or SLAEC of the application and other documents like final EIA report, outcome of the public consultation including public hearing proceedings submitted by the Project Proponent. The word 'scrutiny' should have been employed in the Notification by the Legislature with clear intention that a critical observation or examination of all the available materials before submitting a recommendation to the regulatory authority. The Notification requires a categorical recommendation from the EAC or SLEAC on conclusion of the proceedings of appraisal. Hence, the

appraisal cannot be a mere formality or a simple ritual to pass on. The Hon'ble High Court, Delhi in Utkarsh Mandal v. Union of India (2009 X AD (Delhi) 365 has held as follows:

"We, therefore, hold in the context of EIA Notification dated 14 September 2006 and the mandatory requirement of holding public hearings to invite objections, it is the duty of the EAC, to whom the task of evaluating has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent were considered and the reasons why any or all of such objections were accepted or negated. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non application of mind to relevant consideration and therefore arbitrary. (Para 4)."

46. The Hon'ble Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi (1991) 2 SCC 716 has held as follows:

"21. Thus, it is settled law that the reasons are harbinger between the minds of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi judicial or administrative fair play requires recording of germane and relevant precise reasons. The recording of the reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aid the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of this Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person."

47. The NGT in Appeal No. 20/2013 in Rudresh Naik v. Goa State Coastal Zone Management Authority has held as follows:

"It is settled rule that administrative authorities which are dealing with the rights of the parties and are passing orders which will have civil consequences, must record appropriate reasons in support of their decisions. Certainly, these decisions must not be like judgments of the courts, but they must provide insight into the thinking process of the authority as to for what reasons it accepted or rejected the requests of the applicant. (Para 12, 13 and 14)"

162. The application filed by the project proponent seeking EC in Form I for the proposed airport did not reveal the true, correct and complete disclosure of factual details and it also suffered by

suppression of facts and with false statements as detailed infra:

1. The EIA report placed before the EAC was prepared which was by a thoroughly unqualified and incompetent agency for the reasons supra.
2. Even before the ToR was finalized on 13.10.2010, the 5th respondent/consultant collected data, both primary and secondary and admittedly, conducted the field study between July to October 2010.
3. The EAC did not raise any query regarding the competency and also the commencement and completion of field study even before the finalization of ToR.
4. The EIA was made a thorough deviation and was prepared in violation of the EIA Guidance Manual for Airports issued by the MoEF on vital aspects. The EIA Guidance Manual for Airports requires that the primary data should cover one season other than monsoon and while the secondary data should be collected for one full year. Contrarily, the entire data were collected only during monsoon. The EIA placed before the EAC would clearly indicate that the entire data was collected covering a distance of 10 km radius of the site, while the sector specific manual states at page No. 10 about topo map for 15 km radius. Apart from that, Chapter 4 of the Manual states that the secondary data should be collected covering 15 km aerial distance for parameters at 9(III) of Form I of the EIA Notification. Clause 4.4 of the sector manual requires the measurement of the emission from the aircraft has to be taken into account. But, no attempt was even taken during the study towards this. It is true that AAQ standards are mentioned in Table 3.9 at page No. 73 of the EIA report, but they were of the year 1998. Those AAQ standards have been replaced by standards on 18.11.2009 which are more stringent. There is nothing to indicate in the EIA report that there was any study made with airport related issues, such as, aircraft noise, emission of hydrocarbons and their likely impact. No discussion is found as to how the hazardous waste is to be handled. The solid waste generation shown as 27 kg/day which cannot but be an understatement. It casts a doubt whether the EAC had in its mind a plant or a factory instead of an airport project while considering the EIA. The words 'plant, plant site, plant building, plant operators' are used in paragraphs 3.12.1, 3.15.1, 4.3.7, 4.4.6 and 4.4.8. Paragraph 4.4.8 of the EIA reads as follows:

"Elaborate green belt and afforestation will be developed along peripheral and other vacant portions of the factory premises, which will considerably enhance the floristic density in the area."

Para 5.1.1 reads "...by implementing better technology, the factory can often take advantage of the dual benefits of reduced waste generation and a more cost efficient operation."

Similarly, paragraph 4.4.5 reads, "The increase in traffic density due to transportation of raw materials and products will be very low by means of lorries and truckers 120-180 times per month."

No doubt, all the above are out of context and irrelevant and made without any application of mind. Probably, the same might be a verbatim copy of some other report for a factory or plant.

5. As could be seen from the EIA Notification, 2006, there is a mandate for the preparation of a draft EIA report initially and after finalization of ToR and summing up of such draft EIA report has to be necessarily placed during Public Consultation as required under paragraph 7. III— Stage (3). In paragraph 7. III(vii) of the EIA Notification, 2006 reads, *"After completion of public consultation, the applicant shall address all the material environmental concerns expressed during this process and make appropriate changes in the draft EIA/EMP. The final EIA report so prepared shall be submitted by the applicant to the concerned regulatory authority for appraisal."* The 5th respondent/consultant has categorically admitted in his reply that they submitted the EIA report in October, 2010, which is only a draft EIA report. The 3rd respondent/project proponent has filed a report which incorporated the minutes of the public hearing details which are not only insufficient, but also cannot be termed as final EIA report as envisaged above. Thus, in the instant case, no final EIA report was ever prepared or submitted by the applicant before the concerned regulatory authority.

6. At the time of the public hearing, as seen from the minutes of the hearing the local people who participated in the public hearing voiced their concerns and objections to the draft EIA report. But, none of the objections was addressed in the EIA report. It is pertinent to point out that when those objections and concerns were voiced by the participants during the public hearing, the 3rd respondent/project proponent had given clear undertaking that a detailed EIA study would be conducted later. But, no material was placed to indicate that any detailed EIA study was conducted later. Apart from that, the EIA report would show that no such subsequent study was conducted. If the undertaking given by the 3rd respondent/project proponent at the stage of public hearing to conduct a detailed EIA study was not done, the EAC should have rejected the EIA report as incomplete for want of a detailed EIA study. This would also be indicative of non-exercise of due

diligence on the part of the EAC. The EAC has thoroughly forgotten that it could only appraise a final EIA report and nothing less than that, since paragraph 7. IV of the EIA Notification, 2006 requires the EAC to scrutinize only a final EIA report.

163. Thus, in the instant case, even without a final EIA report, the other materials were taken up for appraisal and hence, both the appraisal by EAC and consequent clearance by MoEF have to be termed as faulty.

164. The EIA report did not assess the impact of the proposed activity of the 3rd respondent/project proponent on land, water air, environment and ecology of the area and it did not provide the required details in these respect as mandated by law, thereby enabling the EAC to make a scrutiny and take an independent decision on the issues of environment. The inadequacy of the EIA report is demonstrated by the fact that it has not considered details about the flora and fauna. The EIA report did not provide any details about the flora in the region except stating that there are no endangered species in the area. A report of the Salim Ali Foundation clearly states that there are more than 212 species of plants. The report also states that there are more than 60 species of fishes and more than 80 species of birds. But, the EIA report did not reflect the same. The EIA has not made any attempt, whatsoever to characterize the ecology of the area including wildlife that inhabits forested lands which required to be cleared for providing a long runway at the proposed airport. The crucial aspects relating to filling up of paddy lands and its impact on the environment were not considered though objections were raised in that regard.

165. The EIA report never cared to consider the environmental impacts of converting Aranmula paddy lands, in particular, the reclamation of those lands and its consequences. The EAC has not considered the materials placed in respect of conversion of part of paddy lands which according to the 3rd respondent/project proponent the same was done by his predecessor in his interest. But, admittedly, a number of proceedings were initiated in both and criminal courts and even by vigilance department of the State of Kerala which were all pending during the relevant period. It is admitted by the 3rd respondent/project proponent that the entire are of 500 acres of land required for the airport project and consists of both paddy lands and wetlands and it is also added by the 3rd respondent/project proponent that the lands remained shallow for dacades and hence it can be put into better use of construction of the airport. It is also true that the conversion of the land-both paddy lands and wetlands already done and proposed to be done are actually the subject matter of the proceedings before different fora in Kerala State, which fall outside the jurisdiction

of the Tribunal. But, the pendency of those proceedings does not impede the Tribunal to consider the impact of such conversion and alleged degradation of environment. In the instant case, admittedly, a part of the paddy fields/wetlands was converted while the remaining is to be converted by the 3rd respondent/project proponent for the proposed airport. The conversion of paddy fields and wetlands, its impact on the ground water resources in the area, the impact of the rivulet and streams, namely, *Kozhithodu*, and *Karumaramchaal* were never taken into consideration by the EAC.

166. The EIA report has not spoken anything about the impact of the project on the displacement of the people as a result of the present project. The EIA report does not even mention the number of houses in the area or population that will be displaced as a result of acquisition of the land for the project and the filling up the wetlands.

167. In so far as the water requirement is concerned, the EIA report under '2.8.2 Water' states that the total requirement of raw water for the airport is 7.55 KLD which will be met from own bore wells and municipal water supply. But, it does not discuss the impact of extraction of water on the water table in the area. The EIA mentions under '2.3.7 under 'Approach Road' that a four lane approach road with 23 m width is proposed from Aikkara junction to the terminal building for which land needs to be acquired. Similarly, road from Parumootumpadi junction to Aikkara junction is also required to be widened for smooth vehicular traffic to the proposed airport. But, the EIA has not addressed on environment, socio-economic and other impacts of the said road construction. The contention of the 3rd respondent that these roads do not form the part of the proposed airport is not acceptable. Needless to state that the roads would not be laid in the absence of the airport project and therefore, the environmental impact of the road laying must have been included in the EIA report. The EIA at paragraph '2.6(n) Land Use Classification' states that Government has recognized the location of this project site as unclassified land. But, the said statement is falsified by the admission of the fact that part of the paddy land has been filled up. The EIA has given false statements on archeological and cultural monuments. The EIA in paragraph 2.6(a) reads thus: "*The location does not have any archeological monuments in nearby 10 km radius" and at 2.6(c) - Cultural Monuments-This project does not have any cultural monument within the area of 10 km radius.* It is pertinent to point out that the Aranmula village itself is a heritage village and got its name from the centuries old Aranmula Parthasarathy Temple which is dedicated to Lord Sri Krishna. The said temple on the banks of River Pampa attracts large devotees throughout from India. Entire region is with temples of importance. The holv Pampa River is described as the

boundary of the project site in EIA, reported.

168. The practice of collecting data even before the finalization of ToR by the EAC and the communication of the same to the project proponent is untenable in the eyes of law and it also sends wrong procedural signals. Accepting such a procedure is bound to set very unhealthy precedent. Instead of deprecating the practice, the EAC, in the instant case, has given its seal of approval. We direct the concerned officials of MoEF to take note of this and initiate procedural reform(s) to discourage this practice.

169. 'Environmental Clearance document' is certainly not a piece of official note conveying the decision of the authorities to the Project proponent. It is a document which reflects the intent and policy of governance vis-a-vis the economic development and natural resources management of the country. Even a cursory scrutiny of the impugned EC would reveal the mechanical mindset and total lack of application of mind on the part of the authorities issuing such an important document of utmost sanctity. We now cite some glaring examples below:

170. The EC issued in the instant case lists two sets of conditions for strict compliance by the project proponent. While Paragraph 10 lists 20 "Specific conditions" Paragraph 11 lists 31 'General conditions'.

Specific condition 10 — (vi) reads as follows:

'Project proponent shall have a Master Plan for the project and other related facilities if any. Such other facilities shall be considered by the Competent Authority only after a Cumulative Environment Impact Assessment is carried out'.

171. The above condition refers to the carrying out of **Cumulative Environment Impact Assessment**. The instant project namely the airport project in the proposed site does not require any **Cumulative Environment Impact Assessment study** from any angle of environment. No reference to the need for such a study has been made in any of the documents produced before the Tribunal by any of the respondents including the MoEF. We have not come across any indication and mention of it in the minutes of the EAC also.

172. General Condition 11 - (viii) reads as follows:

'Ambient noise levels should conform to residential standards both during day and night'

173. We are shocked to see the imposition of a condition referred to above, to say the least. We are at a loss to understand the rationale of expecting **'residential standards of noise'** in the airport area. Amazing indeed.

174. General Condition 11 - (ix) reads as follows:

'Fly ash usage shall be explored as building material in the construction as per the provisions of Fly Ash Notification of

September, 1999 and amended as on 27th August 2003'.

175. We wonder whether any observation on the above condition in the context of "Airport Project" needs to be made by the Tribunal at all. At best, this is an example of making a mockery of EC conditions.

176. General Condition 11 - (xvi) reads as follows:

Treated affluent emanating from STP shall be recycled/reused to the maximum extent possible. Treatment of 100% grey water by decentralised treatment should be done. Discharge of unused treated effluent shall conform to the norms and standards of the Uttar Pradesh State Pollution Control Board. Necessary measures should be made to mitigate the odour problem from STP"

177. We find it difficult to see the relationship between the project in question and the **Uttar Pradesh State Pollution Control Board**. In our opinion, the officials responsible for making a blunder as above owe an explanation to their own selves.

178. We are of the considered view that the "conditions" cited above are typical examples of the (in) famous "Copy and Paste" from the list of conditions appended to the EC of some other project(s), without any application of mind and 'non-verification' of the document before placing the same for signature by the authorized signatory. We direct the MoEF to take steps to restore the sanctity of important documents such as the EC.

179. We have made a scrutiny of the 'Terms of Reference' and also the subject coverage in the EIA report. In our view, the ToR for EIA are not as exhaustive and project specific as they should have been. The EAC, whose role is of great significance in the decision making process, should have demonstrated its collective wisdom and professional acumen by being more "Project specific" while framing the ToR. We hope that the EAC would note this for future reference.

180. The proposal in respect of the airport project of the 3rd respondent/project proponent was taken up for consideration by the EAC in its 107th meeting held on 15th and 16th of December 2011. The relevant part is found in paragraph 3.2 which reads as follows:

"The project was again considered by the EAC in its meeting held on 21st and 23rd September, 2011 and sought additional information. The details submitted and presented were examined by the committee.

During discussion, the following points emerged:

(i) Quantify the water conservation taking into the water from RWH, water efficient fixtures and reuse of treated wastewater and resubmit the water balance.

- (ii) Quantify the energy savings as per ECBC norms and resubmit*
- (iii) Submit the details of manpower requirement/proposed for Risk Environment management team.*
- (iv) Apart from CSSR, the Hospital as proposed shall be built up.*
- (v) All the recommendation of the EMP shall be complied with letter and spirit.*
- (vi) The wastewater from hangers shall be tested for presence of heavy metals in any and shall be treated in STP. The treated waste water shall be used for gardening/flushing.*

The Committee recommends the proposal for EC after submission of the information at (i) to (iii) to Ministry with the above conditions in the clearance letter for strict compliance by the project proponent.

181. A reading of the above would make it abundantly clear that it is bereft of reasons either for negating the objections and concerns in the public hearing nor for accepting the response, information and clarifications provided by the project proponent. What are all stated is the gist of the original application of the project, the main issues raised at the public hearing and except the above, it was recorded that there was submission of response by the project proponent to the issues raised and based on information and clarifications, the Committee recommended the project for EC subject to the specific conditions stated therein.

182. It is not in controversy that at the time of public hearing many objections and concerns were raised and the same were also recorded in the minutes of the public hearing. As rightly pointed out by the learned counsel for the appellants, all issues raised at the time of public hearing were not even stated in the above recordings of the minutes. The detailed scrutiny as required by the notification in order to make an evaluation of the project has not been done since there is nothing to indicate in the minutes of the meeting that in respect of the issues raised at the time of public hearing in respect of each issue i.e., objections raised at the public hearing and what was the correspondence and clarification made by Project Proponent thereon and why and for what reasons those objections were negated and the clarifications of the project proponent were accepted. Thus, the Tribunal is able to notice a thorough failure on the part of the EAC in performing its duty of proper consideration and evaluation of the project by making a detailed scrutiny before approving the same. The contentions put forth by the learned counsel for the respondents that number of specific condition were stipulated by the EAC at the time of recommendation and without proper consideration of both objections and concerns at the time of providing and proper responses made by the Project Proponent, those conditions could not have been stipulated cannot be countenanced. It is true that the EAC while recommending the project

for the grant of EC has stipulated conditions. Mere stipulation of specific conditions *ipso facto* cannot be an answer, while the minutes recorded above clearly indicate that there was no appraisal wherein an evaluation by detailed scrutiny of the project is required as per the mandatory provisions of EIA Notification, 2006. The Central Government, in its wisdom thought it fit and necessary and circumstances also warranted issuance of the EIA Notification, 2006 superseding the earlier Notification, 1990 whereby EAC has been constituted for all projects in Category A and SEAC for Category B for the purpose of screening, scoping and appraisal of the projects. The EAC is constituted consisting of a Chairman and number of members who are experts from different fields only with the sole objective of national interest in order to ensure establishment of new projects or expansion of already existing activity without affecting the ecological and environmental conditions. Thus, a duty is cast upon the EAC or SEAC as the case may be to apply the cardinal and 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 the 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 even without taking note of the implication and importance of environmental issues. On the same day the EAC took for appraisal not only the airport project in question, but also other projects which would be indicative of the haste and speedy exercise of its function of appraisal of the project. It casts a doubt that whether the EAC would have accepted the response made by the Project Proponent in respect of the objections and concerns raised at the time of public hearing as a Gospel Truth. Thus, the 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.

183. The EAC is a High Level Committee entrusted with the task of evaluating the projects, which exercise it has to do with its wisdom, experience and expertise of the members. Needless to say, while doing that exercise for such evaluation, the Committee should keep wider interest of the nation as paramount in its mind. A duty is cast upon the EAC to strike a balance between the development on one side and ecology and environment on the other, thereby ensuring larger interest of the society of the State. While such vital and indispensable task is entrusted with the fervent hope and expectation, shirking of responsibility in a hasty or evasive manner would not only be against

the objective of its constitution, but also defeats the purpose for which the Committee is functioning. Where a particular point is not decided unanimously, specific noting should be prepared and scientific reasons for accepting the majority view should be recorded and maintained for future reference. It should not be forgotten by the EAC that either the acceptance or rejection of a proposal should be the result of a proper and purposeful exercise on the recommendations of which the regulatory authority can safely act and take a correct decision thereon.

184. The learned counsel for the respondents in their final attempt of getting a support of the Doctrine of Sustainable Development would submit that the Aranmula airport project is one of the national importance whose approval will lead to a large development to the State of Kerala directly and indirectly. The airport project, if allowed to be set up as approved, would play a vital role in industrial development and commercial trade and it would offer crucial services for transport of goods and passengers. Apart from that, it would be useful for domestic and international tourism when limitation of time is a key factor. It would play as catalyst to economic development. In turn, it would generate demand for the former. The people of Kerala would like to have modern infrastructure in the State with least disturbance to environment. The State Government representing the public interest has supported and lent its full favour for this project. This project would be an employment generating development which in turn would be a boon to the educated and unemployed in the State and this would be welcomed in a larger public interest of Kerala and economic interests of the country as a whole. In the instant case, environmental issues were fully taken up both by EAC and also MoEF. On being satisfied with the project and finally MoEF accepting the recommendations made by the EAC, has granted the EC. Had not the objections and concerns raised by the public been considered, by the MoEF, number of specific and special conditions in respect of the environmental issued could not have been attached to the EC. This fact would be indicative of the consideration of all environmental and ecological issues and hence the EC has got to be upheld.

185. It is not as if the Tribunal is unmindful of its duty that a balance has to be struck between ecology and development in order to uphold the principles of sustainable development and precautionary principle as envisaged under section 20 of the NGT Act, 2010. Needless to say, striking a balance between the ecology and development is a difficult task. But, at the same time, it cannot be forgotten that for one's sake other should not be sacrificed. A balance has to be struck whereby a compromise is made in order to achieve the development without causing environmental degradation and damaging ecology. Ordinarily, the contention putforth by the learned counsel for the

appellants that if not the environmental issues and concerns were not considered, the conditions specified in respect of the particular project would not have been attached to the EC. But, in the instant case, all mandatory principles and guidelines as envisaged by the EIA Notification, 2006 have been violated by (1) Form I along with the application for EC. (2) incompetency of the consultant who prepared the EIA which is the basis for the grant of EC, (3) public hearing and public consultation and (4) non-application of mind and lack of due diligence.

186. In a democracy like ours, all natural resources are wealth of the country and in the custody of the State as a Trustee. They are all meant for public use and enjoyment and the public at large is the beneficiary of the same. The State as a Trustee is under legal obligation to protect them. We hope that the recommending body EAC and the regulatory agency MoEF are aware of the above concept of public trust and issue clearance for the development projects in tune with this concept.

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

188. In the result, the appeal Nos. 172-174 of 2013 (SZ) and 1 and 19 of 2014 (SZ) are allowed granting only the following reliefs.

189. It is declared:

1. That the 5th respondent, Consultant namely, Enviro Care India Pvt. Ltd., was not competent to prepare the EIA or appear before the EAC in respect of the proposed Aranmula Airport Project.
2. That the public hearing conducted for the proposed Aranmula Airport Project is in violation of the mandatory provisions of the EIA Notification, 2006 and it is vitiated.
3. That the recommendation of the EIA made by EAC for the grant of EC in respect of the proposed Aranmula Airport Project as invalid.
4. The EC granted by the 1st respondent/MoEF in F. No. 10-51/2010-IA. III dated 28.11.2013 is set aside and consequently, the 3rd respondent/Project Proponent namely, KGS Aranmula International Airport Ltd., is restrained from carrying out any activities either constructional or otherwise in respect of the Aranmula Airport Project on the strength of the above environmental clearance.

190. In all other respects, the appeals are dismissed and all connected MAs are closed.

The parties to bear their respective cost.

Before concluding, the Tribunal feels it fit and necessary to record its

appreciation for the effective and efficacious assistance rendered by T. Mohan, A. Yogeshwaran, Ashok M. Cherian, K. Janardhan Shenoy, R. Krishnaraj, Ramesh Kumar Chopra, Ranjith Thamban, Senior Advocate, Rema Smrithi, Mallika Srinivasan and Jacob Alex, Advocates appeared for the appellants and K.P. Dhandapani, Advocate General, State of Kerala, T.R. Rajagopalan, Senior Advocate, P.S. Raman, Senior Advocate, Pushpa Menon, C. Sangamithirai, Standing Counsel for MoEF, Rohan D. Alexander, Government Pleader, State of Kerala, M. Ajay, Sathish Parasaran, Suvitha. A.S., Special Government Pleader, State of Kerala appeared for respondents for adjudicating the matters.

— — —

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.

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

APPEAL NO. 39 OF 2012

CORUM:

Hon'ble Mr. Justice U.D.Salvi (Judicial Member)
Hon'ble Prof. A.R. Yousuf (Expert Member)

IN THE MATTER OF:

1. SAVE MON REGION FEDERATION

Through its General Secretary,
Lobsang Gyatso, Near High Secondary
School Tawang, P.O. Tawang,
District Tawang, Pin Code-790 104.

2. LOBSANG CHOEDAR

Khet Village, P.O. Mukto, P.S. Jang,
District Tawang, Pin Code 790 104
Arunachal Pradesh.

APPELLANTS

Versus

1. UNION OF INDIA

Through its Secretary
Ministry of Environment and Forests
Paryavaran Bhawan, CGO Complex
Lodhi Road, New Delhi-110 003.

2. ARUNACHAL PRADESH STATE POLLUTION CONTROL BOARD, (APSPCB)

Through its Member Secretary,
Arunachal Pradesh State Pollution
Control Board, Department of Forest,
Environment and Wildlife Management,
Itanagar-791111.

3. NJC HYDRO POWER LIMITED

Through its Vice President and CFO
With its registered office at
A-12, Bhilwara Towers, Sector-1,

Noida-201301.
Uttar Pradesh

4. State of Arunachal Pradesh

Respondents

Counsel for Appellant(s):

Mr. Ritwick Dutta, Mr. Rahul Choudhary, and
Ms. Parul Gupta, Advocates.

Counsel for Respondent(s) :

Ms. Divya Prakash Pande, for Respondent No.1
Mr. Anil Shrivastav, Adv for Respondent No. 2
Mr. Raj Panjwani, Sr. Advocate Mr. Sanjay Upadhyay and
Mr. Saliq Shafique, Advocates for Respondent No.3.
Mr. Anil Srivastava and Mr. Pranav Rishi Advocate for
Respondent No. 4

Per U.D. Salvi J. (Judicial Member)

J U D G M E N T

Reserved on: 29th January, 2016

Pronounced on: 7th April, 2016

1. In the present Appeal, Save Mon Region Federation – an organization consisting of citizens of Monpa indigenous community in Tawang district of Arunachal Pradesh and Mr. Lobsang Choedar a Social Activist, Senior Buddhist Lama and Chief Advisor of the said Federation, have assailed grant of Environmental Clearance (EC) dated 19.4.2012 to the construction of 780 Mega Watts (MW) Nyam Jang Chhu Hydroelectric Project (NJC-HEP) in Tawang district of Arunachal Pradesh.

2. Admittedly, 780 MW HEP envisages construction of 10.2m high and 15m long barrage on eco-sensitive stretch of Naymjang Chhu River basin near Zemithangin district

Tawang of Arunachal Pradesh. The project involves 23.45km long and 6.2m. diameter Head Race Tunnel (HRT) requiring extensive tunneling in geologically fragile landscape and comprises of eight (8) de-silting chambers and with underground Powerhouse having 6x130MW Pelton Turbines. The HRT bypasses around 35kms stretch of river between barrage and the powerhouse. The Appellant adds that the project also involves construction of captive hydropower project of 7.5MW, Khangteng HEP to provide power during construction of 780MW Nyamjang Chhu project.

3. It is also not disputed that total land proposed to be acquired for the project is around 254.55ha, out of which 10.08ha is private land and 244.46ha is community land with total submergence area of 39.34ha, and 89.5271ha of forest land has been considered for diversion proposal under the Forest (Conservation) Act, 1980.

4. Following submission of proposal for grant of EC to the said project in Form-I and the public hearing prescribed under the Environment Clearance Regulations, 2006, the Expert Appraisal Committee (EAC) for river/valley and hydroelectric projects constituted by the Ministry of Environment and Forests (MoEF), considered the project proposal and prescribed Terms of Reference (ToR) for preparation of Environment Impact Assessment (EIA)

Report on 29.12.2009. The Central Electricity Authority (CEA) assessed capacity of the project based on hydrology and discharge data approved by the Central Water Commission (CWC) and thereupon capacity of the project was reduced to 780 MW from 900MW, changing the feasibility location of the project components, land requirement and thereby environmental parameters. The public hearing was conducted at New Lumla, District Tawang on 8.2.2011. Respondent No.2- Arunachal Pradesh State Pollution Control Board (APSPCB), submitted report of public hearing to MoEF on 22.2.2011. The EAC in the Meeting held on 26th March 2011 (48th Meeting) and on 16-17th September, 2011 (52nd Meeting), considered project proposal and recommended grant of EC, whereupon the MoEF granted EC to the project on 19.4.2012.

5. The Appellants have challenged the grant of EC, mainly on the following grounds:

(1) Faulty Scoping Process:

- a) Concealment of information, submission of false and misleading data in Form-I,
- b) Lack of application of mind by the EAC at scoping stage, inasmuch as it overlooked inappropriateness for siting barrage at the place used by Black necked Crane for wintering, non-inclusion of ToR for impact assessment of captive small hydel power

7.5MW Khangteng HEP and ancillary infrastructures, unjustified exclusion of important ToRs from Model ToR for North-Eastern projects, absence of prescription for cumulative impact assessment and riverine basin studies in Tawang River Basin, and absence of ToRs relating to impacts of Catchment Area Treatment (CAT) and Compensatory Afforestation (CA).

- (2) Faulty public consultation process, inasmuch as the EIA report was not as per ToR, poor quality of EIA Report, farcical hearing.
- (3) Lack of application of mind by the EAC and MoEF during appraisal of project and thereafter by MoEF.

6. Respondent No.1– Ministry of Environment, Forest and Climate Change, Government of India joined issues with replies dated 26.7.2013 and dated 11.1.2016. Lastly, MoEF relied upon the record and contended that the EAC had thoroughly scrutinized the proposal for grant of EC in question and upon examination recommended the project for scoping clearance, and public hearing for the project was conducted as per provisions of the EIA Notification, 2006 and thereupon EAC thoroughly examined the environmental issues before recommending the project for grant of EC and, thereafter, the Ministry duly granted EC to

the project after following due procedure as per provisions of the EIA Notification, 2006. Respondent No.1 MoEF, placed before us copies of the Minutes of EAC Meetings held on 20-21 July, 2015 and 24-25 August, 2015, wherein the report on “carrying capacity study of Tawang River basin” through North-Eastern Hill University received in June, 2015, was considered vide affidavit dated 11.1.2016.

7. Respondent No.2- APSPCB denied Appellant's contentions and specifically contended that the public hearing was arranged by the Respondent No.2 in systematic, time bound and transparent manner ensuring widest possibility of public participation at or about the project site as per Appendix (IV) of the EIA Notification, 2006. The Respondent No.2 revealed that date, time and venue for conduct of public hearing were finalized in consultation with the Deputy Commissioner, Tawang district and Notices for public hearing were issued, both in English and in local Mompa dialect in the English script and published in two (2) local newspapers “Arunachal Times” and “Arunachal Front” both editions dated 6.1.2011 for widest publicity, and the names of designated officers where the public could access the draft EIA Report and the Executive Summary of EIA Report before the public hearing were clearly mentioned in the public hearing Notices advertised in newspapers; and these documents were made

available in such offices and were accessible to the public for inspection as mandated in the EIA Notification, 2006. The Respondent No.2 revealed that executive summary of EIA Report and other details of the project were uploaded on the Website of the Board and Notice of public hearing inviting suggestions, views, comments and objections from public was given thirty (30) days' in advance of the scheduled date of public consultation. The Respondent No.2 further revealed that as many as 457 persons a large scale public participation in sparsely populated State of Arunachal Pradesh, attended public hearing at Multi-Purpose Hall, New Lumla, Tawang district on 8.2.2011; and entire proceedings of public hearing was Video graphed duly recorded and dispatched to the Regulatory Authority as per provisions contained in the EIA Notification, 2006. Copies of record of the public hearing were placed before us by Respondent No.2- APSPCB along with its reply dated 13th May, 2013.

8. Respondent No.3 NJC Hydro Power Limited –Project Proponent (PP), resisted Appeal with reply dated 17.7.2013 and Sur-rejoinder dated 24.9.2013 to the rejoinder filed by the Appellants. According to Respondent No.3, HEPs are most eco-friendly project, generating hydropower, a benign renewable source of energy, needed for developing infrastructures in remote areas and the State Govt. has

signed Memorandum of Understanding (MoU) for developing several such projects in State of Arunachal Pradesh in pursuance to its policy- 'Arunachal Pradesh Hydro Power Policy, 2008' for development of hydropower potentials. A Memorandum of Agreement (MoA) was signed between Respondent No.4- Govt. of Arunachal Pradesh and Bhilwara Enginery (BEL) on 28.5.2009 to develop Nyamjang Chhu HEP and a Special Purpose Vehicle (SPV) in the name of NJC Hydro Power Ltd was formed by BEL for execution of Nyamjang Chhu HEP with consent given by the Respondent No.4 on 10.6.2010 in terms of said agreement. The Respondent No.3 further revealed that the project is run of the river type scheme with peaking poundage to harness the hydropower potential of River Nyamjang Chhu with its diversion barrage near Zemithang village with powerhouse in village Kharteng about 4km upstream of the confluence of Nyamjang Chhu with Tawang Chhu. According to the Respondent No.3, majority of catchments, upstream of diversion structure lies in Tibet, and the catchment within Indian Territory downstream of diversion structure shall remain largely undisturbed due to several tributaries joining the river system. Initially, the Respondent No.3, revealed that the project was allotted in three stages, but on basis of pre- feasibility report to which the Respondent No.4 accorded its consent the project was found to be more viable and environmentally less demanding in single stage,

and Memorandum of Agreement amongst other things including provisions for the following developmental and welfare activities for benefit of local areas was signed on 28.5.2009:

- a.** Development of two small HEP's viz Khangteng HEP (7.5MW and Shyaro Nallah HEP (3MW),
 - b.** From the date of commercial operation the State shall be given free power @12%.
 - c.** Additional 1% free power from the project for Local Area Development Fund.
 - d.** Hundred (100) Units of electricity per month to each Project Affected Family (PAF) for a period of ten years.
 - e.** The Company shall also bear the State Government's share of 10% of the project cost of Rajiv Gandhi Vidyutikaran Yojna (RGGVY) within a radius/surface distance from the powerhouse/dam site of 10 kms.
 - f.** Recruitment of project personnel and award of work, where preference to local contractors and project affected eligible candidates in the matter of recruitment of project personnel and award of work apart from reservation of posts in the project.
 - g.** Provision of institutional mechanism, the Project Monitoring Committee under the Chairmanship of Secretary, Power or any other State Govt. Authority for the purpose of overseeing progress of the project and address issues arising out of its implementation.
- 9.** According to the Respondent No.3, the EAC raised several issues and approved ToR with various additional

conditions and accordingly two Agencies WAPCOS Limited (A Central Govt. of India Organization) and R.S Enviro-link Technologies (RSET) for due collection of environmental data and its study were appointed and the EIA as well as EMP report was prepared by WAPCOS as per approved ToRs and the EIA study included submergence of area i.e. area within 10km of submergence area, area to be acquired for various project components and area within 10km of project components, namely barrage and powerhouse; and the Central Inland Fishery Research Institute, Kolkata (CIFRI) was appointed to conduct the study for estimation of environmental flow required to maintain aquatic life in the river and migration of fishes. According to the Respondent No.3, requisite environmental data was duly collected, detailed filed/studies were carried out, environmental impacts were examined in detail and thereupon Environmental Management Plan was developed by the consultants.

10. According to the Respondent No.3, four different alternatives for project layout were examined in detail and detailed comparison of alternatives was made, and finally fourth alternative – present barrage located in Zemithang with powerhouse proposed to be located on the left bank of NJC river in Kharteng village was selected, based on suitability of geological consideration and minimum

submergence area required, easy accessibility and other positive construction benefits with minimal environmental impact, minimum tree cutting and minimum disturbance to the local population during construction, minimum height of the diversion structure due to flat grade and sufficient width of the river and no impact on religious monuments such as Gorsan Stupa. A detailed project report in respect of fourth alternative was placed before the CEA for Techno Economic Concurrence; and the CEA finalized project capacity at 780MW during Techno Economic discussion and same was accepted by the Respondent No.3 and approved by Respondent No.4- Govt. of Arunachal Pradesh as well as MoEF for revision of project capacity from 900MW to 780 MW on 2.8.2010. After completion of studies by CIFRI, WAPCOS and RSET, the Respondent No.3 added, the draft Environmental Impact Assessment Report, including detail Environment Management Plan (EMP) was submitted to Respondent No.2- APSPCB on 10.12.2010 with a request to conduct public hearing for the project; and public hearing for the project was duly conducted by Respondent No.2- Board on 8.2.2011 under the Chairmanship of Deputy Commissioner, Tawang. According to the Respondent No.3, the EIA study was finalized and submitted in 2011 in pursuance to the proceedings of said public hearing and the same were submitted to MoEF, New Delhi for consideration; and the project was duly considered

by the EAC on 26th March, 2011; and several observations were made by the EAC with respect to various EMPs; and the MoEF sought clarifications of the observations made by the Committee from the Respondent No.3, which were replied by the Respondent No.3 in August, 2011. The Respondent No.3 added that based on replies submitted by them the project was again considered by the EAC on 17.9.2011 and the Committee recommended the project for EC.

11. Adverting to Memorandum of Appeal, the Respondent No.3, denied specific contentions raised by the Appellants. According to the Respondent No.3, Khangteng HEP is separate, independent and small Hydropower project located about 30 km from the project in question and is part of MoA on a Built, Operate and Transfer basis for supply of power to the project in question during construction phase, which has been envisaged primarily on environmental grounds to do away with diesel generators having adverse environmental impacts. This being a project on single river system, it will not have any cumulative impact with any other existing or planned activities in the locality, though several HEPs may have been proposed in Tawang region in general. According to the Respondent No.3, cumulative effect of the project is considered when project shares same catchment.

12. Main thrust of submission made on behalf of the Appellants in the present case is on faulty project scoping, which has multiple cascading effects on various stages of process of grant of EC and its final outcome. Perusal of the Environment Clearance Regulations, 2006, reveals that prior EC process for new project has four stages namely, (1) Screening (2) Scoping, (3) Public Consultation and (4) Appraisal, though all of which may not apply to set of particular cases. However, the project in question being River Valley project of 780MW HEP generation, is category 'A' Project listed at serial No.1-(c) of the Schedule of Environment Clearance Regulations, 2006, warranting scoping, public consultation and appraisal under the said Regulations. 'Scoping' refers to process by which the EAC determines detailed and comprehensive ToR addressing relevant environmental concerns for preparation of EIA Report in respect of the project for which prior EC is sought. The EAC determines ToR on the basis of information furnished in the prescribed Application Form-I, including ToR proposed by the Applicant, site visit by Sub-group of EAC concerned, only if considered necessary by the EAC. In 'public consultation' the concerns of local affected persons (PAP) and others having plausible stake in environmental impacts of the project or activity, are ascertained with a view to take into account all material concerns in the project or activity designed; and 'public

consultation' comprises of 'public hearing' at the site or in its close proximity and obtaining responses in writing from other concerned persons, having plausible stake in environmental aspects of the project/ activity. For obtaining responses in writing from other concerned persons, having plausible stake in environment aspects of the project or activity, the concerned Regulatory Authority invites responses from such concerned persons by placing on their Website Summary of the EIA Report prepared in the format given in Appendix 3-A, along with a copy of the Application in the prescribed Format within seven (7) days of receipt of written request for arranging 'public hearing'. The Regulatory Authority concerned, is under obligation to make available on written request from any concerned person the draft of EIA Report for inspection at invited place during normal office hours. Procedure for conduct of 'public hearing' given under Appendix IV of the Environment Clearance Regulations, 2006, prescribes arrangement of 'public hearing' in a systematic, time-bound and transparent manner, ensuring widest possible public participation at the project site(s) or its close proximity and requires draft EIA Report, including Summary EIA Report in English and in the official language of the State/local language prepared directly in accordance with ToR available for inspection, electronically or otherwise to the public providing thirty (30) clear days to the public for furnishing

their responses. All the responses received, as part of such public consultation process, are forwarded to the Applicant and the Applicant is obliged to address all material environmental issues, concerns, costs during such process and make appropriate change in the draft EIA and EMP and prepare a final EIA Report. The EAC is then obliged to carry out an appraisal meaning thereby carries detailed scrutiny of the Application and other documents like final EIA Report, outcome of public consultation, including 'public hearing' proceedings submitted by the Applicant for grant of EC. The Applicant is invited to furnish necessary clarifications in course of the process of appraisal carried out by the EAC. On conclusion of this proceeding, the EAC makes recommendations to the Regulatory Authority either for grant of prior EC on stipulated terms and conditions or rejection of Application for prior EC, together with reasons for the same. Thereafter, the Regulatory Authority considers recommendations of the EAC and normally accepts the recommendations. However, in cases where it disagrees with recommendations of the EAC, the Regulatory Authority makes request for re-consideration by the EAC, while stating reasons for disagreement and the EAC has to consider observations of the Regulatory Authority, distinguish its views and thereupon after considering the views of EAC the decision is finally taken by the Regulatory Authority. Pertinently, the Application for grant of EC is

liable for rejection in case of deliberate concealment and/or submission of false or misleading information or data, which is material to screening, scoping, appraisal or decision on the Application vide para 7,8 of the Environment Clearance Regulations of 2006.

13. Thus, it can very well be seen from the procedure laid down in the Environment Clearance Regulations of 2006 for grant of prior EC that the information or data furnished by the Applicant in its Application forms basis of entire process stipulated for grant of prior EC, as information/data supplied begets ToR leading to preparation of EIA Report which is indispensable for process of public consultation rendered obligatory by law to understand public concerns in relation to environmental impacts of the project; and which in turn are responsible for generating the EAC recommendations. Thus, the information/data supplied by the Applicant has cascading effect on the final outcome of process of EC. ToRs, a product of scoping process are material to EIA studies, which leads to the EIA Report and thereafter the final EIA Report as aforesaid necessary for forming objective opinion by the EAC in the process of appraisal for making recommendations to the Regulatory Authority. Material issue, therefore, needs to be answered in the present Appeal is as to whether process of grant of

prior EC to the project in question suffers from vice of faulty scoping process or not.

14. Learned counsel appearing on behalf of the appellants, with reference to a copy of the Form-I Application submitted by the PP, particularly, as regards part II- Activity Sr. no. 9.4 and III environmental sensitivity, submitted that the PP deliberately concealed material facts and this vitiates the entire process of scoping and consequently, the process of grant of EC. According to learned Counsel for the Appellants, the PP gave negative answers to the query at 9.4 regarding cumulative effect to proximity of other existing or planned projects with similar effects, when 13-HEPs particularly, 800MW Tawang II project were proposed in Tawang River basin. This is obvious, learned Counsel on behalf of the Appellants, argued from the techno economic clearances granted by the CEA to Nyam Jang Chhu project on 24th March 2011:

“ The issue of likely interference of one adit of Nyam Jang Chhu HEP with works/adit of Tawang HEP Stage-II of M/s NHPC Limited was resolved in the meeting convened by Chief Engineer (HPA),CEA....

...4(viii) M/s NJCHPL, shall co-operate with M/s NHPC limited who are developing Tawang HE Project Stage-II and other developers in the vicinity to facilitate to carry out their works during construction and O&M stages of the projects.

ix) M/s NHPC Limited shall adjust location of their (Tawang HEP Stage-II) muck dumping yard and construction facility areas to avoid any relocation of the TRT outfall of Nyam Jang Chhu HEP. During construction of TRT of Nyamjang Chhu HEP, M/s NHPC Limited shall allow M/s NJCHPL the right of way/access to construct their TRT and outfall structure after mutual discussions. M/s NHPC Limited shall also extend this facility to M/s NJHPCL during O&M, whenever necessitated.

x) M/s NJCHPL shall maintain clear lateral distance of not less than 140m between the TRT of Nyamjang Chhu HEP and construction adit of Tawang HEP Stage-II."

15. Learned Counsel appearing on behalf of the Appellants further pointed out, from negative answers to the queries at serial Nos. 1,2, 3 regarding III Environmental sensitivity in Form I- Whether the area is protected under international conventions, or is important or sensitive for ecological reasons, or used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting or wintering migration, the insensitiveness of the PP when it is a wintering site for endangered vulnerable and threatened to species of birds- Black necked Crane and (Grus Nigricollis) and wintering site for this endangered species. He submitted that the project in question is located at the very much identified wintering site of the Black necked Crane- Zemithang Nylah, an important Schedule I-

Bird area. He submits that the Black necked Crane is the Schedule-I species under the Wild Life (Protection) Act, 1972 (Entry-1(a), part-III Birds). To answer the counter contention that there was no scientifically validated and legally recognized material to support existence and sighting of this endangered species at Zemithang, he invited our attention to the Scientific Report and studies "Critics of Wildlife Sections of the EIA Report" published by the Senior Scientist of the Nature Conservation Foundation – Annexure A-29. The Relevant text of the Critique reads as under:

"In addition, the Nyamjang Chhu River valley is one of the few wintering sites in the world visited by the black-necked crane (about 7 birds) listed as vulnerable by IUCN and Bird Life International (2001). The valley suitable for the Black-necked crane is from Broken thang (27°43'38.47"N, 91°43'39.69" E), a 3km stretch at an average altitude of 2000msl (Dutta 2010, Rahmani 2010). The average width of the valley is 030 and water flow in this stretch of the river is gentle with small seasonal islands and grasslands on both sides. Locals who call the bird 'Thung-Thung Karmo' revere the bird and report that the cranes have visited the valley since time immemorial. **This crucial wintering area overlaps with the project site (see Fig.1).**

Apart from the black-necked cranes, the valley is also home to other Schedule-I species such as

red panda (*Ailurus Fulgens*) in the Zemithang-Lumpo area, and the snow leopard (*Panthera Taxi color*) in the higher reaches and the Arunachal macaque *Macacamunzala*, a newly described primate species in the area (Sinha et al.2005). There are several troops of the Arunachal macaque in the Zemithang Valley and is one of the primary habitats for this species (Kumar et al.2007, Mendiratta et al. 2009).

The EIA report does not record any of these facts nor does it refer to any of this extensive literature in its report. This is a serious omission and it incorrectly states that the area and its surrounding areas harbor no rare or endangered wildlife”.

16. It is also brought to our notice that the Black necked Crane– is revered by the local Monpa Community in Zemithang and is locally called “*Thung Thung Karmo*” incarnation of VI Dalai Lama. According to learned Advocate for the Appellants, Zemithang Nylah IBA, is one of the two wintering sites for the Black necked Crane in Arunachal Pradesh, other being syank valley.

17. It is true that these material facts were not before the EAC when scoping was done. Naturally, ToRs prescribing EIA study as regards these material facts were not prescribed thereby resulting in vacuum in the EIA Report on this material aspect. Consequently, inevitable aberration

creeps in the appraisal done by the EAC for recommending grant of EC in question.

18. Learned Counsel appearing on behalf of the PP submits that this Tribunal has authority to take an appropriate decision on the facts placed before it and has multiple options either to set aside or suspend the EC and remand the case for reconsideration to EAC on limited issue, or upheld the EC with suggested safeguards. He pointed out from the record that the project in question is pursuant to HEP Policy-2008, and is most environment- eco friendly operation for generation of energy much needed for development and environmental impacts are minimal as compared to economic gains. He submitted that initially the project was in three phases and was given up and a single phase project was considered in order to minimize environmental impacts. He further submitted that two reputed consultants have carried out EIA study and where was need for them to suppress or not to mention anything about the Black necked Crane, particularly, when they referred to Schedule-I species bird pheasant in the EIA Report. He further submits that none of the Members of Public made any utterance about the Black necked Crane and out of 700 households 300 attended 'public hearing', out of them 41 were from Zemithang. He further submits that Nyam Jang Chhu River is Perennial River, having eight

tributaries between barrage and tunnel outlet and minimum flow is ensured without there being occasion of drying of the river. Referring to description of the habitat of the Black necked Crane as spelt out in the literature produced "Threatened Birds of India" by the Appellants at Annexure A-8, to the Application, he further submits that the Black necked Crane breeds in Alpine meadows and riverine marshes, favouring lacustrine marshes from 2600-4900 MSL and winters in river valleys and along riverine shoreline in the vicinity of Barley and spring wheat fields; and such habitat would continue to remain available to the Black necked Crane, even after the project in question takes shape, particularly, on account of pond of water upstream and rice fields along Nyam Jang Chhu River and other Tributaries downstream barrage.

19. All said and done, there has to be application of mind by the EAC in prescribing ToRs and in the appraisal process to the material facts. Even at scoping stage the EAC can take decision and recommend rejection of Application for prior EC, on which the Regulatory Authority is obliged to act in terms of provisions of the Environment Clearance Regulations, 2006- (VII (2) stage-2, Scoping Part-III). The issue raised earlier therefore, needs to be answered affirmatively. The facts, however, reveal that this has not happened. Pertinently, it is revealed by Respondent No.1

MoEF that in the 86th Meeting of EAC (Annexure-2), the EAC took cognizance of Tawang River Basin Study Report conducted by the North-Eastern Hill University (NEHU) and that the Department of Power, Govt. of Arunachal Pradesh has made carrying capacity study of Tawang River basin through NEHU, Shillong; and carrying capacity Study and cumulative impact assessment for river and river basin has been mandatory requirement to consider environment and forest clearance of individual HEPs. The EAC has acknowledged that basin study serves as an important decision-making tool for the Ministry insofar as considerations and grant of EC and FC for HEPs are concerned. The EAC has taken into consideration submissions of NEHU on the issue of conservation of the Black necked Crane and destructing wintering habitat by Nyam Jang Chhu project and concluded that E-flow data computed for Nyam Jang Chhu project, in NEHU draft report (September 2014 version) should be included along with migration measures suggested and separate study on E-flow requirement for protection of habitat and conservation of the Black necked Crane would be commissioned by the MoEF&CC through the Wildlife Institute of India, Dehradun for taking a final decision on Nyam Jang Chhu project.

20. The record also reveals that the CIFRI had carried out field study, collected samples and carried out analysis based on commonly used environment stop methodology for estimation of environment flow required for maintaining aquatic life in the river and migration of fishes, and has made following recommendations in its final report dated July, 2011:

- a)** The minimum environmental release of 3.5cumecs from the barrage during lean period is recommended for maintaining the aquatic life in the river
- b)** The recommended discharge of 3.5cumecs will maintain flow depth and flow velocity of 0.55m and 0.36 m/s respectively.
- c)** A suitably designed fish ladder should be provided in the barrage to facilitate fish migration for sustenance of the native fish population.
- d)** Hatchery unit for indigenous species, nursery ponds, rearing ponds, stocking ponds must be created prior to storage of water in the barrage. Regular ranching of seeds of this species would be an alternative to natural recruitment.

21. However, this report has surfaced only after public consultation held in February, 2011. Respondent No.1-MoEF submits that Tawang basin study is already a cumulative impact study carried out and takes care of alleged concerns and Nyam Jang Chhu being the only project in the entire catchment of Nyam Jang Chhu River,

and no more study is required as regards micro-hydel power project of Khangtang and Shyrao as necessary clearances have been obtained and they are 32-40 km away from the project and are being used primarily to displace use of diesel as a fuel during construction of the project. Learned Counsel appearing on behalf of MoEF further submits that it needs to be left to the discretion of EAC and MoEF to decide whether fresh 'public hearing' or consultation are required on account of changes in scope alignment/project features/operation regime and fresh studies commissioned for project.

22. It is true that hydel power project provides eco friendly renewable source of energy and its development is necessary, however, we are of the considered view that such development should be 'sustainable development' without there being any irretrievable loss to environment. We are also of the view that studies done should be open for public consultation in order to offer an opportunity to affected persons having plausible stake in environment to express their concerns following such studies. This would facilitate objective decision by the EAC on all environmental issues and open a way for sustainable development of the region. In order to do justice in the matter, therefore, we pass the following directions:

- i)** The EC dated 19.4.2011, is suspended till the time the studies as directed are carried out, public consultation thereon done, the EAC considers outcome of such public consultation, carries out a fresh appraisal of proposal for grant of EC, makes recommendation to the MoEF&CC, and the MoEF&CC acts upon such recommendations in accordance with law.
- ii)** The MoEF&CC shall cause to be made a separate study of E-flow requirement for protection of habitat of the Black necked Crane and for conservation of the Black necked Crane through the Wildlife Institute of India, Dehradun, as expeditiously as possible and make such study report along with Tawang River Basin study available for 'public consultation' and shall hold 'public consultation' in compliance of the aforesaid direction in accordance with law.
- iii)** The EAC shall thereupon, make fresh appraisal of the proposal for grant of EC and take appropriate decision for making recommendations to the MoEF&CC, who shall take decision thereupon in accordance with law.
- iv)** The Appeal stands disposed of with no order as to costs.

Justice U.D.Salvi
Judicial Member

Prof. A.R. Yousuf
Expert Member

3038

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

Appeal No. 79 of 2014

(M.A. Nos. 694/2014 & 511/2015)

In the matter of:

1. Debadityo Sinha
R/o III Floor, 943A/8,
Govindpuri, Kalkaji,
New Delhi- 110019
 2. Shiv Kumar Upadhyay
R/o 36/30, Shivpuri Colony,
Station Road, Mirzapur,
Uttar Pradesh- 231001
 3. Mukesh Kumar
Room No. 65, Aravalli Hostel,
Rajiv Gandhi South Campus-Banaras Hindu University
Village- Barkachha, District Mirzapur,
Uttar Pradesh
- Appellants

Versus

1. Union of India
Through the Secretary
Ministry of Environment, Forests & Climate Change
Indira Paryavaran Bhavan
Jor Bagh Road,
New Delhi- 110 003
 2. Government of Uttar Pradesh
Through its Chief Secretary
Lal Bahadur Shastri Bhavan
UP Secretariat
Lucknow- 226001
 3. Uttar Pradesh Pollution Control Board
Through its Member Secretary
Vibhuti Khund, Gomti Nagar
Lucknow- 226010
 4. M/s Welspun Energy (U.P) Pvt. Ltd.
III Floor, PTI Building, Parliament Street
New Delhi- 110001
- Respondents

Counsel for appellants:

Ms. Parul Gupta, Advocate for applicant

Counsel for Respondents:

Mr. Vishwendra Verma and Ms. Shivali, Advs.
for respondent no. 1 with Dr.M. Ramesh, Scientist 'D'
Ms. Savitri Pandey, Adv. for respondent nos. 2
Mr. Pradeep Misra, Mr. Manoj Kr. Sharma and
Mr. Daleep Dhayani, Advs for respondent no.3
Mr. Dhruv Mehta, Mr. Sanjeev Kumar, Mr. Varun
Shankar, Mr. Abhishek Puri and Mr. Anshul Seghal,
Advs. for respondent no. 4

Present:

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

JUDGMENT

Per U.D. Salvi J.(Judicial Member)

Reserved on: 5th April, 2016

Pronounced on: 21st December, 2016

1. Environment Clearance dated 21st April, 2014 bearing no. J 13012/12/2011-IA.II (T) granted by the respondent no. 1- Ministry of Environment, Forest and Climate Change (for short MOEF&CC) to the respondent no. 4- M/s Welspun Energy (U.P) Pvt. Ltd. for setting up 2x660 MW Super Critical Coal based Thermal Power Project at Village Dadri Khurd, Teshil Mirzapur, Uttar Pradesh is assailed in the present Appeal.
2. The appellant no. 1-Debadityo Sinha, alumnus of Banaras Hindu University, holding a Masters in Environment Science and Technology, claims to be an Environmentalist working in the field of protection and conservation of environment individually and as a founder of Vindhya Bachao Abhiyan.

The appellant no. 2-Shiv Kumar Upadhyay, states that he is a senior journalist based in Mirzapur and is a co-founder of Vindhya Bachao Abhiyan. The appellant no. 3- Mukesh Kumar states that he is a student of M.Sc.(Tech.) Environmental Science and Technology from Banaras Hindu University at Rajiv Gandhi South Campus of the University in Mirzapur and he is a member of students 'ECO One' organisation specifically formed for active involvement of the students and staff members of the campus in conservation measures in the region.

3. According to the appellants, the Project Proponent suppressed facts to obtain Environment Clearance and there have been violations of the provisions of EIA Notification, 2006 from the beginning of process of grant of clearance till the end; and crucial aspects have been over-looked by the Expert Appraisal Committee and MoEF&CC.
4. Initially, the appellants submit, a proposal for setting up of the project in question was proposed to be located near villages- Hazipur- Katya, Pahai Gaura and Katya, Tehsil Jakhnia and Saidpur, District Ghazipur, UP with land requirement of 850 acres for power plant, green belt and ash pond as per Form-1 dated 31st December, 2010 annexure A-2. However, when the proposal came up for consideration for grant of TOR before the 22nd meeting of the reconstituted Expert Appraisal Committee of Thermal Power and Coal Mine projects held on 4th -5th April, 2011, the information regarding the changed location-District

Mirzapur situate at 140Km from the previous location- was submitted as follows:-

“The proposal is for setting up of 2x660 MW Super Critical Coal based Thermal Power Plant at villages Dadri Khurd, in Mirzapur Sadar Taluk, in Mirzapur Distt. in Uttar Pradesh.....

Coal requirements will be 6.4 MTPA. Coal will be obtained from domestic coal block through SECL/NCL/CCL mines.....

There are no National Parks, Wildlife Sanctuaries, Tiger/Biosphere Reserves etc. within 10 Km of the site. Danti RF, Mirzapur RF, Patehra RF and Gorthara RF is situated within 10 Km from the project site.”

5. The EAC did not ask the project proponent to re-file the information in Form 1 and after considering the said facts found the site suggested in District Mirzapur as unsuitable for the development of the proposed project and accordingly deferred the consideration of the proposal with the direction to the project proponent to look for more acceptable alternative sites in the following terms:

“The proposed site may be in the flood plain of river or very close to it and has forests in the vicinity. The Committee also noted that the other sites identified were rejected by the project proponent itself. The Committee therefore, decided that the project proponent shall identify more alternative acceptable sites and accordingly deferred the proposal for re-consideration at a later stage.”

6. In the 24th meeting of re-constituted EAC (Thermal) held on 2nd May, 2011 the project proponent along with his consultant M/s J.M Environet Pvt. Ltd. gave a presentation and provided the following information as per the minutes of the meeting-
“The proposal is for setting up 2x660 MW Super Critical Coal based Thermal Power Project at villages Dadri Khurd, Mirzapur Sadar Taluk in UP. Land requirement will be 1100 acres, out

of which 798 acres is un-irrigated barren land and 77 acres is waste land. 875 acres land will be used for plant and 225 acres land will be used for railway and pipeline corridor..... The project proponent submitted that the Ganges River is about 22Kms from the proposed site and site is not in flood plain of the Ganges. The project proponent also submitted survey of India toposheet in confirmation of their submission. It was also informed that M/s Welspun Energy (U.P) Pvt. Ltd. had conducted pre-feasibility for availability and route of water pipeline from Upper Khajuri Dam till the proposed project site.....The project proponent informed that they have started collection of AAQ data since April and completed monitoring before onset of monsoon. The Committee decided the same can be used for preparation of EIA Report.”

7. The appellants submit that the location of the project possibly lying in the flood plain or close to it and in the vicinity of the forest- had prompted the EAC to seek alternative site for the project; but the EAC did not discuss the issue of forest land involved in the project and proceeded to prescribe detailed Terms of Reference even when the collection of baseline data was already started prior thereto- vide copy of the minutes of 24th meeting of EAC held on 2nd and 3rd May, 2011 annexure A-4 and TOR letter dated 15th June, 2011 annexure A-5.
8. Finding fault with this scoping project as aforesaid, the appellants further submit that a fresh Form-1 mentioning the

project location at District Mirzapur was submitted by the project proponent on 3rd December, 2011 annexure A-6 well after the grant of TOR and preparation of draft EIA report.

9. According to the appellants the public consultation process the main component of EIA process suffered from many lacunae:

A. Inadequate publicity of public hearing. No means other than publishing notice of the public hearing in Amar Ujala, Mirzapur and Hindustan Times, New Delhi were adopted by the authorities, which consequently lead to unawareness of public hearing among the local rural folk, thereby preventing real participation of the locals in the public consultation process.

B. Public hearing was conducted on 7th April, 2012 at Village Dadri Khurd, Tehsil Sadar, Mirzapur under influence of political leaders, police force and armed private individuals and the locals were denied entry to the public hearing premise.

C. Summary EIA and draft EIA were not made electronically available.

10. The appellants submit that the EAC recommended project for EC overlooking its own observations, siting guidelines and without considering the representations/responses of the affected people, namely Banaras Hindu University and site visit report dated 15th September, 2013. The appellants referred to the following siting criteria laid down by the respondent no.1-MoEF&CC:

- A. Availability of adequate uncultivable and unused land for erecting power plant structures;
 - B. Vicinity to the railway line for laying railway siding for coal transportation;
 - C. Suitability of land from topography, geological aspects;
 - D. Environmentally suitable, absence of sensitive areas and major settlements.
11. The appellants further submitted that the EAC did not verify facts at ground level, particularly, the facts: that the major area of the project site is fertile prime agricultural land used for agriculture grazing purpose surrounded by reserved forest, and the railway line proposed to carry coal from 20 Km distance would pass through forest land requiring forest clearance under Forest (Conservation) Act, 1980. EIA report- Chapter III, Section 3.5.2.1 submitted by the project proponent reveals, the appellants pointed out, that the project is located in a valuable Kaimur sand stone reserve. The appellants submit that the EAC overlooked these facts. As regards the location at Mirzapur, the project proponent had advocated for its selection due to NCL coal reserves within 100 km and presented the EIA report on assumption that coal source was from Kaimur NCL mines. However, the EAC in its meeting held on 20th March, 2013 decided to go ahead with imported coal from Indonesia until domestic coal was available without giving thought to reconsideration of the location of the project. The appellants submitted that the EAC did not consider economic and

environmental impacts of transporting water from River Ganga to Upper Khajuri reservoir and then to the project site. The appellants added that the EAC had previously decided to send a sub-group comprising of C.R. Babu, Shri T.K. Dhar, Shri N.K. Verma and a representative of MoEF to carry out site inspection and yet without conducting the site inspection as previously decided it had dealt with Appraisal Process in a most casual manner.

12. The appellants submit that the EAC did not deal with the representation made by the affected people and blindly relied upon the statement of the project proponent claiming that the several critical issues and deficiencies in the EIA, suppression of the existence of forest land, non assumption of the water resources and human health raised by the affected persons particularly, the Banaras Hindu University were resolved in the meeting with the BHU.

13. The respondent no. 1-MoEF&CC filed brief affidavit dated 15th January, 2015 making a claim that the Environment Clearance in question was granted after following due procedure as laid down under EIA Notification, 2006 and amendments thereto with reference to the EAC meetings held on April 4th and 5th 2011 and May, 2nd and 3rd, 2011 for grant of Term of Reference-EACs consenting to use of baseline data collected from April, 2011 and to three EAC meetings held in March, November, 2013 and March, 2014 to highlight deliberations involved in the process of grant of Environment Clearance. The respondent

no.1- MoEF further explained that since a sub-group of EAC could not visit the site, the EAC delegated the said task to State Government officials of Irrigation Department and further extensively deliberated upon the issue of firm water availability for the project and the impact of water drawl by the project.

14. Despite service of notice to respondent no.2- State of Uttar Pradesh and respondent no.3-Uttar Pradesh Pollution Control Board choose not to file their replies. According to them they had very limited role in the entire process and therefore, no replies are necessary.

15. The respondent no.4-the project proponent filed a detailed reply, dated 24th December, 2014(page 272-546 Vol-I-A) with voluminous documents annexure R-1 to R-48. Respondent no. 4 admitted that the project proponent had filed Form-1 dated 31st December, 2010 annexure R-30 for grant of EC to the project proposed to be setting up at District Ghazipur. However, it contended that the project proponent has chosen to re-file the Form 1 dated 31st March, 2011 annexure R-2 changing the proposed project site to district Mirzapur on 31st March, 2011 and intimated all the Members and Member Secretary of the EAC regarding the change of proposed project site from District Ghazipur to District Mirzapur through an e-mail, along with pre-feasibility report annexure R-3 and the UP Power Corporation Limited as well as Ministry of Coal had granted approval to such changes vide letters dated 1st April, 2011- annexure R-4 and letter dated 24th August, 2011- annexure R-6

respectively. The respondent no. 4 further submitted that the EAC was informed by the project proponent in the 24th meeting held in May, 2011 that it has started collection of the AAQ data since April, 2011 in order to complete the monitoring before the onset of the monsoon and this was approved by the EAC. According to the respondent no.4 as per the MoEF guideline the project proponent was required to collect baseline data for one season except for the monsoon season and as such the collection of baseline data for the purpose and April, 2011 and June, 2011 was started and the MoEF was informed of the same and its use for formulating the EIA report vide letter dated 12th May, 2011.

16. The respondent no.4 further submitted that the project site is located well beyond the highest recorded flood level of River Ganga situated at a distance of 17 km from the project. According to the respondent no. 4 there has been no concealment of any material facts, particularly as regards the presence of reserved forests and wildlife; and this fact has been acknowledged by the District Forest Officer and MoEF vide letters dated 20th April, 2011- annexure R-11 and letter dated 11th October, 2013- annexure R-12 respectively. The respondent no. 4 made reference to the EIA report (annexure R-13) in that regard. Respondent no. 4 in its reply referred to the minutes of the 13th meeting dated 25th March, 2015 and 26th March, 2014 wherein the biodiversity and conservation plan prepared by the consultant of the project proponent was found

to be forwarded to the MoEF and to the Expert Member from Wildlife Institute of India, Dehradun and approved by the MoEF thereafter as well as by the Chief Conservator of Forest (Wildlife). The respondent no. 4 further submitted that the MoEF has duly taken into account the impact on the water resources and approved the project after all the concerns were satisfactorily replied by all the senior officials of the Government of UP as recorded in the minutes of the EAC dated 26th March, 2014. The respondent no. 4 further submitted that the EIA report reveals the efforts and arrangements made to recycle the waste water to attain zero discharge and in inescapable scenario to discharge the quantity of waste water in the nearest drain after meeting the CPCB standards; and as such there will be no significant impact on the surface water quality and discharges shall be curbed to the maximum extent. The respondent no. 4 submits that due care has been taken for dust emission and commercial use of the fly ash generated by the Thermal Power Plant. According to respondent no. 4 the public consultation process was duly conducted as per EIA Notification, 2006; and the public hearing was conducted in the presence of Additional District Magistrate, Regional Officer of the UPPCB, Deputy Superintendent of Police, SDM District Sadar and other top police and administrative officers of District Mirzapur and the proceedings were videographed and the minutes were recorded annexure R-24 and R-25.

17. As regards the concerns raised by the Banaras Hindu University and Vindhya Bachao Manch, the respondent no. 4 submitted that the meeting was held with the BHU on 8th October, 2014 and 10th October, 2014 wherein after deliberations the respondent no. 4 gave its commitment to the installation of the ESP's with 99.9% efficiency, to the compliance with conditions of CWC ash utilization plan etc. and has adequately dealt with it by settling the issue. The respondent no. 4 further submitted that it had submitted a detailed point wise clarification to the points raised in the site inspection report by the Vindhya Bachao Manch on 6th February, 2014. Respondent no. 4 further submitted that the proposed Thermal Power Plant would be a boost to sustainable development in the power deficit State of UP and would generate both electricity and employment to improve the socio-economic standards of the locals in the District of Mirzapur. Generally the respondent no.4 controverted the case of the appellants regarding violations of the EIA Notification and suppression/misrepresentation of the material facts with reference to the proceedings in the Appeal and solicited dismissal of the present Appeal.

18. Rival pleadings warrant answers to the following question:

1. Whether the proposal moved for grant of Environment Clearance by the respondent no.4- M/s Welspun Energy (U.P) Pvt. Ltd to the proposed thermal power project in

question was duly appraised and considered by the concerned authorities.

19. We have heard the parties at length and considered the record of the case including the written submissions tendered by the appellants dated 11th April, 2016 and the respondent no. 4 dated 8th April, 2016. State players in the contest, namely, MoEF and Uttar Pradesh Pollution Control Board played supplementary role in support of their roles played in the present case.

20. It is true that there is ever growing demand for the power/electricity for the development and to meet this demand the UP Power Corporation Ltd. entered into a power purchase agreement with respondent no.4- M/s Welspun Energy (U.P) Pvt. Ltd. However, any decision over the issue involving environmental concerns needs to be taken as warranted by the Section 20 of the National Green Tribunal Act, 2010. Principles of Sustainable Development, Precautionary Principle and Polluter's Pay Principle are guiding stars in a journey towards such decision as rightly pointed out in M.C. Mehta's Case [(2004) 12 SCC 118: M.C. Mehta vs. Union of India and Ors.] referred to by the respondent no. 4- M/s Welspun Energy (U.P) Pvt. Ltd. The development has to be a sustainable one for ensuring intergenerational equity. The respondent no. 4- M/s Welspun Energy (U.P) Pvt. Ltd has quoted only a part of the para 48 of the Judgment delivered by the Hon'ble Apex Court in M.C. Mehta's Case (Supra) to highlight its submissions. For

making complete sense of what the Hon'ble Apex Court has to say. One needs to read the entire para. We, therefore, reproduce the entire para 48 herein below for ready reference:

48. Development and the protection of environment are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest, a series of orders have been passed by this Court in T.N. Godavarman case regulating the felling of trees in all the forests in the country. Principle 15 of the Rio Conference of 1992 relating to the applicability of precautionary principle, which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straitjacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.

21. A great caution has, therefore, to be exercised before any developmental activity is allowed to go ahead in order to ensure protection of the environment, which in the words of the Hon'ble Apex Court seeks precedence over economic interest. While concluding the submissions, Learned Counsel appearing

on behalf of the respondent no.4- M/s Welspun Energy (U.P) Pvt. Ltd, fairly made a submission that the project proponent is also open and willing to comply with any additional safeguards in addition to the safeguards stipulated under the EC. We have, therefore, have to cautiously tread our course and reach a balanced decision in the present case.

22. Having realised the need to take such measures necessary for the purpose of preventing and improving the quality of environment and protecting, controlling and abating environmental pollution, the Central Government in exercise of its power under Section 3 of the Environment (Protection) Act, 1986 read with clause d sub-section 3 Rule 5 of the Environment (Protection) Rules, 1986 devised an elaborate mechanism/ procedure to grant prior EC to the projects or the activities as per the EC Regulations, 2006. Environment Clearance Regulations, 2006 categorized the projects and activities into Category A and Category B based on the spatial extent of potential impacts and potential impacts on human health, natural and manmade resources. Admittedly, the project in question is a Category A project and EC Regulations, 2006 envisage in the process of grant of EC therefor the following material stages:

1. Scoping,
2. Public Consultation,
3. Appraisal and
4. Decision for acceptance or rejection of the proposal.

23. In the stage of scoping the Expert appraisal Committee determines detailed and comprehensive Terms of Reference (ToR), addressing all relevant environmental concerns for the preparation of an Environmental Impact Assessment (EIA) report in respect of the project for which prior EC is sought on the basis of information furnished in the prescribed application Form-I/I-A including Terms of Reference proposed by the applicant, outcome of site visit if considered necessary and other information that may be available with the Expert Appraisal Committee. The Terms of Reference so determined are required to be conveyed to the appellants/project proponent by Expert Appraisal Committee within 60 days of the receipt of Form-I. Pertinently, the EAC at this stage itself is conferred with the discretion to recommend to the regulatory authority the rejection of the application for environment clearance and the regulatory authority i.e. MoEF has a discretion to accept such recommendation of the EAC or to reject the application for prior EC. This mechanism build in the EC, Regulations, 2006 emphasises the importance of this stage of scoping, particularly of Form-I therein, which lays the foundation of the Environmental Impact Assessment of the proposed project for its objective appraisal that follows.

24. Next in the chain of the process of evaluation of the potential impacts of the project on environment is the stage of public consultation, a process by which the concerns of the locally affected persons and others, who have plausible stake in the

environmental impact of the project are ascertained. The public Consultation has two components 1) Public hearing and 2) obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project. Appendix IV to the EC Regulations, 2006 prescribes the manner in which its one of the components- a public hearing has to be carried out. At the outset Appendix IV to the EC Regulations, 2006 prescribes that the public hearing shall be arranged in a systematic, time bound and transparent manner ensuring widest public participation at the project site(s) or in its close proximity district wise, by the concerned State Pollution Control Board. Needless to reiterate that the public hearing is carried out for ascertaining concerns of locally affected persons. Response in writing from other concerned persons having a plausible stake in environment or activity are also required to be obtained as a part of another component of public consultation and as such responses are invited by placing on the website of the concerned State Pollution Control Board, the summary of EAC report prepared in the format given in Appendix III-A by the applicant along with a copy of the application in the prescribed form. After completion of the public consultation the appellants is under obligation to address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP, and prepare a final EIA report and submit it to the concerned regulatory authority for appraisal.

25. Following the public consultation the Expert Appraisal Committee is required to carry out appraisal of the proposal for grant of environment clearance before it categorically recommends to the regulatory authority concerned either the grant or rejection of the application for environment clearance. Appraisal involves detailed scrutiny by the Expert Appraisal Committee of the application and other documents, like the final EIA report, outcome of public consultations including public hearing proceedings in a transparent manner in a proceeding to which the applicant is invited for furnishing necessary clarification in person or through authorized representative. Thus, a conspectus of things previous to the appraisal is taken by the Expert Appraisal Committee for the purpose of objective evaluation of merits of the proposal for grant of EC and the recommendations are made thereupon.

26. The regulatory authority, para 8(ii) of the EC Regulations, 2006 stipulates, shall normally accept the recommendations of the Expert Appraisal Committee; and in case where it disagrees with the recommendations of Expert Appraisal Committee, it shall request reconsideration by the Expert Appraisal Committee while giving the reasons for the disagreement within 45 days of the receipt of the recommendations from the Expert Appraisal Committee. The Expert Appraisal Committee in turn has to consider the observations of the regulatory authority and furnish its view on the same within a further period of 60 days and the decision taken by the regulatory authority after

considering the view of Expert Appraisal Committee is regarded as final. This shows an amount of discretion that is also vested with the regulatory authority-in the present case MoEF and the regulatory authority is expected to exercise such discretion in reasonable manner. Para 8 (vi) of the EC Regulations, 2006 voices the sanctity of information or data material to screening or scoping or appraisal or decision on the application in following terms:

“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 or prior environment clearance granted on that basis”.

The reason for such information or data to be sacrosanct is evident from the entire mechanism which is so interconnected that one false or misleading information and/or its deliberate concealment data in the process necessarily has cascading effect on rest that follows.

27. Keeping this process in mind we have to examine the submissions made by the rival parties. The environment clearance dated 21st August, 2014 makes reference to the letters dated 31st December, 2010, 12th May, 2011, 29th June, 2012, 14th January, 2013, 11th February, 2013, 6th February, 2014, 21st February, 2014 and 6th May, 2014 vide copy of the EC at annexure A-1 to the application. Communication dated

31st December, 2010 is a Form-I submitted by the respondent no.4- project proponent seeking prior EC for setting up the thermal power plant in question at Hazipur- Katya, Pahai Goura and Katya, Teshil Jakhnia and Saidpur, District Ghazipur, UP under the hand of Mr. Abhinav Mayank authorized signatory for project proponent. This fact is not disputed, however, respondent no.4- submitted that the project proponent had duly filed the Form-I for the proposed project site to be located at District Mirzapur on 31st March, 2011 and had also intimated all the Members and the Member Secretary of Expert Appraisal Committee regarding the change of the project site from District Ghazipur to District Mirzapur through an email along with the pre-feasibility report on 31st March, 2011 as per annexure R-2 and R-3 to the reply. Reading of annexure R-3 to the reply reveals that it is a copy of email send by Suranjan Sarkar on behalf of the respondent no.4- M/s Welspun Energy (U.P) Pvt. Ltd. enclosed therewith soft copy of the duly filed Form-I and PFR in respect of 2x660 MW Thermal Power Project in UP to various addresses. According to respondent no. 4 there is mere denial of the email dated 31st March, 2011 by the appellants without there being any basis whatsoever. The respondent no.4 to buttress its contentions referred to the reply filed by the MoEF which makes reference to the proposal for District Mirzapur being considered by the EAC in its 22nd and 24th meeting held on April 4th and 5th, 2011 (erroneously referred to as 4-5) and May 2-5, 2011 for grant of

ToR and to the minutes of the EAC meeting dated May 4th and 5th, 2011 at annexure A-4 (page 80).

28. The respondent no.4 also made reference to disclosure made by Dr. M. Ramesh, Scientist 'D' from MoEF before the Tribunal on 5th April, 2016 in support of the fact that the project was assessed on basis of Form-I dated 31st March, 2011 and the acknowledgment of Mr. C.R. Babu of having acknowledged the consideration of the project on the basis of Form-I dated 31st March, 2011 sent by E-mail. Dr. M. Ramesh, Scientist 'D' produced a file containing Note sheets from pages 1 to 11- authenticated copies of which find place on our record at vol-II (documents). We have perused the Note sheet pages 1 to 11. At page 11 a reference is found made to the communication received from respondent no.4 in respect of the present appeal and passing on the information that the appellants could not access revised Form-I from MoEF record and the respondent no.4-company having already submitted revised Form-I and circulated it amongst all EAC Members and Member Secretary through E-mail dated 31st March, 2011. Dr. M. Ramesh appeared to have made endorsement on the said Note sheet for checking the records for the same and nothing more. However, our scrutiny has not revealed any reference to revised Form-I dated 31st March, 2011 in the said Note sheet except one on page 11 as disclosed herein above and placing of the proposal of respondent no.4 for setting up of thermal power plant at Village Dadri Khurd, Teshil Mirzapur, Uttar Pradesh in 24th meeting of

EAC held on May 2nd and 3rd, 2011 for determination of ToRs at page 2 of the said Note sheet dated 10th June, 2011.

29. Material portion of the minutes of EAC meeting dated May 4th and 5th, 2011 at annexure A-4 (page80) reads as under:

“2.10 2x660 MW Super Critical Coals Based Thermal Power Plant of M/s Welspun Energy UP Private Ltd. at villages Dadri Khurd, in Mirzapur Sadar Taluk, in Mirzapur Distt. in Uttar Pradesh- reg. TOR.

“The proposal was earlier placed for consideration in the 22nd meeting held during April 4-5, 2011 wherein the Committee noted that the proposed site may be in the flood plain of river or very close to it and has forests in the vicinity. The Committee also noted that the other sites identified were rejected by the project proponent itself. The Committee therefore decided that the project proponent shall identify more alternative acceptable sites and accordingly deferred the proposal for re-consideration at a later stage.

The proposal was again placed for re-consideration for determination of terms of reference for undertaking EIA/EMP study as per the provisions of EIA Notification, 2006. The project proponent along with its consultant M/s J.M Environet Pvt. Ltd. gave a presentation and provided the following information:

The proposal is for setting up of 2x660 MW Super Critical Coal Based Thermal Power Plant at Villages Dadri Khurd, in Mirzapur Sadar Taluk, in Mirzapur Distt. in Uttar Pradesh. Land requirement will be 1100 acres, out of which 798 acres is unirrigated barren land and 77 acres is waste land. 875 acres land will be used for plant and 225 acres land will be used for railway and pipeline corridor. The co-ordinates of the plant site are at Latitude 24°58’51.2’’N to 25°00’5.43’’N and Longitude 82°39’34.1’’E to 82°40’52.71’’E. Coal requirements will be 6.4 MTPA. Coal will be obtained from domestic coal block through SECL/NCL/CCL mines. Area requirement for ash/pond dyke will be 225 acres including green belt. Water requirement will be 45 MCM/annum, which will be sourced from the Upper Khajuri Dam and Ganga River through a pipeline about a distance of 4km and 17 km respectively from project site. There are no National parks, Wildlife sanctuaries, Tiger/Biosphere reserves etc. within 10 km of the site. Danti RF, Mirzapur RF, Patehra RF and Gorthara RF are situated within 10 km from the project site.

The project proponent submitted that Ganges River is about 22 Kms from the proposed site and site is not in the flood plain of the Ganges. The project proponent also submitted Survey of India toposheet in confirmation to their submission. It was also informed that M/s WAPCOS has conducted pre-feasibility for availability and route of water pipeline from Upper Khajuri Dam till the proposed project site.

The Committee noted that details of water availability need to be extensively examined and a detailed source of water sustainability study shall be submitted.

The project proponent informed that they have started collection of AAQ data since April and complete monitoring before onset of monsoon. The Committee decided that the same can be used for preparation of EIA report.

Based on the information provided and presentation made, the Committee prescribed the following specific ToRs for undertaking detailed study and preparation of EMP.....”

30. Nowhere in the minutes of the 22nd and 24th EAC meeting held on April 4th and 5th, 2011 and May 2nd and 3rd, 2011 respectively we find reference to revised Form-I dated 31st March, 2011 except the fact that it referred to thermal power project at Village Dadri Khurd, Teshil Mirzapur, Uttar Pradesh.
31. In the sur-rejoinder filed by the respondent no.4 (page 2070) the respondent no.4 submitted that in addition to E-mail sent by the project proponent to the EAC and revised Form-I was submitted to the MoEF by hand on 31st March, 2011 which was duly signed by Mr. Ravikant Verma, General Manager, Corporate Affairs with proper verifications; and letter of MoEF had informed that the revised Form-I by hand on 31st March, 2011 was misplaced and as such MoEF made a request to the project proponent to provide a copy of the revised Form-I and as such the revised Form-I was submitted by hand to the MoEF on

3rd December, 2011. A copy of the Board resolution dated 25th March, 2011 authorizing Mr. Ravikant Verma to sign Form-I is annexed to sur-rejoinder at annexure R-48 a copy of the Basic Information Form signed by the authorized signatory Mr. Ravikant Verma dated 31st March, 2011 is also produced along with sur-rejoinder at annexure R-49.

32. The appellants specifically contends in the backdrop of the aforesaid facts as disclosed that the determination of ToR was done on the basis of a basic information- a concise document circulated for the convenience of EAC and not Form-I dated 31st March, 2011. Learned Counsel appearing on behalf of the appellants compared the data furnished through basic information document annexure R-49 (Page 2092), copy of the Form-I dated 31st March, 2011 at page no. 2362 and fresh Form-I dated 3rd December, 2011 submitted after grant of ToR dated 15th June, 2011 (Page 86) and pointed the following discrepancies.

<i>Basic Information</i>	<i>Form-I along with pre-feasibility report</i>	<i>Fresh Form-I</i>
<i>Land Requirement- 1100 acres, out of total land 798 acres is unirrigated barren land, 77 acres is waste land, 875 acres for plant and 225 acres is for railway and pipeline corridor.</i>	<i>Total area of land is 850 acres. Government land: 9.88%, private land 90.12% unirrigated land 93.88%, barren land 5.25% water bodies 0.87%.</i>	<i>Land 875 acres, Government land 11.1% private land 88.9%, single cropped agricultural land 1.78% barren land 97.50%, water bodies 0.62% human settlement 0.02%.</i>

33. Learned Counsel appearing on behalf of the appellants further pointed out that the signatures of the authorised signatory in all the documents, namely, Form-I dated 31st March, 2011 (page 383), Basic Information (page 2094) and Form-I dated

31st December, 2011(page112) vary and lacks proper verification as per EIA amendment dated 1st December, 2009. Learned Counsel appearing on behalf of the respondent no.4 submitted in counter that there is no bar on the EAC to consider the basic information form as the source of information and the project proponent stands by the information submitted in the Form-I dated 31st March, 2011 sent vide e-mail to the EAC Members and as submitted during the course of the arguments as the true facts available to it at the relevant times, and the verification is merely a procedural defect which can be cured and cannot be held fatal to the credibility of the Form-I. In support of his submission Learned Counsel appearing on behalf of respondent no.4 quoted the observations made by the Hon'ble Apex Court as follows:

Kiran Shankar Kathore V Arun Dattaray Sawant (2014) 14 SCC 162

Para34. "... The Court, however upheld the view of the High Court holding that on perusal of the affidavit, there was substantial compliance with the prescribed format. Even when some defect was found in the verification of the election petition, it was held that the said defect is also curable and cannot be held fatal to the maintainability of the Election Petition. In the present case we are concerned with the affidavit which a candidate seeking election is required to file along with his nomination form. At the same time, we proceed on the basis that if there is a substantial compliance with the requirements contained in the said affidavits, in the sense that there is a disclosure of required particulars including assets/liabilities it can be treated as adequate compliance with the provisions of the Act, Rules and Orders."

Shaikh Sail Haji Abdul Khayumsab V Kumar and others (2006) 1 SCC 46

Para 10. "All the rules of procedure are handmaid of justice. The language employed by the draftman of

processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice.”

Para 13: “... A procedural law should not ordinarily be constructed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.”

Para 14: “Processual law is not a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

Learned Counsel appearing on behalf of the respondent no.4 added that the Form-I is initiation of the entire process and acts as a guide and cannot bind the EAC. In support he quoted from the Judgment delivered in R. Vermani’s case (R. Veeramani vs. Secretary, Public Works Department and Ors.: Appeal No. 31 of 2012) by the Southern Zone Bench of Tribunal as follows:

Para 56: “....The application is merely an expression of the desire of the proponent to commence a particular project and Form IA is intended for the mentioning of the safeguards necessary for the said new project. Thus the application is only initiation of the entire process. It can only be a guide; but it is neither conclusive nor decisive on the project and cannot control the EC. The contents in Form I can only be one of the guiding factors, but they cannot bind either of the committees, Appraisal or Assessment. The Appraisal Committee is an independent body consisting of experts from different fields and equally, the Assessment Committee. They have to consider all available materials before taking a decision to grant or reject the request. They have to make an independent study and decide the necessary parameters and safeguards for a given project.

Thus the EC is wisdom driven of the Members of the Committees and no doubt, it is not driven by the data and particulars furnished by the proponent in the forms alone. The authority cannot base their decision on the application alone or the contents of the Form. After the application is made along with the safeguards stated by the proponent in Form I and Form IA, the Appraisal Authority at the time of appraisal, can add number of safeguards for the project...”

34. If one looks at para 7(i) stage II of the EC Regulations, 2006 dealing with the process of scoping it is not difficult to find that all the information furnished in the prescribed application Form-I, forms the basis of detailed and comprehensive Terms of Reference addressing all relevant environmental concerns for the preparation of Environmental Impact Assessment Report in respect of the project for which prior EC is sought in as much as potential impacts of the project are assessed with reference to the information revealed in Form-I. Though, there is no bar on the EAC to consider basic information as a source of information, the EAC has to consider details of the activity in relation to:

- (i) Construction, operation or decommissioning of the project, involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies).
- (ii) 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)
- (iii) Use, storage, transportation, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about actual or perceived risks to human health.
- (iv) Production of solid wastes during construction or operation or de-commissioning.

- (v) Release of pollutants or any hazardous, toxic or noxious substances to air.
- (vi) Generation of Noise and Vibration, and Emissions of Light and Heat.
- (vii) Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, ground water, coastal waters or the sea.
- (viii) Risk of accidents during construction or operation of the project, which could affect human health or the environment.
- (ix) Factors which should be considered (such as consequential development) which could lead to environmental effects or the potential for cumulative impacts with other existing or planned activities in the locality.
- (x) Environmental sensitivity.

Furnished in Form-I

Before detailed and comprehensive Terms of Reference addressing all relevant Environmental concerns for the preparation of Environmental Impact Assessment Report are determined, it is worthwhile to note, the EAC is expected to be pro-active in as much as to look for other information as to would be available, and secondly it has discretion to reject the application at the stage of scoping upon the total view of the material before it and in that context observations made by the Southern Zone Bench of this Tribunal in R. Veeramani's Case

regarding the role of the EAC and its authority to vet the information furnished and be bound by it are misplaced as regards the present case. However, in view of the discrepancies pointed out in basic information, Form-I and fresh Form- I furnished by the respondent no.4 as pointed earlier, legitimate questions as regards the objective consideration of the information furnished to the EAC for determining the detailed and comprehensive ToRs arise,. In our view all the information furnished and considered by the EAC for the determination of ToR is a raw material for the Terms of Reference determined from which the draft EIA report takes shape- a material step for further stages of public consultations, appraisal, recommendations of EAC and ultimately for grant of EC.

35. Learned Counsel appearing for the appellants submitted that the EIA Notification, 2006 makes it mandatory that all the projects which requires EC need to undergo the scoping process and the appraisal not done on the basis of proper scoping process on the basis of Form-I is a substantial non-compliance. He invited our attention to the observations made by this Tribunal at para 120 of the Judgment delivered in S.P. Muthuraman's case (O.A. No. 37 of 2015): S.P. Muthutraman vs. Union of India & Ors.0 Judgment dated 7th July, 2015 reported in Manu/GT/0016/2015 "that the provisions of this enactments are substantive and mandatory.....if compliance is not made to the provisions of this enactments it will totally frustrate the Polluters Pay Principle and thus Polluters Pay

Principle adversely affect the environment, protection of which is the sole objective of the Act of 1986.....” Thus, we have no hesitation in holding that the provisions of Notification 2006 are mandatory and procedural simplicitor”. We do subscribe to this view in relation to the present case for the simple reason that even the smallest lapse in furnishing the information or data material to screening or scoping or appraisal or decision on the application would leave lasting effects possibly adverse impacts on the environment or sustainable development, if information or data is misleading.

36. Nature of the land involved in the project and its expanse are material aspects in determination of adverse impacts of any project on the environment which going by its definition at Section 2(a) of Environment (Protection) Act, 1986 includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings and other living creatures, plants micro-organism and property. According to the appellants from the stage of scoping to the final stage of appraisal the project proponent projected a misleading picture about the nature and expanse of the land involved as follows:

- (i) Form I dated 3.12.2011- In response to query at sl. 2.1- **Barren land 97.58 %** (pg 99)
- (ii) Final EIA report- (1) sl no. 9 Present land use at the site- **“mostly barren”** pg 565
(2) para 2.4.1- Factors considered for site selection- **“Availability of adequate uncultivable and unused land for erecting power plant structures”**(pg 579)
- (iii) Letter dated 12.07.2011- Reasons given to Ministry of Coal for change of site from Dist. Gazipur to District Mirzapur

which states **“barren and single crop land”** and **“No forest land involved”**(pg 412)

He further pointed out that use of such wrong terms on which the impugned EC is based found its expression in the EC dated 21st August, 2014 in the following terms “land required will be 875 acres, out of which 15.63 acres will be single cropped agricultural land; 859.37 acres will be barren land”. In support of its contentions that it is not a barren land the applicant invited our attention to the following:

- (i) Study report of project site under taken by WAPCOS.
- (ii) Revenue records of project site in village Dadri Khurd, Teshil Mirzapur, Uttar Pradesh.
- (iii) Additional affidavit filed by the appellants on 5th April, 2016
- (iv) Photographs of irrigation structures check dams, grazing and agricultural lands.

Para 3.1 of Area Drainage Study Report of the project site undertaken by WAPCOS for the project in question reveals that from the observations made by the WAPCOS team upon the site visit and from Study of survey data of plant area, the team observed that most of the plant area was found covered with trees/vegetation and grass; and though no agricultural activity was noticed on entire plant area, the team found that most of the land was being used for grazing and tree plantations and thus dense forest was noticed at South-eastern part of the plant area at higher elevation of about 220 to 233m. Revenue records

of the project site produced by the appellants during hearing on 2th April, 2016 describe the land as 'Parti Bhumi' i.e. fallow land and not a barren land. Additional affidavit of the appellants dated 5th April, 2016 placed before us the relevant extracts from National Resource Census Project Report 2004-2005 of Indian Space Research Organization and Wasteland Atlas of India titled "Control Sheet". Definition of fallow land as found in the National Resource Census Project Report is as under:

Fallow land: These are the lands, which are taken up for cultivation but are temporarily allowed to rest, un-cropped for one or more seasons, but not less than one year"

Barren land from its very description conveys a meaning that it is unfertile not supportive of any vegetation. Definition of barren land in "Wasteland Atlas of India" describes it as: The rock exposures of varying lithology often barren and devoid of soil and vegetation cover. Thus absence of any vegetation is hallmark of a barren land. Description of the land for the project as a 'barren land' is therefore, a misleading description.

37. Learned Counsel appearing on behalf of the appellants further invited our attention to IL&FS Technical EIA Guidelines Manual for thermal power plant- August, 2010 prepared for the MoEF, Government of India. Purpose of developing such sector specific technical guideline manual is to provide clear information on EIA to all the stakeholders. It gives guidelines

for site selection of coal based thermal power station and general siting factors (page 2748 to 2749). At the outset it exhorts the stakeholders to recognise that no forest land shall be used for non-forest activity and no prime agricultural land shall be converted into industrial site. As regards the site selection for thermal power station, it makes reference to the Guidelines of Central Electricity Authority, Government of India for site selection of coal based thermal power station which advice the selection of site near to coal source, accessibility by road and rail. These guidelines spells out the priorities for site selection as follows:

First priority is given to the sites those are free from forest, habitation and irrigated/agricultural land. Second priority is given to those sites that are barren, i.e. wasteland, intermixed with any other land type, which amounts to 20% of the total land identified for the purpose.

38. Guidelines for site selection of coal thermal power station set by MoEF are made available in the said manual as under:

- *Locations of thermal power stations are avoided within 25km of the outer periphery of the following:*
 - metropolitan cities;
 - National park and wildlife sanctuaries;
 - Ecologically sensitive areas like tropical forest, biosphere reserve, important lake and coastal areas rich in coral formation;
- *The sites should be chosen in such a way that chimneys of the power plants do not fall within the approach funnel of the runway of the nearest airport;*
- *Those sites should be chosen which are at least 500m away from the flood plain of river system;*
- *Location of the sites are avoided in the vicinity (say 10km) of places of archaeological, historical, cultural/religious/tourist importance and defense installations;*
- *Forest or prime agriculture lands are avoided for setting up of thermal power houses or ash disposal.*

39. In this backdrop the contentions raised by the appellants that there was deliberate concealment of forest land by the appellants in the present case gains significance. Learned Counsel appearing on behalf of the appellants submitted that the project proponent concealed the presence of forest within the plant boundary in Form-I dated 3rd December, 2011 as well as in the EIA Report (Page 621) with the statement that there is no forest land within plant boundary.

40. Perusal of the Form -1 dated 03-12-2011 (page no. 93) reveals clear statement of the fact at entry in serial no. 21-23 of the Form-1 that no forest land is involved and as such, the proposal does not call for clearances under the Forest Conservation Act, 1980. Perusal of the EIA Report (page no. 621) also reveals a categorical assertion that no forest land is within the plant boundary. It is pointed out by the Appellants from the Form-1 that the project envisages approach road connecting SH-5, 15.5 kms distance railway line from Sarsogram railway station and 17 kms of pipeline (31kms as per the EIA Report page no. 601) to fetch water from River Ganga and all this passes through the Reserve Forest.

41. To highlight this fact the Appellants drew our attention to the table no. 3.18 in the EIA Report (page no. 668) which is reproduced herein below:

S. No.	Name of R. F.	Distance from Project boundary	Direction from Project Boundary
1	Danti RF	Adjacent to the project site	N
2	Barkachha RF	8.5 km	NW
3	Mirzapur RF	Adjacen	S
4	Sarson RF	5.5km	SE
5	Malua RF	8.5km	SW

6	Karaunda RF	5km	SW
7	Patehra RF	5km	SW
8	Bahuti RF	6.5 km	W
9	Newaria RF	10 km	SW
10	Nanutu RF	7 km	E
11	Golhanpur RF	6.5 km	E

42. It is very clear from the aforesaid table that project site is surrounded by reserved forest from all sides. The Appellants also invited our attention to the photographs at page no. 159-159A of the actual site to point out that the SH-5 passes through the reserved forest area as could be noticed from the signboard of forest department (“this road belong to Forest Department Regional Forest Officer Madihan DFO, Mirzapur, Forest Division”).

43. The project Proponent relied upon the site visit reports dated 01-08-2008 and 19-11-2012 to contend that the area where the power plant is proposed is not a notified reserved forest/protected forest and/or forest like area. As against this the Appellants have relied upon the area drainage study report of the project site undertaken by WAPCOS. Photographs (page no. 159-159A), satellite imagery- particularly National land use and land cover mapping using multi-temporal AWiFS data available at Bhuvan website.

44. It is noticed that the WAPCOS team upon visit to the project site (30-09-2011) at Dadri Khurd Village found dense vegetation/forest at Southern-Eastern part of the plant area (page 165). It is also correct that Land Use/Land Cover (LULC) map of District Mirzapur (page no. 2990-2992) shows project area mostly occupied by deciduous forest and part of it by

agriculture, plantation. On the other hand, the Project Proponent relies upon the judgments delivered in Application No. 19(T_{HC})/2013 dated 08-08-2014 titled as Nisraga Vs. Assistant Conservator of Forests as well as in New Okhla Bird Sanctuary case [(2011) 1 SCC 744: in In Re construction of park at Noida near Okhla Bird Sanctuary]. The Hon'ble Apex Court in In Re-construction of park at Noida near Okhla Bird Sanctuary case observed as follows:

“In support of the applicant's case that there used to be a forest at the project site he relies upon the report of the CCF based on site inspection and the Google Image and most heavily on the FSI Report based on satellite imagery and analyzed by GSI application. A satellite image may not always reveal the complete story. Let us for a moment come down from the satellite to the earth and see what picture emerges from the government records and how things appear on the ground. In the revenue records, none of the khasras (plots) falling in the project areas was ever show as jungle or forest..”

Moreover, the Appellants admit in their affidavit dated 05-04-2016 (page no. 2974) that satellite image per se cannot be relied upon as 100% accurate evidence for forest area. However, it proceeds further to state that the time when the said judgments were passed Google Earth Imagery was most common and Bhuvan Application Services were not developed; and Bhuvan Satellite imagery is based on advance technologies like Multi-temporal(satellite images collected repeatedly over a long time for a year or more), multi-layered(superimposing images from different satellites and sensors) and multi-spectral (involving different radiations other than IR radiation), which when collaborated with ground data gives fairly accurate information

about the present land use and land cover. Even accepting this statement to be correct its collaboration with the ground data is indispensable for giving fairly accurate information. Ground data collection is, therefore, a key to answer the question whether the land was a forest or forest like area.

45. We have therefore to see what site inspection reports have procured for the benefit of decision making. Site visit report dated 01-08-2008 makes a reference to the piece of land in Village Kushiya and Sangra as having been identified in Thesil Lalganj, Haliya, District Mirzapur and having being identified as a forest like area having specified number of trees mentioned therein. It does not say anything about Village Dadri Khurd. Site Inspection Report dated 19-11-2012 (page no. 508) reveals that the inspection of the project site was purportedly carried out by team of Forest Officials, Scientist from MoEF, Project Proponent, Villagers from Mirzapur and Sh. Balram Singh, President, Van Upvan Conservation of Nature Environment Society. The team after going through the reports of the DFO Mirzapur dated 16-08-2013 and 13-09-2013 as well as revenue records of Village Dadri Khurd drew conclusions as follows:

1. *Thus from the records available the proposed Welspum Thermal Power Plant site plan included no notified reserved forest/protected forest and forest like area recognized in Mirzapur district in compliance of Hon'ble Supreme Court order.*
2. *The two Gatas 180 and 216 jha with an area of 1.5 ha included in proposed site plan of Welspum Thermal Power Plant is revenue recorded Jhari (forest). The ownership belongs to UP Govt. and it is in process of transfer to the*

company. If this is used for non-forestry purpose, it requires approval of Central Govt. under Forest (Conservation) Act.

46. Poking holes in this report, the Appellants pointed out that the report is signed only by two officials namely: Dy. Conservator of Forest (Central) and Chief Conservator of Forest (Central) almost a year after and not by all the members of the team.

47. It is further pointed out that Mr. S. N. Mishra, DFO, Mirzapur Forest Division who was the member of the site inspection team addressed a letter dated 16-08-2013 (page no.2051) to the Chief Conservator of Forest(Central) , MoEF making a statement that the project site has 50% of forest like area (page no. 2052). However, there is also a communication dated 13-09-2013 written by the same DFO Mirzapur to the CCF Central, MoEF with reference to list of forest like area prepared by District Level Committee mentioning that no land from the project area has been identified as forest like area. Pertinently, we do not find any collection of ground data in relation to forest density in the area inspected by site inspection team. This leaves us in wilderness of assumptions and presumptions with no categorical answer as to the nature of the area based on ground data collections.

48. Undoubtedly, the approach road, rail line and water line have to pass through forest lands, and these being material components of the project, the Project Proponent ought to have revealed the involvement of the forest land, in Form-1 filed for the purposes of getting EC Paragraph 8 (v) of the EC Regulation, 2006 stipulates that clearances from other regulatory bodies or

authorities shall not be required prior to receipt of applications for prior environmental clearance of project or activities, or screening, scoping and appraisal or decision by regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to requirement of law, or for necessary technical reasons.

49. Office Memorandum dated 09-09-2011 issued by MoEF stipulates that EC is issued only after stage -1 forest clearance has been submitted by Project Proponent and if same is not submitted within time limit prescribed under the said Office Memorandum proposal of the EC would stand rejected and the entire process of obtaining EC will have to be initiated *de novo*. With reference to the guidance document for taking up of non-forest activity in forest dated 19-12-2012, learned Counsel appearing on behalf of the Appellants submitted that the Project Proponent has to apply simultaneously for Environment and Forest and NBWL clearances and a complete clearance is obtained only when requisite clearances are obtained by Project Proponent. As observed above the proposal for grant of EC involves forest land. It is therefore, not correct to submit that the forest clearance is not a criteria for grant of EC under the EIA Notification.

50. Learned Counsel appearing on behalf of the appellants further brought to our notice that not only the project involves use of forest land for coal transportation, water pipeline but there is no discussion in the EIA report regarding the potential impact

of the fragmentation of the forest and disturbance of wildlife due to the passing of the railway line for coal transportation, construction of transmission line, water pipeline and approach road. From the facts noticed herein above, it is evident that the project is surrounded by forest and involves 'Parti Bhumi' (fallow land) thereby signifying least anthropogenic activity at or around the project site and, thus the issue of wildlife in the area deserves serious consideration. EIA report (page 668) and the table provided therein (Page 669, 675) make mention of having not noticed any endangered species within the area of project site and the area lying in 10 km of the radius therefrom. However, the appellants pointed out to the response received by them to the RTI query dated 27th August, 2013 (page 161, 162) providing the list of Schedule I species- Sloth Bear, Chinkara, Black Buck, Bengal Monitor, Peafowl, crocodile (Magar) etc. within the project site and 10 km radius area. The project proponent relied upon the bio-diversity assessment and conservation plan and submitted that the EAC in its meeting dated 23rd March, 2014 had found the site report/plan in order. It has been pointed out that the site plan was prepared after the EIA report and public hearing and no study was undertaken to assess the impact of the project and its ancillary activity like coal transportation, water pipeline, approach road, ash ponds and such other impacts on the wildlife in the region. Para 4.3.1.3 (page 1058) of the report adds credence to this contention in following terms: *"this survey needs to be carried*

out with the wildlife experts and the State Authority, Department to identify the areas or forest need all the conservation and management interventions which are highly crucial.” Facts revealed before us do not show that any member of the EAC or Expert member of WII conducted any site visit of the project to assess the gravity of exception taken to the project upon the issues raised in relation to the forest and wildlife. Appraisal of the project in this regard, therefore, becomes questionable.

51. Water being important component of environment appraisal of the project for accessing its potential impacts on water resources in course of the process of appraisal is also of material importance for answering the question before us. The project envisages drawl of 36 mcl of water from Ganga and its transportation through 24 km of pipeline to upper Khajuri reservoir and thereafter to make supply of the water through 7 km of pipe line to the project site. Upper khajuri reservoir is a rain fed reservoir which according to the project proponent is meant for irrigation purposes. However, the appellants contend that the water in the upper Khajuri reservoir is not only for irrigation purposes but also used for human consumption and caters to the needs of the wildlife in or around the said reservoir. In this context Learned Counsel appearing on behalf of the appellants submitted that upper Khajuri reservoir feeds water to lower khajuri reservoir lying on the River Khajuri- a tributary of Ganga and there has been representation made by Banaras Hindu University regarding the potential impacts of

taking of untreated contaminated water from Ganga to upper Khajuri reservoir and thereafter to the lower Khajuri reservoir which is catering to the need of Banaras Hindu University; and the EAC had completely over looked the critical issues raised by the Banaras Hindu University in that regard and blindly relied upon the misstatement made by the project proponent that the issue with BHU had been resolved.

52. We find from the record, a letter dated 18th September, 2013 (page 174) addressed by Registrar of the Banaras Hindu University to the Secretary, Government of India, MoEF, New Delhi voicing concerns of the University in following words:

I would like to inform you that a Thermal Power Project with capacity 1320 MW Coal based is going to be installed at nearby Village-Dadari Khurd in District-Mirzapur which is 10 km. away from Rajiv Gandhi South Campus of BHU at Barkachha. It is pointed out that the Rajiv Gandhi South Campus is constituent of BHU having running more than 20 self-financing undergraduate and post-graduate courses and other academic activities. A good number of students, teaching and non-teaching staff and their family members are residing in the campus.

In this connection, we have received a letter of General Secretary, a NGO-“Vindhya Environmental Society” and representation of resident of that area. Further, we have also examined by our Faculty Member who belongs to field of Environmental Science & Technology and he has submitted an Environment Impact Assessment Report of 1320 MW bout proposed Coal based Thermal Power Project, which are self explanatory(copy enclosed).

It is needless to mention here that the negative impact of this project may adversely affect their health of students, teachers and other staff residing in the Rajiv Gandhi South Campus. We would like to highlight the fact that entire drinking water supply of the RGSC is from lower Khajur Dam which is fed by upper Khajuri Dam. Any industrial activity in the upper khajuri Dam will jeopardize our water supply.

Keeping in view of the above fact, I request you to kindly consider for reviewing the shifting of place much ahead from the premises of Rajiv Gandhi South Campus,

Barkachha so that the ambiance and environment of this area may keep intact.

This communication from the Registrar enclosed Environment Impact Assessment Report concerning the project in question prepared by Dr. A.K. Pandey, Assistant Professor, Environment Science and Technology, Rajiv Gandhi South Campus, BHU. The respondent no. 4, it appears, made a presentation before the EAC that the issues raised by BHU were resolved in the meeting held on 8th March, 2014 and 10th March, 2014. In that regard our attention has been invited to minutes of the meeting conducted by the project proponent, BHU Faculty and Campus Members on 8th and 10th March, 2014. Reading of these minutes would persuade a reader to believe that discussion was held on following major points:

1. Air Impact and dispersion modelling
2. Water withdrawal scheme
3. Water utilization
4. Waste water management system
5. Coal Quality
6. Coal Transportation.

and after three hours of deliberations it was decided that Welspun Energy UP Pvt. Ltd-Project proponent would be forwarding the following commitments to BHU:

1. Installing of ESP with 99.9% efficiency and operating the ESP
2. Commitment to comply all condition stipulated by CWC on water withdrawal
3. Comply with the commitment of ash utilisation plan
4. Commitment to operate ETP

It is further revealed that BHU desired to be part of environmental and social management review during the operational phase of the project and the project proponent should submit six monthly compliance report along with online

data as per EC condition to the University along with other stakeholders. Significantly, the minutes of meeting do not disclose what exactly the discussions were in the meeting for thrashing out technical issues involved in the major topics purportedly discussed. The EAC also did a lip service to the process of appraisal by merely recording its nod to the presentation made by the project proponent in following terms:

6.The pp has submitted point wise response to BHU vide their letter dated 29th January, 2014 reg. The adverse impacts on the residents of Rajiv Gandhi South Campus due to the project. The same were presented before the Committee. The PP held meetings with BHU on 08.03.2014 and 10.03.2014 and detailed discussions were held on all the issues and provided satisfactory replies. The issues raised by the NGO, Vindhya Environmental Society in their letter to BHU were also discussed in the said meetings in detail. The Minutes of the said meeting were also submitted before the Committee. As desired by BHU, the commitments regarding installation and operation of ESP (with 99.9% efficiency) and ETP, complying with all conditions stipulated by CWC on water withdrawal and complying with proposed ash utilization plan shall be submitted to BHU. The committee recommended that the environmental cell of the PP shall also work in close coordination with BHU.

To compound this issue further the appellants have pointed out that the persons who raised their concerns did not participate in the meeting nor they authorize any person to hold the meeting on their behalf; and Professor Dr. Vijay Kishna who is shown to have attended the meeting held on 8th and 10th March, 2014 in the minutes annexure R-26 (page 1183) asserted vide email dated 23rd April, 2014 that the said meetings were not authorized by Banaras Hindu University and he participated in his personal capacity (page 2061) annexure

R-30; and this fact was brought to the notice of Secretary, MoEF by appellants no. 3 vide email dated 25th April, 2014 annexure R-31. It was therefore, incumbent upon the MoEF to have thoughtfully considered the relevant record and sought clarification from EAC before proceeding to grant the EC. Nothing of this sort is done in the present case.

53. Learned Counsel appearing for the appellants submitted that transporting the massive quantity of Gangetic untreated/contaminated water to the rain fed upper Khajuri reservoir is bound to change the water quality of upper Khajuri reservoir and consequently have impact on the people downstream using the water for human needs. It is further submitted that water withdrawal of 36,000,000,000 litres annually would undoubtedly affect the ecological flow of Ganga and severely affect the Gangetic Biodiversity including Gangetic Dophins found in Mirzapur stretch; and it is wrongly presumed that water withdrawal during monsoon from Ganga would leave no impact on Gangetic environment when there is a record of decline in rainfall in past year with no sufficient water in river in monsoons vide statistical data of rainfall in District Mirzapur annexure A-28 (page 2058). According to Learned Counsel appearing for the appellants both competitive use of water from river Ganga and upper khajuri reservoir and its comulative impact on upstream and downstream have not been discussed in the EIA report. We do find substance in the submission made.

54. It is further pointed out that the Project Proponent revealed in Form-1 dated 03-12-2011 (entry serial no. 10, page no. 110) that the area in question does not fall in any important high quality or scarce resources zone (ground water resource, surface resource, forestry, agriculture, fishery, tourism and minerals), and the EIA report (page no. 633 and 634) disclosed that the project site does not fall in any economically viable zone as per Regional GSI map.

55. The Appellants further points out that the respondent no. 4 in its reply (page no. 342) made reference to the Geological and Mineral Map of District Mirzapur annexure R-47 to state that the District Mirzapur has presence of Alluvium rather than Kaimur sand stone. Coloured map produced at annexure R-58 (page no. 2924) shows that the project area is adjacent to Marihan identified as a Kaimur sand stone area which is an important mineral resource.

56. The record reveals that the Public Hearing was conducted by UPPCB on 07-04-2012 in village Dadri Khurd, District Mirzapur, after publishing the notice of the public hearing in a National Daily- 'Hindustan Times' Delhi edition on 04-03-2012 and in the local Daily- 'Amar Ujala' of the same date, and the meeting was attended by about 190 persons (page 121-127). Two fold exceptions is taken to this public consultation process firstly, that the notice ought to have been publicized in the National Daily published from Allahabad/Varanasi in order to ensure maximum publicity, and secondly, public hearing was

not conducted in free and fair manner there being presence of men holding guns in the meeting as evident from a video clipping.

57. Perusal of the provision prescribing procedure for conduct of public hearing in Appendix IV of EC Regulations, 2006 reveals that notice of public hearing has to be advertised in one major National Daily and one Regional Vernacular Daily/State official language. The procedure stipulated does not say that it needs to be publicised in National Daily published from a particular place.

58. Learned Counsel for the appellants invited our attention to the purpose of public consultation of which the public hearing is one of the important component as mentioned at para 7 (III)(ii)(a). It is correct that public hearing is held for ascertaining concerns of local affected persons. However, the process of public consultation also envisages obtaining of responses in writing from other concerned persons having plausible stake in environmental aspects or project activity. Keeping in mind the procedure prescribed in clear terms at 3.0 under Appendix IV of EC Regulation, 2006. We are of the considered view that the procedure adopted for publication of notice of public hearing has been duly followed in the present case by its advertisement in national daily and local daily.

59. Additional Affidavit (page no. 2936-2944) with photographs filed by respondent no. 4-Project Proponent points out that other mode for publicity was resorted to by the Project

Proponent with the speaker mounted van/jeep for making announcement regarding the public hearing. Exception taken on this ground, therefore, has no merit. However, as regards the conduct of the public hearing itself the videography has revealed the presence of gun toting men amongst the members attending the public hearing. Learned Counsel appearing on behalf of the respondent no. 4 submitted that Village Dadri Khurd being situated in backward Forest area, it is not unusual to find the locals moving with guns. Assuming this to be true it was necessary for policemen on duty to have dis-armed them before they entered the venue of the public hearing. Arms like guns are bound to strike fear in the hearts of men around and dominate their free will. It is, therefore, difficult to call this public hearing as a free and fairly conducted public hearing.

60. EC Regulations, 2006 lay down a chain of interconnected processes to make a complete mechanism required to assess the potential impacts of the project or activities on the environment made of several components. Every piece of information/data furnished and/or collected at every stage of the process is expected to be wholesome free from any twist or turn in order to truly aid the correct appraisal of the potential impacts of the project. This expectation of law is evident from the checks and balances provided in EC Regulations, 2006.

61. Cumulatively, therefore, the entire process of consideration and appraisal of the proposal to grant EC is found tainted so as to render it less credit worthy than the one expected by law and

as such makes it even more difficult to suggest the safeguards in order to render the project sustainable one. We, therefore, answer the question raised herein above negatively. In our opinion, it is advisable to go through the entire process of EC afresh before green signal is given to the project.

We, therefore, allow this Appeal and pass the following directions:

- 1. The Appeal is allowed and EC dated 21-08-2014 is set aside.
 - 2. Respondent no. 4 shall not carry out any developmental work at the project site.
 - 3. The respondent no. 4 shall restore the area to its original condition.
 - 4. Work of restoration is stayed for a period of two months.
62. In view of the above directions Appeal No. 79 of 2014 stands disposed of. M.A. Nos. 694 of 2014 and 511 of 2015 also stand disposed of.

....., JM
(U.D. Salvi)

....., EM
(Ranjan Chatterjee)

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA

401

(2019) 15 Supreme Court Cases 401

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

a

Civil Appeal No. 12251 of 2018[‡]

HANUMAN LAXMAN AROSKAR

.. Appellant;

Versus

UNION OF INDIA

.. Respondent.

b

With

Civil Appeal No. 1053 of 2019

FEDERATION OF RAINBOW WARRIORS

.. Appellant;

Versus

UNION OF INDIA AND OTHERS

.. Respondents.

c

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

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

e

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

f

thereon (Paras 162 to 166)

— Concerns highlighted in judgment:

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

h

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

402

SUPREME COURT CASES

(2019) 15 SCC

(2) Airport operations Collection of baseline data Guidance Manual for Airports specifically requires collection of baseline data on (i) land environment, (ii) water environment, (iii) air environment, (iv) noise environment, (v) biological environment, (vi) socioeconomic environment, and (vii) solid waste — As airport operations might have possible impact on biological environment, collection of baseline data on sensitive habitats and wild or endangered species in project area is contemplated — Baseline data of environmental parameters aid in preparation of an environment management plan (EMP) (Paras 63 to 69)

a

b

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

(4) Duty and onus of project proponent It is duty of project proponent to make full, complete and candid disclosure of all environmental aspects Burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of environment — However, in present case project proponent failed to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1 of EIA Notification, 2006 — Duty to 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)

c

d

e

— (5) EIA report defective — EIA report failed to notice existence of Ecologically Sensitive Zones (ESZs) within buffer distance of 10 km of project site — EIA report must encompass all aspects of environmental concern which render area ecologically sensitive i.e. wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests (Paras 91 and 92)

f

(6) Data collection incomplete Allegedly, no primary data with regard to environmental parameters like air quality, water quality, noise quality and flora and fauna were collected from State of Maharashtra and related only to State of Goa (Paras 93 to 101)

g

(7) Incorrect information about trees EIA report incorrectly stated that area required for proposed airport has only few trees but evidently permissions were granted for felling 54,676 trees — Issues pertaining to vegetational cover must be taken seriously in the EIA process (Paras 102 to 109)

h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA

403

- (8) Issues raised in public consultation not included in EIA — Intrinsic and instrumental value of public consultation — Stages of public consultation — Project proponent's duty to address all material environmental concerns raised during public consultation and make appropriate changes in draft EIA and EMP — Though only seven out of sixty-eight issues dealt with issue of unemployment, project proponent observed that major issue was unemployment — Duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC, which it failed in doing (Paras 110 to 117)
- (9) EAC as an expert body failed to apply mind — Duty to apply mind to documents like EIA report, outcome of public consultation and public hearing proceedings — EAC is under a mandate to conduct process of appraisal in "a transparent manner" — And make a categorical recommendation about grant of EC on stipulated terms and conditions or rejection of EC — Recommendations made by EAC to regulatory authority must be based on "reasons" — Said recommendations constitute substantive material which ultimately affects decision-making process and also might form subject-matter of challenge before Tribunal — However, minutes indicate non-application of mind by EAC with reference to 15 ESZs in study area — In absence of critical analysis EAC failed in discharging its duties under 2006 Notification (Paras 118 to 129)
- (10) NGT as an expert adjudicatory body on environment failed in its duty to exercise the jurisdiction entrusted to it under S. 16(h) r/w S. 20, NGT Act, 2010 by merely deferring decision to recommend and grant an EC — Though several important submissions were urged before it, entire analysis by NGT is contained in one paragraph and next para only deals with requirement of data collection — This does not fulfil requirement of merits review by the expert adjudicatory body like NGT (Paras 130 to 141)
- (11) In environmental governance, means are as significant as ends, process of decision is as crucial as ultimate decision — However, there has been a failure of due process commencing from non-disclosure of vital information by project proponent to non-application of mind by EAC and failure of merits review by NGT — Thus in present case neither decision-making process nor ultimate decision of granting EC can be said to be valid — Bearing in mind that there is an urgency for setting up a new airport to tackle with increasing volume of passengers and at the same time protect environment, time bound directions were issued (Paras 142 to 167)
- Infrastructure Laws — Carriage of Goods and Persons by Air, Land and Sea — Carriage by Air/Aircraft and Airports — Airport Development — EIA Guidance Manual for Airports, 2010 — Forests, Wildlife and Zoos — Demarcation/Determination/Identification of Forest Land — Forest Act, 1927 — S. 20 — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 — Form I — Regulatory Framework, Bodies and Judicial Intervention — Expert Appraisal Committee (EAC) — Duties of and manner of exercise of power while conducting EIA in grant of EC — National Green Tribunal Act, 2010 — Ss. 16(h) and 20 — Duties of and proper

404

SUPREME COURT CASES

(2019) 15 SCC

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

a

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

b

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

c

Generally — Environmental adjudication — Approach to — Constitution of India, Arts. 21 and 19(1)(g) & (g) (Para 164)

C. Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 distinguished from 1994 Notification (Para 41)

d

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

— In laying down a detailed procedure for the grant of an EC, 2006 Notification attempts to bridge perceived gap between environment and development — Development vis-à-vis Ecology: National, Urban and Rural Development — Development Projects — Prerequisites for/Environmental clearance/viability (Paras 45 to 62)

e

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

f

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

g

h

Development Projects — Prerequisites for/Environmental clearance/viability (Paras 45 to 62)

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)

a

Given the environmental consequences of a proposed project, no difference of opinion is provided for in the grant of an EC at the State level. It is further mandated that the project management submit half-yearly compliance reports to the regulatory authority in respect of EC and conditions. (Para 59)

b

Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1-A. Crucial information regarding the particulars of the proposed project is sought to enable EAC or SEAC to prepare comprehensive Terms of Reference (ToR) which the applicant is required to address during the course of the preparation of the EIA. The ToR so prepared addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment. (Paras 60 and 61)

c

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

d

e

C.2. Guidance Manual for Airports

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

f

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

g

h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA

407

(v) biological environment; (iv) socioeconomic environment; and (vi) solid waste. (Para 64)

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

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

D. Forests

c The court cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1. (Paras 70 to 73)

d It cannot be accepted that the disclosure required was of reserved forests comprehended within a notification under Section 20(2) of the Forest Act, 1927. The expression “forests”, means a forest as commonly understood, without reference to a notification under the Forest Act, 1927 or any other statutory enactment. Such an interpretation will subserve the purpose of an EIA. The purpose is to ensure that all relevant facets of the environment are noticed, that baselines are documented, and that the potential impact of a project or activity on the environment is assessed. Forests are forests without reference to recognition in a statutory form devised for a specific purpose. (Para 74)

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

f *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267; *Noida Memorial Complex Near Okhla Bird Sanctuary, In re.* (2011) 1 SCC 744, *distinguished*
Federation of Rainbow Warriors v. Union of India, 2017 SCC OnLine NGT 1964; *Federation of Rainbow Warriors v. Union of India*, 2017 SCC OnLine NGT 1962; *Federation of Rainbow Warriors v. Conservator of Forests*, 2018 SCC OnLine Bom 329 : (2018) 3 Mah LJ 424; *Hanuman Laxman Aroskar v. Union of India*, 2019 SCC OnLine SC 500, *referred to*

Alternative submission that disclosure about forests was made not tenable

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

408

SUPREME COURT CASES

(2019) 15 SCC

the functioning of EAC in the preparation of ToR and in consequence, leads to preparation of a deficient EIA report. (Paras 78 to 81)

The failure on the part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment: a "heads I win, tails you lose" approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law. (Para 82)

E. Ecologically Sensitive Zones (ESZs)

The glaring deficiency which emerges from the EIA report is its failure to notice the existence of ESZs within a buffer distance of 10 km of the project site. The EIA report fails to meet a classical requirement of administrative law: to take into account a relevant consideration, namely, that within the study area which has to be considered, there is the presence of ESZs. (Para 91)

The EIA report must factor in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests. The deficiency of the EIA report emanates from its failure to notice that the purpose of the study was not only to determine whether the project site is ecologically sensitive. Confining itself to this aspect, the EIA report failed to consider a crucial and relevant consideration. (Para 92)

F. Sampling points

The submission of the appellants is that the Guidance Manual requires the collection of primary data through measures and field studies in the study area within 10 km radius from the ARP. Secondary data has to be collected within a 15 km aerial distance for the parameters mentioned in Column 9(III) of Form 1 of the 2006 Notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra. (Para 93)

The grievance is that no data has been collected from the State of Maharashtra and all secondary data collected by the project proponent related only to the State of Goa. There is substance in the submission which has been urged on behalf of the appellant. A reading of the counter-affidavit filed by the State of Goa would seem to support the appellant's submission. (Paras 93 to 101)

F.5. Felling of trees

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

a data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinised the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented. (Paras 102 to 108)

b The purpose of prescribing an EIA report is precisely to undertake a baseline study on all aspects of the environment and to anticipate the impact of a projected activity on the environment. Ignoring *any* component of the environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance. (Para 108)

c Issues pertaining to vegetational cover must be taken seriously in the EIA process. The formula of planting a set number of trees for every existing tree felled must be alive to the fact that the survival of new plantations is replete with uncertainty. The survival of transplanted trees is equally a matter of uncertainty. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 Notification must be transparent, candid and robust. A regulatory regime for environmental governance is based on the hypothesis that all stakeholders will act with rectitude. Hiding significant components of the environment from scrutiny is not an acceptable modality to secure project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy. (Para 109)

G. Public consultation

e The importance of public consultation is underscored by the 2006 Notification. Public consultation, as it states, is "the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate". This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. (Paras 110 to 112)

f Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. (Para 113)

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

h

410

SUPREME COURT CASES

(2019) 15 SCC

concerns raised by stakeholders. The duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC. The minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 Notification in this regard. (Paras 113 to 117)

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

H. Appraisal by EAC

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

- (i) the grant of a prior environmental clearance on stipulated terms and conditions; or
- (ii) the rejection of the application.

The recommendations made by EAC to the regulatory authority must be based on “reasons”. (Para 118)

EAC has failed to consider relevant circumstances bearing on the environmental impact of the project and has instead considered circumstances extraneous to its function. That the project proponent, according to EAC, has not concealed facts and circumstances is not reason enough to warrant a grant of an EC. Moreover, even this hypothesis is incorrect. There is no analysis of the EIA report. EAC has failed to answer to the call to its expertise. (Paras 119 to 125)

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

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

be accepted. Consequently, a failure of due process before EAC, as in the present case, must lead to the invalidation of EC. (Para 129)

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

The failure to consider materials on a vital issue and indeed the non-consideration of vital issues raises a substantial question of law leading to the invoking of the jurisdiction of the Supreme Court under Section 22 of the NGT Act, 2010. The failure of process in the present case has been compounded by the absence of a merits review by NGT. (Paras 132 to 136)

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

The doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. (Para 140)

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

c EAC as an expert body abdicated its obligations to make an expert determination based on reasons. NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it under Section 16(h) read with Section 20 of the NGT Act, 2010 by merely deferring to the decision to recommend and grant an EC. The parameters in regard to the existence of substantial questions of law have hence been established in the classical or conventional sense of that expression. (Paras 130 to 141)

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

e J. Environmental rule of law

Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement—both in developed and developing countries alike. The environmental rule of law seeks to address this gap. (Paras 142 to 155)

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

g In the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive. (Paras 156 and 157)

h

412 SUPREME COURT CASES (2019) 15 SCC

In the present case, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form I. (Para 159)

EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. (Para 160)

In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Bearing in mind the need to bring about a wholesome balance between the development of infrastructure of an airport and the preservation of the environment, time-bound directions should be issued. Bearing in view the necessity to maintain a balance between the need for an airport and environmental concerns, it would be appropriate if EAC is directed to revisit the conditions subject to which it granted its EC on the basis of the specific concerns which have been highlighted in this judgment. (Paras 158 and 161 to 167)

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

SS-D/62216/S

Advocates who appeared in this case :

K.K. Venugopal, Attorney General, Atmaram N.S. Nadkarni, Additional Solicitor General, Datta Prasad Lawande (Goa), Advocate General and Parag P. Tripathi, Senior Advocate [Ms Anitha Shenoy, Ms Rashmi Nandakumar, Ritwick Dutta, Ms K.V. Bharathi Upadhyaya, Ms Kanika Sood, Sany Antony, Ms Srishti Agnihotri, Pratap Venugopal, Ms Surekha Raman, N. Prashant Kumar, Akhil Abraham Roy, Sahil Singh, Ashish Krishnanath Kuncoliencer, Chinmayee Chandra, Rajesh Shiyolker, S. Salvador Rebello, N. Prashant Nair (for M/s K.J. John and Co.), Divya Prakash Pande, G.S. Makker, Niraj Kumar, S.S. Rebello, Ms Suhasini Sen, Suchindran B.N., S.B. Narain, Sriram Srinivasan, Jai A. Delhadrai, Prashant Vaxish, Ms Manisha Ambwani (for M/s K.J. John and Co.), Ms Aastha Mehta, Mahesh Agarwal, M.S. Ananth, Vanshi Rao, E.C. Agrawala and Annam D.N. Rao, Advocates] for the appearing parties.

Chronological list of cases cited

on page(s)

1. (2019) 18 SCC 494 : 2019 SCC OnLine SC 322. *Mantri Techzone (P) Ltd. v. Forward Foundation* 461f g
2. 2019 SCC OnLine SC 500. *Hanuman Laxman Aroskar v. Union of India* 417c
3. 2018 SCC OnLine NGT 831. *Federation of Rainbow Warriors v. Union of India (reversed)* 413g, 417b, 424f g, 458a b, 458b f
4. 2018 SCC OnLine Bom 329 : (2018) 3 Mah L.J 424. *Federation of Rainbow Warriors v. Conservator of Forests* 416f, 448c
5. 2017 SCC OnLine NGT 1964. *Federation of Rainbow Warriors v. Union of India* 416d
6. 2017 SCC OnLine NGT 1962. *Federation of Rainbow Warriors v. Union of India* 416d e
7. 2014 SCC OnLine NGT 15. *Sreeranganathan K.P. v. Union of India* 459e g
8. (2013) 1 All India NGT Reporter 1. *Save Mon Region Federation v. Union of India* 459b c
9. (2011) 8 SCC 161 : (2011) 4 SCC (Civ) 87. *Indian Council for Enviro Legal Action v. Union of India* 458a
10. (2011) 7 SCC 338. *Lafarge Umiam Mining (P) Ltd. v. Union of India* 460c, 461a, 461c, 461c d
11. (2011) 1 SCC 744. *Noida Memorial Complex Near Okhla Bird Sanctuary, In re* 421d-e, 439b, 439c-d h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 413

12. 2009 SCC OnLine Del 3836, *Utkarsh Mandal v. Union of India* 452g
 13. (2000) 10 SCC 664, *Narmada Bachao Andolan v. Union of India* 458a
 14. (1999) 2 SCC 718, *A.P. Pollution Control Board v. M.V. Nayudu* 458a
 15. (1997) 2 SCC 353, *M.C. Mehta v. Union of India* 458a
 16. (1997) 2 SCC 267, *T.N. Godavarman Thirumulpad v. Union of India* 419b, 421d, 421d-e, 438g, 460g-h
 17. (1997) 1 SCC 388, *M.C. Mehta v. Kamal Nath* 458a
 18. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum v. Union of India* 458a
 19. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.* 461g

The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.

INDEX

<i>Sl. No.</i>	<i>Heading</i>	<i>Page No.</i>
A.	Introduction	413
B.	Submissions	417
C.	Scheme of the 2006 Notification and the Guidance Manual for Airports	425
	C.1. EIA process	425
	C.2. Guidance Manual for Airports	434
D.	Forests	437
E.	Ecologically Sensitive Zones (ESZs)	441
F.	Sampling points	444
	F.1. Air quality	444
	F.2. Water quality	445
	F.3. Noise quality	445
	F.4. Flora and fauna	445
	F.5. Felling of trees	447
G.	Public consultation	450
H.	Appraisal by EAC	453
I.	The appellate jurisdiction of NGT: the requirement of a merits review	457
J.	Environmental Rule of Law	462
K.	Directions	468

A. Introduction

1. An appeal was filed before the Principal Bench of the National Green Tribunal (NGT) at New Delhi challenging the grant of an environmental clearance (EC) for the development of a greenfield international airport at Mopa in Goa. NGT, by its judgment dated 21-8-2018¹ came to the conclusion that the present case “is not a case where the project compromises with the environment”. While affirming EC, NGT came to the conclusion that “further safeguards for environmental protection need to be incorporated”. NGT, accordingly, proceeded to formulate additional conditions, while affirming the grant of EC.

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

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 415

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

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

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

e 8. On 20-5-2015, the State of Goa submitted a final EIA report to MoEFCC, seeking the grant of an EC for the project. On 29-5-2015, MoEFCC communicated its approval for extending the validity of ToR until 31-5-2015. Between 24-6-2015 and 26-6-2015, EAC, at its 149th meeting, deliberated on the EIA report and sought additional information from the project proponent, inter alia, on:

- “• 10 years’ data regarding rainfall in the area;
- f* • Drawing of traffic circulation plan for smooth circulation of traffic in the area;
- Minimum 20% energy conservation measures should be adopted in incorporating provisions for use of LED, star rated ACs, and a revised energy conservation plan to be submitted;
- g* • Measures taken to comply with the CPCB guidelines formulated for noise pollution control in airport area to be submitted.”

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

416

SUPREME COURT CASES

(2019) 15 SCC

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

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

10. The grant of EC was challenged before the Western Zonal Bench of NGT (Appeal No. 61 of 2015) by the Federation of Rainbow Warriors. Hanuman Laxman Aroskar also filed an appeal (Appeal No. 1 of 2016) before the Western Zonal Bench of NGT. These appeals were subsequently renumbered (Appeals Nos. 5 and 6 of 2018) before the Principal Bench of NGT at New Delhi. On 7-11-2017², NGT issued an ad interim order restraining the cutting or felling of trees in the area designated as the site of the proposed airport. On 22-11-2017³, the order of restraint was modified on the statement of the Advocate General of Goa that the State shall not cut or fell any trees, nor allow it to take place without valid permission from the lawful authority for a fortnight thereafter in order to enable the appellants to pursue their remedies. On 6-2-2018, the Deputy Conservator of Forests granted permission for felling 21,703 trees at the airport site. The appellate authority under the Goa, Daman and Diu Preservation of Trees Act, 1984 (6 of 1984) dismissed the appeal on 7-3-2018.

11. On 8-3-2018⁴, the High Court of Judicature at Bombay at its seat at Goa set aside the order of the Deputy Conservator of Forests and remanded the matter to be heard by the Principal Chief Conservator of Forests. On 2-4-2018, the Principal Chief Conservator of Forests stipulated several conditions for the cutting and the felling of trees at the site of the airport including: (i) enumeration of trees; and (ii) the plantation of ten times the number of trees felled. Upon being moved in a public interest litigation (PIL), the High Court by its order dated 25-4-2018 allowed the exercise of enumeration to be carried out. As a result, 54,676 trees were enumerated, including the 1548 trees which had been

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

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 417

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

b 12. A miscellaneous application (MA No. 975 of 2018) was filed by the State of Goa before NGT on 2-7-2018 seeking permission for the felling of trees. By its judgment dated 21-8-2018¹, NGT disposed of both the appeals and the miscellaneous application filed by the State of Goa, upholding EC and imposing additional conditions to safeguard the environment. This Court has been informed that the felling of trees was initiated on 3-9-2018 and completed on 14-1-2019. Assailing the judgment of NGT, two appeals have been filed before this Court: one by Hanuman Laxman Aroskar (Civil Appeal No. 12251 of 2018) and the other by the Federation of Rainbow Warriors (Civil Appeal No. 1053 of 2019).

c 13. On 18-1-2019⁵, notice was issued in the appeals and an order of status quo was passed by this Court. The appeals were admitted for hearing and final disposal.

d B. Submissions

e 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.

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

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

h 16.1. There were material concealments by the project proponent in failing to disclose that as many as 54,676 trees were required to be felled. Form I, which was submitted by the project proponent, was silent in regard to the

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

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

418

SUPREME COURT CASES

(2019) 15 SCC

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

“2.1.5. Biological environment

Construction phase

Impacts (Significance-Medium)

The area acquired for proposed airport has only few trees, mainly bushes. These will be cleared during site preparation.”

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

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

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 419

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

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

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

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

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

⁶ (1997) 2 SCC 267

420

SUPREME COURT CASES

(2019) 15 SCC

the course of the public consultation covered a variety of environmental issues. Amongst them was the presence of perennial springs, the porous nature of the laterite plateau where permeation is a source of drainage for water collection and the existence of cashew plantations on which the livelihood of the local residents depends. Under the 2006 Notification, the State Pollution Control Board (SPCB) was required to collate the issues raised and the response of the project proponent, before submitting required documents to EAC. Before EAC, the project proponent in its presentation, indicated that the objections were only about employment opportunities. The project proponent clearly failed in its duty to appraise EAC about serious environmental concerns which were raised during the course of the public consultation.

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

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 421

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

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

b 21.1. The submission of the appellants was not raised either in the public hearing or in the grounds urged before NGT, but was addressed in the written submissions filed before NGT and when a map of the Surveyor General of India was produced.

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

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

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

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

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

h ⁶ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267
⁷ (2011) 1 SCC 744

422

SUPREME COURT CASES

(2019) 15 SCC

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

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

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

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

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

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 423

25.3. A strict prohibition on “red category” industries.

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

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

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

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

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

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

d **27.2.** At its 151st meeting held on 7-9-2015 to 9-9-2015, EAC took note of a representation filed by the Federation of Rainbow Warriors and deferred further consideration of proposal for the grant of EC. The project proponent was called upon to submit a response to the issues raised in the representation.

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

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

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

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

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

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

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

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

424

SUPREME COURT CASES

(2019) 15 SCC

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

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 21-8-2018¹, NGT disposed of both the appeals as well as the miscellaneous application. Moreover, NGT has specifically dealt with the felling of trees in the course of its distinction.

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 425

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

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

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

(ii) PTB-foundations and column works; and

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

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

d **33.** The rival submissions now fall for our consideration.

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

C. 1. EIA Process

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

f **35.** The Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from 3-1-1977, inserted Article 48-A to the Constitution which mandates that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51-A(g) of the Constitution places a corresponding duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm (the Stockholm Conference) in June 1972 in which India participated, Parliament enacted the Environment (Protection) Act, 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

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

426

SUPREME COURT CASES

(2019) 15 SCC

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

a

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.

b

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.

c

d

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:

e

“...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.”

f

g

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.

h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 427

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

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

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

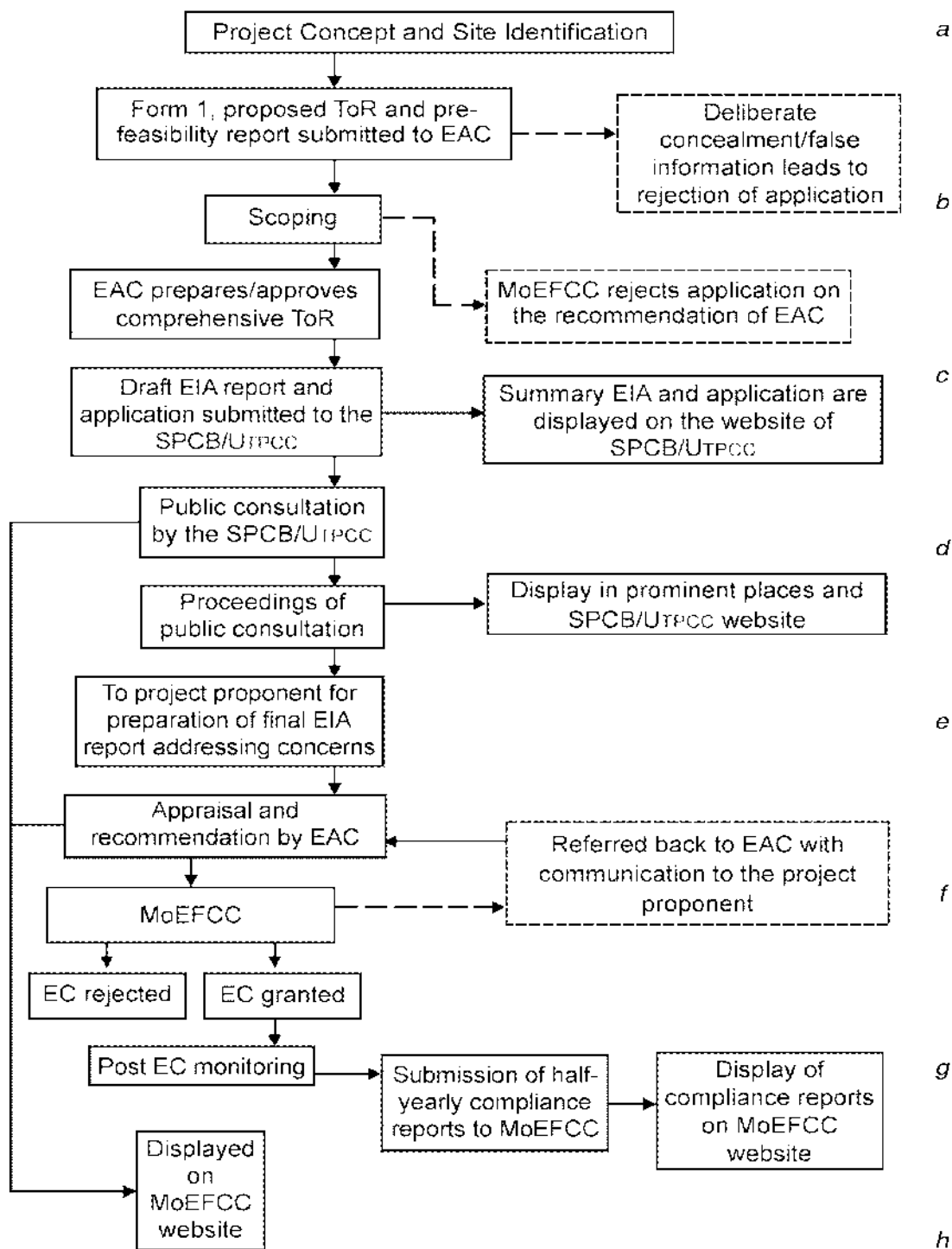
41.5. Under the 1994 Notification, the final approval was granted by IAA. Under the 2006 Notification, though the final regulatory approval is granted by MoEFCC or SEIAA, as the case may be, the approval is to be based on the recommendations of EAC functioning in MoEFCC or the State Expert Appraisal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

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

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

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

EIA Process for Category 'A' projects



HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 429

- 43.** Based on the spatial extent of the potential impact and the potential impacts on human health and natural and man-made resources, the 2006 Notification categorises all projects into Category 'A' and Category 'B' projects. MoEFCC in the Central Government and SEIAA at the State level constitute the regulatory authorities for the purposes of the notification. Category 'A' projects require prior environmental clearance from MoEFCC, based on the recommendation of EAC constituted by the Central Government for this purpose. Category 'B' projects will require prior environmental clearance from SEIAA, based on the recommendations of SEAC. Where no SEIAA or SEAC has been constituted, Category 'B' projects are treated as Category 'A' projects.

- 44.** Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1-A⁸, if applicable. The application must be submitted prior to the commencement of any construction activity, or preparation of the land at the site. A pre-feasibility report must also be submitted with the application except in the cases of construction projects in Item 8 of the Schedule, for which a conceptual plan must be submitted. The significance of the information furnished by the applicant in Form 1 shall be explored shortly.

- 45.** The process to obtain environmental clearance as stipulated by the notification for *new* projects⁹ comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the notification:

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

Screening

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

- ⁸ Only for construction projects listed under Item 8 of the Schedule.
- ⁹ Applications for EC for expansions or modernisation of *existing* units as stipulated under the notification are made in Form 1 and shall be considered by EAC or SEAC within 60 days, which will decide on the due diligence necessary including the preparation of the EIA and public consultations and the application shall be appraised accordingly for the grant of environmental clearance.

Scoping

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

Public Consultation

48. Prior to this stage, a summary EIA is prepared in the format given in Appendix IIIA on the basis of ToR furnished to the applicant. This stage involves the process “by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate”. The detailed procedure is stipulated in Appendix IV. Subject to the exceptions provided in the 2006 Notification, all Category ‘A’ and Category ‘B1’ projects shall undertake the public consultation process. This stage comprises of two components:

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

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

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 431

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

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

Appraisal

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

- d (i) Final EIA report
- (ii) A copy of the video tape or CD of the public hearing proceedings
- (iii) A copy of the final layout plan
- (iv) A copy of the project feasibility report.

e **53.** The regulatory authority must examine the documents “strictly with reference to ToR” and communicate any inadequacy to EAC or SEAC, as the case may be, within 30 days of receipt of the documents. Within sixty days of the receipt of all the documents, EAC or SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. Within the next fifteen days, EAC or SEAC shall make categorical recommendations to the regulatory authority concerned to either grant EC on the stipulated terms and conditions or reject the application, together with reasons. The appraisal of projects which are not required to undergo the public consultation process or the submission of an EIA is to be carried out on the basis of the prescribed application Form 1 or Form 1-A, as applicable.

f **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.

a

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.

b

c

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.

d

e

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.

f

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.

g

h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 433

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

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

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

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

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

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

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

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

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

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

60.9.1. Areas protected under international and national legislation.

60.9.2. Ecologically sensitive areas.

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

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

61.1. EAC or SEAC, as the case may be, formulates comprehensive ToRs on the basis of the information furnished in Form 1 which addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment.

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

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

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

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

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

“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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 435

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

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

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

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

436

SUPREME COURT CASES

(2019) 15 SCC

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

a

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.”

b

c

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.”

d

e

Local emissions attributed to aircraft operations at airports include oxides of nitrogen (NOx), carbon monoxide (CO), hydrocarbons (HC), sulphur dioxide (SO₂), and particulate matter (PM 10 and PM 2.5).

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

f

“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

g

h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 437

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

- a (i) Baseline data from field observations for various terrestrial and aquatic systems are to be generated.
- (ii) Comparison of the data with authentic past records to understand changes is undertaken.
- (iii) Environmental components like land, water, flora and fauna are characterised and,
- b (iv) The impact of airport development on vegetation structure in and around project site is to be understood.

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

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

e **D. Forests**

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

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

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

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

438

SUPREME COURT CASES

(2019) 15 SCC

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

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

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

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

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

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 439

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

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

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

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

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

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

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

h

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

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

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

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

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

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

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

a

b

c

d

e

f

g

h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 441

a terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 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:

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

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

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

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

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

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

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

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

State	District	Taluk	Village Name
Maharashtra	Sindhudurg	Sawantwadi	Tamboli
Maharashtra	Sindhudurg	Sawantwadi	Kumbhayade
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 Tarl Soundal”

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 443

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

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

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

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

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

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

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

- (a) Mining, quarrying and sand mining;
- (b) Thermal power plants;
- (c) Building and construction projects of 20,000 sq m area and above;
- (d) Township and area development projects with an area of 50 ha and above and/or with a built-up area of 1,50,000 sq m and above; and
- (e) "Red category" industries.

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

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

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

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

F. Sampling points

93. The submission of the appellants is that the Guidance Manual requires the collection of primary data through measures and field studies in the study area within 10 km radius from the ARP. Secondary data has to be collected within a 15 km aerial distance for the parameters mentioned in Column 9(III) of Form 1 of the 2006 Notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra. As a result, no sampling sites for any of the parameters fall within 40% of the study area. Consequently, no primary data collection was done despite the carrying out of two samples in 2011 and 2014 respectively. In response to this submission, it has been urged that all sampling points were based on Para 4.1 of the Guidance Manual. As a result, it was submitted that areas within Goa and Maharashtra were studied along with impact studies. In order to assess the submission, it is necessary to refer to relevant aspects of the EIA report:

F.1. Air quality

94. In order to study the ambient air quality in terms of suspended particulate matter, respirable particulate matter, SO₂, NO_x, CO and HC, ambient air quality monitoring stations were set up at six locations. They are at Sinechaadyin, Katwal, Mopa Village, Pernem, Nagzor and Patradevi. All are in Goa. The location at Patradevi was on the border shared by Goa with Maharashtra. The study area extended to a radial distance of 10 km from the ARP. We accept the submission of the ASG that they would hence cover areas falling within both Goa and Maharashtra. Para 4.1.2 of Chapter IV of the EIA

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 445

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

F.2. Water quality

b 95. Para 4.2 of the EIA report states that groundwater quality was measured at four locations: Mopa Village, 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

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

F.4. Flora and fauna

e 97. The EIA report indicates that the area surrounding the site for the proposed airport has dense forests¹⁰. These total up to nearly 6634.19 hectares¹¹. Ms Shenoy has urged that it is impossible that the fauna found by the project proponent through both primary sampling and secondary sources was only limited to animals such as: domestic dog, cat and cattle, common house mouse, rat and mongoose, jackal and the three striped palm squirrel. This, in her submission, is a clear indication that the EIA report is faulty and clearly incorrect.

f 98. While dealing with the above submissions, it is necessary to note that the Guidance Manual contains a specific reference to the collection of data of sensitive habitats and wild/endangered species in the project area. The Guidance Manual stipulates thus:

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

h ¹⁰ See for instance Para 2.0 of the executive summary and Para 2.3.1 of Chapter I.
¹¹ See Para 2.3.1, Chapter II.

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

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

“I say that several recognised publications and research papers were referred to in order to verify and assess the data collected, to name a few of the publications: b

(i) *Birds of Goa* by Heinz Lainer & Rahul Alvares;

(ii) *The Goun Jungle Book* by Nirmal Kulkarni;

(iii) *A Photographic Guide to Butterflies of Goa* by Parag Ragnekar; c

(iv) *Flora of Goa, Diu, Daman, Dadra and Nagarhaveli* (Vol. 1) by R.S. Rao;

(v) *Flora of Goa, Diu, Daman, Dadra and Nagarhaveli* (Vol. 2) by R.S. Rao;

(vi) *Red Data Book* published by Botanical Survey of India; d

(vii) Study materials published in Goa ENVIS Centre were also referred.”

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

“(a) A rapid survey to assess mammal presence at Barazan Plateau, Mopa, Goa, India conducted by Girish Punjabi (Wildlife Biologist) and Atul S. Borker (Full Member of IUCN/SSC Otter Specialist Group) that Schedule I species such as gaur, leopard and Indian Pangolin; Schedule II species such as giant squirrel, common palm civet; Schedule III species such as sambar, wild pig and Schedule IV species such as Indian hare, Indian porcupine. f

The report also mentions the presence of the Sawantwadi — Dodamarg wildlife corridor within the 10 km proposed project site.

(b) Report on one day survey conducted to find evidence of Otter presence at Mopa, Goa conducted by Atul Borker (Full Member of IUCN/SSC Otter Specialist Group) that found that a perennial stream on the plateau had presence of the smooth coated otter, that falls within Schedule II of the Wildlife (Protection) Act, 1972. g

(c) Report on two days’ survey to find evidence of plant and bird species at Mopa Plateau conducted by Aparna Watve (Ecologist) and Sanjay Thakur (Wildlife Biologist) that found Schedule I species such as the Indian peafowl and the Dipeadi Concanese which is critically h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 447

a 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.”

b **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:

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

d 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 e 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:

f “*The area required for proposed airport has only few trees, mainly bushes.* These will be cleared during site preparation.” (emphasis supplied)

g **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).

h

448

SUPREME COURT CASES

(2019) 15 SCC

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

104.1. The enumeration of all trees. a

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

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

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

105. On 6-2-2018, the Deputy Conservator of Forests had granted permission for felling of 21,703 trees. Following the dismissal of an appeal under Section 15 of the Goa, Daman and Diu Preservation of Trees Act, 1984 filed by the Federation of Rainbow Warriors, a writ petition was filed before the Bombay High Court (WP No. 1 of 2018). The High Court set aside⁴ the order of the Deputy Conservator of Forests and remanded the proceedings to the Principal Chief Conservator who passed the order which has been noted above. Following the order of the Principal Chief Conservator, 54,676 trees were enumerated. The competent authority granted permission for the felling of trees thereafter on the following dates:

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

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

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

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

"E. Biological environment" f

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

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

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 449

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

b **106.** We express our serious displeasure with the manner in which the EIA report made an attempt to gloss over the existence of trees. The EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The EIA report states that vegetation and trees are sparse at the site. A photograph and a google map image are put forth as illustrations in Figure 2.3 of Chapter II. To realise later that the project involved the felling of 54,676 trees is indicative of the cavalier approach to the issue and a process of fact finding which is parsimonious with the truth. Post facto explanations are inadequate to deal with a failure of due process in the field of environmental governance. The State of Goa would have us gloss over the felling of trees by submitting that 54,676 trees over a project area of 2133 ac averages out to 25 trees per acre or one tree over an area of 160 sq m. This is a fallacious approach to the issue. Mathematical averages cannot displace factual data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinised the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented.

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

- (i)* 32,193 trees representing 59% had a girth of 30 to 50 cm;
- (ii)* 19,903 trees representing 36% had a girth of 50 to 100 cm; and
- (iii)* "only 2580 trees" had a girth exceeding 100 cm.

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

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

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

450

SUPREME COURT CASES

(2019) 15 SCC

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

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

G. Public consultation

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

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

112. The 2006 Notification postulates:

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 451

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

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

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

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

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

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

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

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

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

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

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

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

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

452

SUPREME COURT CASES

(2019) 15 SCC

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

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

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

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

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

114.8. Local plantations would be affected.

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

114.10. The Dodamarg Wildlife Sanctuary had been “sanitised” by the High Court. c

114.11. Forest clearance had not been obtained.

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

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

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

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

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

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

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

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

¹² 2009 SCC OnLine Del 3836

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 453

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

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

d **H. Appraisal by EAC**

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

- f* (i) the grant of a prior environmental clearance on stipulated terms and conditions; or
- (ii) the rejection of the application.

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

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

- "(i) There is a need to superimpose the layout plan showing the drainage pattern including natural drainage, construction in the area on superimposed map showing clear topography of the region;
- (ii) 10 year data regarding rainfall in the area;

h

(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.

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 455

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

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

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

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

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

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

d **122.1.** The "peculiar circumstances" of the case.

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

122.3. The "larger public interest" involved.

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

e **122.5.** The project is in the public interest.

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

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

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

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

456

SUPREME COURT CASES

(2019) 15 SCC

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

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

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

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

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 457

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

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

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

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

“16. Tribunal to have appellate jurisdiction. Any person aggrieved by

* * *

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);”

458

SUPREME COURT CASES

(2019) 15 SCC

131. Section 20 mandates that the Tribunal shall, while passing any order, decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Several decisions of this Court have given meaning to these principles¹³.

132. The decision of NGT indicates that several significant submissions were urged before it. The entire analysis by NGT is contained in one paragraph of its judgment dated 21-8-2018¹ which is extracted below: (*Federation of Rainbow Warriors case*¹, SCC OnLine NGT para 27)

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

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

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

“5. (2) A person shall not be qualified for appointment as an Expert Member, unless he—

(a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five year's practical experience in the field of environment and

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 459

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

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

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

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

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

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

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

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

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

h
 14 (2013) 1 All India NGT Reporter 1
 15 2014 SCC OnLine NGT 15

460 SUPREME COURT CASES (2019) 15 SCC

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

* * *

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

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

137. The learned ASG has placed reliance on the decision of this Court in *Lufarge Umiam Mining (P) Ltd. v. Union of India*¹⁶ (*Lufarge*) to contend that the failure to disclose the presence of trees should not lead to the invalidation of EC. In that case, an application was made under the 1994 Notification for the grant of an EC to a proposed limestone mining project at Nongtra 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 Nongtra 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 Nongtra and Village Durbar, who participated at the public hearing and filed written submissions before this Court, supported the project and certified that no damage would be caused to adjacent lands.

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

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

138.6. The 2006 Notification was not applicable.

¹⁶ (2011) 7 SCC 338

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 461

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

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

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

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

"119. ... In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint."

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

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

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

¹⁷ (2019) 18 SCC 494 : 2019 SCC Online SC 322

¹⁸ 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

462

SUPREME COURT CASES

(2019) 15 SCC

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.”

a

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(b) 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.

b

c

J. Environmental Rule of Law

d

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

143. Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement — both in developed and developing countries alike¹⁹. The environmental rule of law seeks to address this gap.

e

f

144. The environmental rule of law provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace¹⁹. It imbues environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance¹⁹. The environmental rule of law becomes a priority particularly when we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, supports sustainable economic and social development, protects public health,

g

¹⁹ United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y>

h

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 463

a contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights¹⁹. Similarly, the rule of law in environmental matters is indispensable “for equity in terms of the advancement of the Sustainable Development Goals (SDGs), the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socioeconomic rights²⁰.”

b **145.** Amartya Sen argues for a broadening of the notion of sustainable development which is the most dominant theme of environmental literature, from a need-based standard²¹ to a standard based on freedoms²². Thus recharacterised, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar — or more — freedoms. The intertwined concepts of environmental rule of law thus further intragenerational as well as intergenerational equity.

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

g ¹⁹ United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y>

²⁰ “UN Environment. Environmental Rule of Law”. Available at <<https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0>>

h ²¹ Brundtland definition of Sustainable Development

²² Amartya Sen, “Sustainable Development and Our Responsibilities”. Available at <<http://www.comitatoscientifico.org/temi%20SD/documents/SEN%20Responsibility&SD%2010.pdf>>

147. In 2016, the First World Environmental Law Congress, co-sponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law²³ which outlines 13 principles for developing and implementing solutions for ecologically sustainable development:

- (i) Obligation to Protect Nature
- (ii) Right to Nature and Rights of Nature
- (iii) Right to Environment.
- (iv) Ecological Sustainability and Resilience
- (v) In Dubio Pro Natura
- (vi) Ecological Functions of Property
- (vii) Intragenerational Equity
- (viii) Intergenerational Equity
- (ix) Gender Equality
- (x) Participation of Minority and Vulnerable Groups
- (xi) Indigenous and Tribal Peoples
- (xii) Non-regression
- (xiii) Progression

148. Dhvani Mehta's doctoral thesis²⁴ explores this idea of environmental rule of law in the Indian context by analysing the functioning of the three institutions of the Government with regard to environmental law. It develops a framework to assess whether the environmental rule of law in India is being strengthened or weakened, through an analysis of the legal instruments of each of the institutions of Government—statutes, executive orders and judicial decisions. The indicators on the basis of which this is done are:

- (a) the capacity of statutes to guide behaviour (one of the organising principles of the rule of law) by clearly articulating goals or balancing competing interests;
- (b) the ability of the executive to take flexible but reasoned decisions grounded in primary legislation; and
- (c) the ability of the judiciary to apply statutory interpretation and consistent standards of judicial review to give effect to environmental rights and principles.

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

- (i) Eradication of poverty;
- (ii) Eradication of hunger;
- (iii) Good health and well-being;

²³ IUCN. "Environmental Rule of Law". Available at <<https://www.iucn.org/commissions/world-commission-environmental-law/wcel-resources/environmental-rule-law>>

²⁴ Dhvani Mehta. *The Environmental Rule of Law in India*, University of Oxford, 2017. Available at <<https://ora.ox.ac.uk/objects/uuid:730202ce-f2c4-4d2f-9575-938a728fe82a>>

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 465

- (iv) Quality education;
- (v) Gender equality;
- a (vi) Clean water and sanitation;
- (vii) Affordable and clean energy;
- (viii) Decent work and economic growth;
- (ix) Industry, innovation and infrastructure;
- (x) Reduced inequalities;
- b (xi) Sustainable cities and communities;
- (xii) Sustainable consumption and production;
- (xiii) Climate action;
- (xiv) Protecting life below water;
- (xv) Life on land;
- c (xvi) Peace, justice and strong institutions; and
- (xvii) Partnerships to achieve the goals.

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

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

152. The statistics on climate change indicate that:

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

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

152.3. Since 1990, global emissions of CO₂ increased by almost 50%.

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

466

SUPREME COURT CASES

(2019) 15 SCC

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

154. On 2-10-2016, India ratified the Paris Agreement²⁵ on climate change which reaffirmed the goal of “limiting global temperature increase to well below 2°C, while pursuing efforts to limit the increase to 1.5 degrees above pre-industrial levels”. Article 5 of the Agreement encourages parties to conserve and enhance sinks and reservoirs of greenhouse gases, which include forests. Under its Nationally Determined Contributions under the Paris Agreement, India made the following three commitments²⁶:

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

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

(iii) An additional “carbon sink” of 2.5 to 3 billion tonnes of CO₂ equivalent through additional forest and tree cover will be created by 2030.

155. In March 2019, UNEP released the Global Environment Outlook themed “Healthy Planet, Healthy People”²⁷. Noting clear “links between human health and the state of the environment”, the report concludes that clean-up and efficiency improvements are not adequate to pursue the 2030 Agenda and SDGs and achieve the internationally agreed environmental goals on pollution control. Instead, “transformative change” which reconfigures basic social and production systems and structures is needed. This includes well-designed policies on institutional frameworks, social practices, cultural norms and values along with their implementation, compliance and enforcement. In this view, a systemic and integrated policy action²⁷ would ensure that a “healthy environment is a prerequisite and foundation for economic prosperity, human health and well-being”²⁷.

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

25 Entered into force on 4-11-2016.

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 467

157. The 2006 Notification must hence be construed as a significant link in India's quest to pursue SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.

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

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

468

SUPREME COURT CASES

(2019) 15 SCC

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

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

K. Directions

163. We accordingly issue the following directions:

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

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

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

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

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

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA (*Dr Chandrachud, J.*) 469

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

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

164. Before we part with the present case, we consider it appropriate to record a finding on the bona fides of the appellants before this Court. It was briefly urged by the respondents that the appellants have invoked the jurisdiction of this Court based on a personal agenda and consequently, the present appeal is liable to be dismissed. This argument cannot be accepted. We accept the submission of Ms Shenoy, learned counsel appearing on behalf of the appellants, that the non-consideration of vital issues by EAC has led to the invocation of the statutory remedy available to them under Section 22 of the NGT Act, 2010. Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment. If a court comes to the finding that the appeal before it was lacking bona fides, it may issue directions which it thinks appropriate in that case. In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow.

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

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

Civil Appeal No. 1053 of 2019

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

2026 SCC OnLine SC 204

In the Supreme Court of India

(BEFORE VIKRAM NATH AND SANDEEP MEHTA, JJ.)

Civil Appeal No..... of 2026

(Arising Out of SLP(C) No. 8316 of 2024)

Harbinder Singh Sekhon and Others ... Appellant
(s);

Versus

State of Punjab and Others ... Respondent(s).

With

Civil Appeal No..... of 2026

(Arising Out of SLP(C) No. 8495 of 2024)

And

Writ Petition (C) No. 481 of 2025

And

Writ Petition (C) No. 551 of 2025

Civil Appeal No..... of 2026 (Arising Out of SLP(C) No. 8316 of 2024), Civil Appeal No..... of 2026 (Arising Out of SLP(C) No. 8495 of 2024), Writ Petition (C) No. 481 of 2025 and

Writ Petition (C) No. 551 of 2025^s

Decided on February 13, 2026

The Judgment of the Court was delivered by

VIKRAM NATH, J.:— At the outset, it may be noted that the present judgment is structured in two parts. The first part addresses the civil appeals arising out of the Special Leave Petitions and examines the legality of the change of Land Use and the impugned judgment of the High Court. The second part separately considers the writ petitions under Article 32 of the Constitution of India, which raise an independent challenge to subsequent regulatory actions taken during the pendency of the appeals.

Part I: For SLP (Civil) No. 8316 of 2024 and SLP (Civil) No. 8495 of 2024

2. Leave granted.

3. The present appeals arise from the common judgment and order dated 29.02.2024 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No. 20134 of 2022 and CWP No. 18676 of 2022. By the impugned judgment, the High Court dismissed the writ petitions and upheld the change of Land Use dated 13.12.2021 granted in favour

of "Shree Cement North Private Limited". Civil Appeal arising out of SLP (Civil) No. 8316 of 2024 has been filed by the writ petitioners in CWP No. 20134 of 2022. Civil Appeal arising out of SLP (Civil) No. 8495 of 2024 has been filed by Vasant Valley Public School, which was the writ petitioner in CWP No. 18676 of 2022. For ease of reference, the parties shall be referred to as per their status in SLP (Civil) No. 8316 of 2024. Accordingly, Respondent No. 9 is Shree Cement North Private Limited, the main contesting respondent, before this Court.

4. The facts giving rise to the present appeals are as follows:

4.1. The Appellant in Civil Appeal arising out of SLP (Civil) No. 8316 of 2024 is a group of agriculturists residing in and around Sangrur, Punjab. The Appellants state that Respondent No. 9 purchased land admeasuring about 47.82 acres for establishing a cement related industrial unit in close proximity to their agricultural lands and residential houses. The Appellant in Civil Appeal arising out of SLP (Civil) No. 8495 of 2024 is Vasant Valley Public School. The School claims that its premises are located in the immediate vicinity of the proposed site and that the proposed activity would adversely affect the health and safety of students and staff.

4.2. On 13.12.2021, the Punjab Bureau of Investment Promotion issued a Change of Land Use¹ in favour of Respondent No. 9 for the proposed unit. On 14.12.2021, consent to establish/No Objection Certificate from the pollution angle was granted under the Single Window mechanism on the basis of Punjab Pollution Control Board's² consideration. The Appellants contend that the CLU was granted in a manner not contemplated by the Punjab Regional and Town Planning and Development Act, 1995³. The Appellants also contend that the proposed site falls within a rural agricultural zone under the Master Plan for Sangrur and that a red category polluting industry could not have been permitted at the said location.

4.3. The agriculturist Appellants, therefore, instituted CWP No. 20134 of 2022 before the High Court challenging the CLU dated 13.12.2021 and the consequent approvals. Vasant Valley Public School instituted CWP No. 18676 of 2022 raising similar objections and specifically relied upon the proximity of the school and other habitations to the proposed site. During the pendency of the writ proceedings, the High Court passed an interim order dated 20.09.2022, and the interim arrangement continued till the writ petitions were finally decided.

4.4. By the common judgment and order dated 29.02.2024, the High Court dismissed both writ petitions. The High Court noted that as on 13.12.2021, the CLU did not have statutory backing in the form contemplated by the PRTPD Act. The High Court, however, upheld the

CLU on the reasoning that the Punjab Regional and Town Planning and Development Board granted approval in its 43rd meeting dated 05.01.2022. The High Court treated the said approval as curing the defect and accepted the stand that the land use permissibility stood validated thereafter.

4.5. The High Court also proceeded on the basis that the decision taken by the Planning Board on 05.01.2022 was relatable to the power of amendment of the Master Plan. The High Court relied upon Section 76 of the PRTPD Act and held that the approval recorded in the 43rd meeting dated 05.01.2022 could operate to support the CLU and to sustain the proposed industrial activity. The High Court further proceeded on the premise that the competent authorities had considered the relevant siting aspects and that the CLU itself contained conditions and restrictions. The High Court observed that if the conditions stipulated in the CLU were violated, the affected persons would be at liberty to pursue appropriate remedies.

5. Aggrieved by the dismissal of their writ petitions and by the upholding of the CLU dated 13.12.2021, the Appellants have preferred the present civil appeals.

6. We have heard the learned counsel for the parties, and we have gone through the comprehensive material on record. In our considered opinion, the following questions arise for determination in the present appeals:

- I. Whether the CLU dated 13.12.2021 could have been granted for the proposed unit when the land use under the Master Plan for Sangrur treated the site as falling in a rural agricultural zone.
- II. Whether the "approval" recorded in the 43rd meeting of the Punjab Regional and Town Planning and Development Board dated 05.01.2022 could lawfully cure the admitted defect in the CLU and whether such approval is capable in law of operating as an alteration or amendment of the Master Plan under the PRTPD Act.
- III. Whether the siting norms and environmental safeguards, including the PPCB notification dated 02.09.1998 and the relevant regulatory framework, were complied with in relation to the proximity of habitations and the school, and whether the process adopted by the authorities satisfies the requirements of the prevailing legal norms.

7. It is apparent that the controversy before us turns principally on the statutory scheme governing the Master Plan and control of development under the PRTPD Act; and the environmental and siting safeguards applicable to a cement grinding unit as in the present case.

A. PRTPD Act, the Master Plan, its binding force, and the procedure for alteration/revision

7.1. Chapter X of the PRTPD Act deals with '*Preparation and Approval of Master Plans.*' Under the same, Section 70 of the PRTPD Act lays down the foundational statutory scheme for the preparation, approval, and legal operation of a Master Plan. The same has been reproduced hereunder:

"70. Outline Master Plan. - (1) As soon as may be after the declaration of a planning area and after the designation of a Planning Agency for that area, the Designated Planning Agency shall, not later than one year after such declaration or within such time as [the State Government may, from time to time, extend, prepare and submit to the State Government for its approval a plan (hereinafter called the "Master Plan")]] for the planning area or any of its part and the Master Plan so prepared shall -

(a) indicate broadly the manner in which the land in the area should be used;

(b) allocate areas or zones of land for use for different purposes;

(c) indicate, define and provide the existing and proposed highways, roads, major streets and other lines of communication;

[(cc) indicate areas covered under heritage site and the manner in which protection, preservation and conservation of such site including its regulation and control of development, which is either affecting the heritage site or its vicinity, shall be carried out.]

(d) include regulations (hereinafter called "Zoning Regulations") to regulate within each zone the location, height, number of storeys and size of buildings and other structures, open spaces and the use of buildings, structures and land.

(2) Subject to the provisions of the rules made under this Act for regulating the form and contents of the Master Plan, any such plan shall include such maps and such descriptive matters as may be necessary to explain and illustrate the proposals in the Master Plan.

(3) [As soon as after the Master Plan has been prepared under sub - section (1), by the Designated Planning Agency, the State Government, not later than such time, as may be prescribed, shall direct the Designated Planning Agency to publish the existing land use plan and master plan and the place or places, where the copies of the same may be inspected, for inviting objections in writing from any person with respect to the existing land use plan and master plan within a period of thirty days from the date of publication.]

(4) [The State Government, after considering the objections and in consultation with the Board, may, direct the Designated Planning Agency to modify the Master Plan or approve it as such.]

(5) [The Designated Planning Agency, after approval of the State Government, shall publish the final Master Plan in the Official Gazette, after carrying out the modifications if any, under intimation to the State Government within a period of thirty days from the date of according approval by the State Government.]”

7.2. The provision makes it clear that the Master Plan is not a mere policy document or an internal administrative guideline. It is a statutory instrument which governs how land in the planning area is to be used and regulated. The Act places the primary responsibility for preparing the Master Plan upon the Designated Planning Agency, which is required to prepare the plan and submit it to the State Government for approval. The contents of the Master Plan, as reflected in the statutory scheme, include the identification and allocation of land into different zones for specified purposes and the regulatory norms that will govern development and land use within those zones. Equally significant is the procedure that Section 70 mandates before a Master Plan can acquire enforceable effect. The Act requires that the proposed Master Plan be brought into the public domain, that the public be afforded an opportunity to submit objections and suggestions within the prescribed period, and that such objections and suggestions be considered by the Designated Planning Agency before the plan is placed for approval. This is not a procedural formality. It is a statutory safeguard intended to ensure transparency, participatory planning, and reasoned decision making, particularly because zoning and land use decisions have a direct bearing on property rights, local habitations, public amenities, and environmental and health concerns.

7.3. The Act then ties enforceability to publication in the Official Gazette. In other words, the Master Plan becomes operational, and thereby binding for land use regulation, only upon its publication in the Official Gazette in the manner contemplated by the statute. Section 75 of the PRTPD Act reinforces this principle by reiterating that the Master Plan comes into operation from the date of such publication, and the same reads as follows:

“75. [Coming into operation of Master Plan,- The Master Plan come into operation from the date of publication, referred in sub-section (5) of section 70.]”

The combined statutory scheme indicates that once the Master Plan is published and comes into operation, it binds both the authorities and the public, and land use permissibility is to be determined with reference to its zoning prescriptions unless the statute is duly followed to alter or revise the plan.

7.4. The same statutory discipline governs review and revision. Section 76 of the PRTPD Act contemplates periodic review of the Master Plan, and it permits revision where the statutory authority considers it

necessary. Section 76 reads as follows:

"76(1) At any after time after the date on which the Master Plan for an area comes into operation, and atleast once after every ten years, after that date, the Designated Planning Agency shall after carrying out such fresh surveys as may be considered necessary or as directed by the [State Government], prepare and submit to the Board, a Master Plan after making alterations or additions as it considers necessary.

*(2) The provisions of *[Sections 70 and 75] shall mutatis mutandis as far as may be possible, apply to the Master Plan submitted under sub-section (1)."*

However, the Act does not treat review as a mechanism by which land use norms can be altered informally or on a case by case basis. The provision expressly applies the publication, objection, consideration, and gazette publication requirements to a revised Master Plan as well. This legislative design ensures that revision of the Master Plan, even when undertaken as part of a periodic review cycle, remains subject to the same safeguards of notice, participation, and formal publication which give the Master Plan its legal force in the first place.

7.5. The Act also provides for the making of minor changes, but even that power is not arbitrary. Where changes are proposed to the Master Plan, including changes described as minor, the statutory scheme requires that the State Government's direction and the fact of change be brought to the notice of the public in the manner contemplated by the Act. The underlying principle is that a change in zoning or land use permissibility cannot rest only upon internal file notings, minutes, or administrative approvals. Where the change alters the operative land use framework that binds the public and the authorities, the statute insists upon transparency and public notice so that the Master Plan continues to remain a legally certain and publicly knowable instrument of planning regulation.

B. Control of development and "change of land use" permissions

7.6. Once a Master Plan has come into operation in the manner contemplated by the PRTPD Act, the statutory command is that land use and development within the planning area must conform to the zoning and regulatory prescriptions of the Plan. Section 79 to 81 in Chapter XI of the PRTPD Act provides for the same and has been reproduced hereunder:

79. After the coming into operation of any Master Plan in any area, no person shall use or permit to be used any land or carry out any development in that area otherwise than in conformity with such Master Plan: Provided that the Competent Authority may allow the continuance of any use of any land, for a period not exceeding ten

year, upon such terms and conditions as may be provided by regulations made in this behalf for the purpose and to the extent, for and to which it was being used on the date on which such a Master Plan came into operation.

80. After coming into operation of any Master Plan in any area and subject to the other provisions of this Act, no development in respect of, or change of use of, any land shall be undertaken or carried out, in that area -

- (a) without obtaining the permission in writing as provided for hereafter; and*
- (b) without obtaining a certificate from the Competent Authority certifying that the development charge or betterment charge as leviable under this Act has been paid or that no such charges are leviable:*

[Provided that except in the case of development, affecting heritage site or its vicinity, no such permission shall be necessary-]

- (i) for operational constructions and constructions in the area comprised in the abadi-deh of any village falling inside its Lal Lakir or Phirni ;*
- (ii) for carrying out such works for the maintenance, improvement or other alteration of any building which affect only its interior or which do not materially affect the external appearance of the building ;*
- (iii) [...] for the carrying out by the Central Government or the State Government or any local authority of,-*
 - (a) any work required for the maintenance or improvement of a high way, road or public street, being work carried out on land within the boundaries of such highway, road or public street;*
 - (b) any work for the purpose of inspecting, repairing or renewing any drains, sewers, mains, pipes, cables or other apparatus including the breaking open of any street or other land for that purpose ;*

- (iv) for the excavations (including wells and tubewells) made in the ordinary course of agricultural operation or for such constructions which are made for agricultural purposes subservient to agriculture:*

Provided that such excavation or constructions are situated in the areas in which agriculture is permitted land use as per the Master Plan;

- (v) for the construction of unmetalled roads intended to give access to land solely meant for agricultural purpose.*

81.(1) Any person intending to carry out any development in

respect of, or a change of use of any land or intending to sub-divide his plot or to layout a private street shall make an application in writing to the Competent Authority for permission in such form and containing such particulars and accompanied by such documents and plans as may be prescribed.

(2)(a) In the case of a Department of the State Government or the Central Government or a local authority intending to carry out any development in respect of, or, change of use of, any land, the concerned Department or the local authority, as the case may be, shall notify in writing to the Competent Authority of its intention to do so giving full particulars thereof and accompanied by such documents and plans as may be prescribed, at least, two months prior to the undertaking of such development or change, as the case may be.

*(b) Where the Competent Authority has raised any objection in respect of the conformity or the proposed development either to any Master Plan under preparation or to any rules in force at that time, or due to any other material consideration, the Department of the State Government or the Central Government or the local authority, as the case may be, shall either make necessary modifications in the proposals for such development or change of use to meet the objections raised by the Competent Authority or submit *[to the State Government the proposal for such development or change of use together with the objections raised by the Competent Authority for decision.]*

*(c) The *[State Government] on receipt of such proposal together with the objections of the Competent Authority shall either approve the proposals with or without modifications or direct the Department of the State Government or the Central Government or the local authority, as the case may be, to make such modifications in the proposals as it considers necessary in the circumstances.*

(3) Every application under sub-section (1) shall be accompanied by such fee as may be prescribed:

Provided that no fee shall be payable in the case of an application made by a Department of the State Government or the Central Government.

(4) On an application having being duly made under sub-section (1) and on payment of the development charge or betterment charges if any, as may be assessed under Chapter XIII, the Competent Authority may,-

(a) pass an order -

(i) granting permission unconditionally ; or

(ii) granting permission subject to such conditions as it may

think

necessary to impose; or

(iii) refusing permission ;

(b) without prejudice to the generality of clause (a) impose conditions-

(i) to the effect that the permission granted is only for a specified period and after the expiry of that period, the land shall be restored to its previous condition or the use of the land so permitted shall be discontinued ; or

(ii) for regulating the development or use of any land under control of the applicant or for the carrying out of works on any such land as may appear to the Competent Authority expedient.

(5) The Competent Authority in considering the application for permission shall ensure that it is in conformity with the provisions of the Master Plan prepared or under preparation under this Act and where the development or change or use of any land is likely in the opinion of the Competent Authority to interfere with the operation of the Master Plan or to be prejudicial to planned development, or any plan for development of the Authority, the Competent Authority may refuse such permission.

(6) Where permission is granted subject to conditions or is refused, the grounds of imposing such conditions or such refusal shall be recorded in the order and such order shall be communicated to the applicant in the prescribed manner.

*(7) *[If the Competent Authority does not communicate its decision to grant or refuse permission to the applicant within a period of sixty days from the date of receipt of his application in case other than the heritage site, and within a period of one hundred twenty days in the case of heritage site and development affecting such site, or within a period of sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Competent Authority, whichever is later, then such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of the later date without prejudice to the provisions of this Act, rules and regulations made thereunder:*

Provided that any development carried out in pursuance of such deemed permission, which is in contravention of the provisions of the Act, rules and regulations made thereunder, shall be deemed to be an unauthorised development for the purposes of sections 86, 87, 88, 89 and 90.]”

7.7. Section 79 is a prohibition in mandatory terms. It does not

leave the matter to administrative discretion on a case to case basis. It interdicts the use of land and the carrying out of development in a manner inconsistent with the operative Master Plan. The legislative intent is to ensure certainty, uniformity, and enforceability in planning control, so that the zoning framework is not diluted by ad hoc departures that would defeat the Plan's public purpose.

7.8. Section 80 then provides the complementary statutory control. Even where a proposed activity is otherwise permissible under the Plan, the statute mandates that development or change of use can be undertaken only upon written permission of the competent authority. This written permission is not conceived as a substitute for, or an override of, the Master Plan. It is a regulatory permission which must operate within the discipline of the Plan and the statute. In other words, Section 80 does not create a untrammelled executive power to authorise land use contrary to the Master Plan. It creates a permission regime which presupposes conformity with the planning framework, and which is intended to regulate the manner, conditions, and safeguards subject to which permissible development may proceed.

7.9. Section 81 sets out the structured decision-making process for grant or refusal of permission. The provision contemplates an application by the person intending to carry out development, a time bound decision by the competent authority, the power to impose conditions while granting permission, and an obligation to record reasons where permission is refused. The scheme is designed to ensure that permissions are granted on relevant considerations, that the decision is not arbitrary, and that the affected party is informed of the basis of refusal. The deemed permission clause is also part of this discipline. It operates as a statutory consequence where the authority fails to act within the prescribed period. It does not dispense with the substantive requirements of conformity with the Master Plan or compliance with other applicable laws.

7.10. The appellate remedy is similarly part of the statutory architecture. It provides a supervisory forum within the executive framework, but it does not dilute the binding force of the Master Plan or the mandatory nature of the statutory controls in Sections 79 and 80.

C. Environmental clearance and siting safeguards

7.11. Environmental clearance and siting safeguards stand on a distinct but overlapping legal plane. Under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986, the EIA Notification dated 14.09.2006 (hereinafter referred to as the EIA Notification, 2006) is a delegated legislation which creates a regime of prior environmental clearance for specified projects and activities. The requirement of prior environmental clearance is triggered before commencement of construction activity or preparation of land at

the site. The statutory design is preventive. It ensures that environmental impacts, mitigation measures, and site-specific concerns are assessed at a stage when the project can still be meaningfully evaluated, conditioned, modified, or declined.

7.12. The EIA Notification, 2006 also prescribes a stage wise process which includes screening, scoping, public consultation, and appraisal. These stages are not interchangeable. Each stage serves a distinct function within the regulatory design, and public consultation has a specific role in ensuring that persons likely to be affected can place their concerns on record and that the appraisal is informed by local conditions and stakeholder inputs. Where the project is treated as falling within Category "B" under the relevant schedule entry, the appraisal is at the State level through the institutional mechanism of the State Level Environment Impact Assessment Authority⁴ and the State Expert Appraisal Committee⁵. This classification determines the forum and the process for appraisal. It does not dilute the core requirement that the environmental clearance must be prior and must be obtained before construction or preparation of land.

7.13. Siting and proximity norms operate as an additional layer of safeguards, particularly where habitations and sensitive receptors such as educational institutions are involved. The PPCB notification dated 02.09.1998 prescribes minimum siting distances for cement plants and grinding units, including minimum buffers from residential clusters and educational institutions, and it also requires development of a green belt along the boundary. These norms reflect a regulatory framework prescribing that certain minimum separations and buffers are required to reduce risk of exposure and nuisance from dust, emissions, noise, and traffic. They function as minimum protective standards for the purpose of grant of consent and related pollution control permissions. Compliance with these standards is relevant to evaluate whether the regulatory authorities have applied the correct yardsticks and whether the safeguards imposed are adequate having regard to the site conditions and the proximity of habitations and the school.

8. Having set out the statutory scheme governing planning control and the environmental and siting safeguards, we now turn to the three issues that arise for determination in these appeals as framed in the earlier part of this judgment.

Issue I: Whether the CLU dated 13.12.2021 could have been granted when the site fell in a rural agricultural zone under the Master Plan for Sangrur.

9. At the outset, it is necessary to notice the legal character of the Master Plan for Sangrur and the zoning prescription governing the site in question. The material on record, including the reports and

communications relied upon by the parties, proceeds on the consistent premise that the land purchased by Respondent No. 9 fell in a rural agricultural zone under the notified Master Plan for Sangrur. It is also not in dispute that, as per the zoning permissibility then prevailing, a red category industry was not permissible at the said site.

10. In this backdrop, the CLU dated 13.12.2021 has to be tested on its own legal footing. This Court has consistently held that a statutory development plan is not a mere policy statement. It has binding force and regulates land use in the larger public interest. Any development contrary to the operative plan is impermissible unless the plan itself is altered in the manner known to law. The principle has been reiterated in decisions of this Court in *K. Ramadas Shenoy v. Town Municipal Council, Udipi*⁶ and *Bangalore Medical Trust v. B.S. Muddappa*⁷, where this Court emphasised that zoning and planned development norms cannot be diluted by ad hoc departures at the cost of public interest. The relevant portion from *Bangalore Medical Trust* (Supra) is reproduced hereunder:

"48. Much was attempted to be made out of exercise of discretion in converting a site reserved for amenity as a civic amenity. Discretion is an effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly. When legislature enacted sub-section (4) it unequivocally declared its intention of making any alteration in the scheme by the Authority, that is, BDA and not the State Government. It further permitted interference with the scheme sanctioned by it only if it appeared to be improvement. The facts, therefore, that were to be found by the Authority were that the conversion of public park into private nursing home would be an improvement in the scheme. Neither the Authority nor the State Government undertook any such exercise. Power of conversion or alteration in scheme was taken for granted. Amenity was defined in Section 2(b) of the Act to include road, street, lighting, drainage, public works and such other conveniences as the government may, by notification, specify to be an amenity for the purposes of this Act.

The Division Bench found that before any other facility could be considered amenity it was necessary for State Government to issue a notification. And since no notification was issued including private nursing home as amenity it could not be deemed to be included in it. That apart the definition indicates that the convenience or facility should have had public characteristic. Even if it is assumed that the definition of amenity being inclusive it should be given a wider meaning so as to include hospital added in clause 2(bb) as a civic amenity with effect from 1984 a private nursing home unlike a hospital run by government or local authority did not satisfy that characteristic which was necessary in the absence of which it could not be held to be amenity or civic amenity. In any case a private nursing home could not be considered to be an improvement in the scheme and, therefore, the power under Section 19(4) could not have been exercised.

49. Manner in which power was exercised fell below even the minimum requirement of taking action on relevant considerations. A scheme could be altered by the Authority as defined under Section 3 of the Act. It is a body corporate under Section 3 consisting of the Chairman and experts on various aspects, namely, a finance member, an engineer, a town planner, an architect, the ex-officio members such as Commissioner of Corporation of the City of Bangalore, officer of the Secretariat and elected members for instance, two persons of the State legislature, one a woman and other a scheduled caste and scheduled tribe member, representative of labour, representative of water supply, sewerage board, electricity board, State Road Transport Corporation, two elected councillors etc. and the Commissioner. This authority functions through committees and meetings as provided under Sections 8 and 9. There is no section either in the Act nor any rule was placed to demonstrate that the Chairman alone, as such, could exercise the power of the Authority. There is no whisper nor there is any record to establish that any meeting of the Authority was held regarding alteration of the scheme. In any case the power does not vest in the State Government or the Chief Minister of the State. The exercise of power is further hedged by use of the expression, if 'it appears to the Authority'. In legal terminology it visualises prior consideration and objective decision. And all this must have resulted in conclusion that the alteration would have been improvement. Not even one was followed. The Chairman could not have acted on his own. Yet without calling any meeting of the Authority or any committee he sent the letter for converting the site. How did it appear to him that it was necessary, is mentioned in the letter dated April 21, because the Chief Minister desired so. The purpose of the Authority taking such a

decision is their knowledge of local conditions and what was better for them. That is why participatory exercise is contemplated. If any alteration in scheme could be done by the Chairman and the Chief Minister then sub-section (4) of Section 19 is rendered otiose. There is no provision in the Act for alteration in a scheme by converting one site to another, except, of course if it appeared to be improvement. But even that power vested in the Authority not the government. What should have happened was that the Authority should have applied its mind and must have come to the conclusion that conversion of the site reserved for public park into a private nursing home amounted to an improvement; then only it could have exercised the power. But what happened in fact was that the application for allotment of the site was accepted first and the procedural requirements were attempted to be gone through later and that too by the State Government which was not authorised to do so. Not only that the Authority did not apply its mind and take any decision if there was any necessity to alter the scheme but even if it is assumed that the State Government could have any role to play, the entire exercise instead of proceeding from below, that is, from the BDA to State Government proceeded in reverse direction, that is, from the State Government to the BDA. Every order, namely, converting the site from public park to private nursing home and even allotment to BMT was passed by State Government and the BDA acting like a true subservient body obeyed faithfully by adopting and confirming the directions. It was complete abdication of power by the BDA. The legislature entrusted the responsibility to alter and approve the scheme to the BDA but the BDA in complete breach of faith reposed in it, preferred to take directions issued on command of the Chief Executive of the State. This resulted not only in error of law but much beyond it. In fact the only role which the State Government could play in a scheme altered by the BDA is specified in sub-sections (5) and (6) of Section 19 of the Act. The former requires previous sanction of the government if the estimated cost of executing the altered scheme exceeds by a greater sum than five per cent of the cost of executing the scheme as sanctioned. And later if the 'scheme as altered involved the acquisition otherwise than by agreement'. In other words the State Government could be concerned or involved with an altered scheme either because of financial considerations or when additional land was to be acquired, an exercise which could not be undertaken by the BDA. A development scheme, therefore, sanctioned and published in the gazette could not be altered by the government."

11. Once a Master Plan has come into operation under Section 70(5) of the PRTPD Act read with Section 75 of the PRTPD Act, the statutory

scheme does not contemplate a permission regime where land use contrary to the operative zoning can be authorised merely by issuance of a CLU. The prohibition contained in Section 79 of the PRTPD Act, read with the written permission requirement in Section 80 of the PRTPD Act and the structured decision-making framework in Section 81 of the PRTPD Act, makes it clear that a CLU is not a source of power to override the Master Plan. A CLU operates as a regulatory permission within the statutory discipline of the Master Plan. It presupposes that the proposed use is permissible under the operative planning framework, or that the framework has already been altered or revised in accordance with the procedure prescribed by the PRTPD Act. The binding character of the Master Plan under Sections 70 and 75 of the PRTPD Act, read with the control on development and land use under Sections 79 to 81 of the PRTPD Act, requires that land use permissibility be determined with reference to the operative zoning prescription. It cannot be displaced by ad hoc permissions.

12. It must be emphasized that when a statute prescribes a particular manner for doing an act, it must be done in that manner and in no other manner. In the present case, where the Master Plan is the governing statutory instrument for land use, a departure which effectively changes land use permissibility must satisfy the statutory procedure for alteration, amendment, or revision contemplated by the PRTPD Act. It cannot rest on internal approvals or administrative convenience. This is also why the High Court's recording that, as on 13.12.2021, the CLU did not have statutory backing, assumes decisive significance. If on the date of its issuance the CLU lacked statutory support to permit the proposed use in the relevant zone, the defect is not a mere irregularity. It goes to the root of jurisdiction. A permission must be lawful when it is granted. It cannot be rendered lawful by a later event unless the PRTPD Act itself so provides.

13. The CLU dated 13.12.2021 also proceeds on the footing that the site falls within the notified Master Plan and is treated as a non-conforming land use zone. In such a situation, a conditional permission issued in the course of the Section 80 of the PRTPD Act and Section 81 of the PRTPD Act framework cannot be used to invert the statutory order by first granting a CLU in a zone where the use is not permissible under Section 79 of the PRTPD Act and then seeking to sustain it on the basis of subsequent approvals.

14. We may also note, in this context, that the reliance placed upon conditions contained in the CLU, and the observation that affected persons may pursue remedies if such conditions are violated, cannot answer the foundational objection. Conditions may regulate the manner in which a permission that is otherwise lawful may be implemented; they cannot supply jurisdiction where the proposed land use is

impermissible under the operative Master Plan. To accept conditions as a substitute for conformity with the Plan would invert the statutory order by permitting what is prohibited under Section 79 of the PRTPD Act first, and leaving compliance with the Master Plan to future contingencies.

15. It was also urged that the proposed unit would advance industrial development and employment and that the CLU was processed under a single-window mechanism. Such considerations cannot dilute the binding force of the operative Master Plan or the statutory prohibitions governing land use. Administrative facilitation, however efficient, must operate within the four corners of the PRTPD Act, and cannot legitimise a land use that is impermissible under the Plan.

16. The objection founded on alternate remedy or disputed questions of fact does not carry the matter further. The challenge in the present appeals goes to the root of statutory competence and legality, namely, whether a change of land use contrary to the operative Master Plan could be granted at all. Where jurisdictional legality is in issue, the matter cannot be non-suited on the plea that factual aspects may be disputed.

17. For these reasons, we are of the view that the CLU dated 13.12.2021 could not have been granted for the proposed unit when, under the operative Master Plan for Sangrur, the site fell in a rural agricultural zone where the proposed activity was not permissible.

Issue II: Whether the “approval” recorded in the 43rd meeting dated 05.01.2022 could lawfully cure the admitted defect in the CLU and whether such approval is capable in law of operating as an alteration or amendment of the Master Plan under the PRTPD Act

18. We now turn to the reliance placed on the “approval” recorded in the 43rd meeting of the Punjab Regional and Town Planning and Development Board dated 05.01.2022. The record indicates that the item placed before the Planning Board itself described the proposal as requiring ex post facto approval, and the minutes record that such ex post facto approval was granted. The crucial question, however, is not the label applied by the administration, nor the form in which the approval is described. The determinative question is whether the decision recorded on 05.01.2022 is capable, in law, of operating as an alteration or amendment of the Master Plan so as to retrospectively validate and cure the admitted defect in the CLU dated 13.12.2021.

19. In our considered view, it is not. Once a Master Plan has come into operation under Section 70(5) of the PRTPD Act read with Section 75 of the PRTPD Act, it acquires statutory force and becomes the

governing instrument for land use and development within the planning area. Any change which has the effect of altering land use permissibility, whether described as an amendment, modification, or revision, can be brought about only by following the procedure expressly prescribed by the statute. The review and revision mechanism under Section 76 of the PRTPD Act does not operate in isolation. It expressly attracts, by legislative design, the procedural discipline embodied in Sections 70 and 75, including publication, invitation and consideration of objections and suggestions, and formal bringing into operation of the revised position through publication in the Official Gazette.

20. A decision recorded in the minutes of a meeting, or an internal approval accorded by an executive or statutory body, does not by itself amount to an alteration or amendment that has been brought into legal operation as part of the Master Plan framework. Section 76 empowers the initiation of a revisionary process. It does not dispense with the mandatory steps that alone give legal efficacy to a change in the Master Plan. To treat minutes of a meeting as the functional equivalent of a statutory amendment would be to collapse the distinction between a proposal to revise and a revision that has acquired legal force, and would render the procedural safeguards built into the PRTPD Act otiose.

21. This conclusion becomes inescapable where, as in the present case, the asserted "approval" has the effect of permitting an otherwise impermissible industrial activity in a rural agricultural zone, with direct consequences for residents, habitations, and a functioning educational institution. Zoning prescriptions under a Master Plan are not mere internal guidelines. They represent a considered legislative balance between competing land uses and are intended to protect public interest. Any departure which dilutes that balance must satisfy the full statutory process prescribed for altering the Plan itself. Executive convenience or post facto endorsement cannot be a substitute for statutory compliance.

22. Equally, the statutory scheme does not contemplate the curing of a jurisdictional defect by retrospective administrative approval. A CLU which is unlawful on the date of its grant for want of statutory authority does not become lawful merely because a later decision purports to validate it, unless the statute expressly confers such a power of retrospective validation. The PRTPD Act contains no such provision. The legality of the CLU must therefore be tested with reference to the law and the operative planning framework as they stood on the date the CLU was granted.

23. Therefore, we hold that where the PRTPD Act occupies the field and prescribes the manner in which an operative planning instrument is to be revised or altered, that manner cannot be substituted by

executive decision-making or by treating minutes of a meeting as the equivalent of an amendment brought into operation under the Act. The approach adopted by the High Court, which treats the subsequent approval as curing the illegality of the CLU, cannot be accepted when the statutory structure does not permit legality to be supplied to an act which was unlawful when done, by a later administrative approval which does not itself satisfy the mandatory requirements governing alteration or revision of the Master Plan. The High Court's approach, which proceeds on the premise that an act lacking statutory backing on the date of its issuance may nonetheless be sustained by a subsequent ex post facto approval, is inconsistent with this statutory structure.

24. It was lastly urged that substantial financial investment has been made pursuant to the CLU and that interference at this stage would cause prejudice. We are unable to accept this submission. Expenditure incurred or steps taken in furtherance of a permission that is unlawful or without statutory authority cannot confer legitimacy upon the underlying action. No amount of financial investment can justify the continuation of an illegal project that operates in derogation of the statutory planning framework and directly impacts the rights of civilians living in the region.

25. For these reasons, we hold that the "approval" recorded on 05.01.2022 could not lawfully cure the defect in the CLU dated 13.12.2021, and it is not capable, in law, of operating as an alteration or amendment of the Master Plan under the PRTPD Act.

Issue III: Whether the siting norms and environmental safeguards applicable to the proposed unit were complied with in the manner required by law.

26. The present issue arises at the intersection of two distinct, but complementary, safeguards. The first is the requirement of prior environmental clearance under the EIA Notification, 2006 before commencement of construction activity or preparation of land at the site. The second is the siting and proximity discipline applied at the level of pollution control permissions, including the siting distances prescribed by the PPCB notification dated 02.09.1998 for cement plants and grinding units. These safeguards are intended to operate in advance. They are designed to prevent avoidable risk to habitations and sensitive receptors, including educational institutions, and to ensure that regulatory satisfaction is reached on objective material and not on assumption.

27. The record indicates that Respondent No. 9 applied for Terms of Reference with the SEIAA, Punjab, and that Terms of Reference were granted on 28.09.2021 and amended on 25.11.2021. The record also indicates that a public hearing was conducted on 19.04.2022 in connection with the process for environmental clearance, and that

environmental clearance has not been granted, with the parties attributing the pendency to interim orders operating in the writ proceedings and thereafter in these appeals. These steps, however, do not dilute the basic position that the requirement of prior environmental clearance under the EIA Notification, 2006 is not a post facto formality. The statutory scheme proceeds on the basis that assessment, public consultation, and appraisal must precede the commencement of construction activity or preparation of land at the site.

28. Equally, so far as siting is concerned, the PPCB notification dated 02.09.1998 prescribes minimum distances for cement plants and grinding units, including 300 metres from an educational institution and 300 metres from a residential area described as a cluster of 15 pucca houses, apart from other siting parameters. On the material placed before us, Respondent No. 6 has sought to justify the grant of the No Objection Certificate dated 14.12.2021 by stating that it was based on the SDM certification and a site visit dated 17.11.2021. Respondent No. 9 relies upon material which states that the school is beyond the prescribed distance when measured from the periphery of the proposed site and that there is no residential cluster of 15 pucca houses within the prescribed radius. The Appellants, on the other hand, dispute this position and rely upon material to contend that the school and residential habitations are in closer proximity to the proposed site and that the prescribed siting safeguards are attracted. The record also refers to nearby habitations and other establishments in the vicinity. This material, taken as a whole, indicates that the site is not isolated and that the proposed unit is in the vicinity of habitations and an educational institution, which are precisely the kinds of receptors for which siting safeguards exist.

29. A further difficulty arises from the manner in which compliance with distance is sought to be established on the material relied upon by the authorities. Respondent No. 6 acknowledges that the measurement was carried out from the boundary shown by the project proponent and then asserts that the distance would increase if measured from the source of pollution. This approach does not satisfy the minimum regulatory discipline. Siting norms are not satisfied by an assumption that the distance may be more when measured differently. They require demonstrable compliance on the basis of identified emission sources and verified measurements. This is more so when, at the relevant stage, the material placed for consideration did not demonstrably crystallise the emission sources and their configuration in a manner that would permit verified assessment of siting compliance on objective parameters. When the emission sources and their configuration are not crystallised and verified, a conclusion on siting compliance based on

boundary measurements cannot be treated as a conclusive regulatory satisfaction, particularly where the school and habitations are close to the margin.

30. Respondent No. 9 has also sought to contend that the proposed unit is a clinker grinding unit, that it is assessed at the State level as a Category "B" project, and that it proposes the use of fly ash and control systems such as bag filters. These submissions do not answer the core concern we have. Classification for the purposes of appraisal under the EIA Notification, 2006 does not displace the obligation to comply with siting safeguards. Proposed mitigation measures and conditions in a consent to establish do not substitute the minimum siting standards, nor do they permit the regulator to postpone demonstrable compliance to a later stage. In environmental matters, where a school is in close proximity and where there is material indicating nearby habitations, the decision-maker must proceed on the precautionary approach and must demonstrate, on objective material, that the applicable safeguards have been complied with. This approach is consistent with the principles reiterated by various landmark decisions of this Court in *Vellore Citizens' Welfare Forum v. Union of India*⁸, *M.C. Mehta v. Union of India*⁹ and *Hospitality Assn. of Mudumalai v. In Defence of Environment & Animals*¹⁰, among others.

31. The submissions advanced on behalf of Respondent No. 6 (PPCB), that the consent to establish/No Objection Certificate was granted on the basis of the SDM's report and a site visit, and that compliance with the siting guidelines can be verified at a later stage while considering consent to operate, do not meet the legal requirement of demonstrable compliance at the threshold. Preventive safeguards, by their very design, cannot be treated as matters to be tested only after permissions have been granted or after the project has advanced. Where the regulatory framework prescribes minimum buffers from habitations and educational institutions, the satisfaction recorded by the authority must be founded on objective and verifiable measurements, and not on an assumption that compliance can be ensured later.

32. Likewise, Respondent No. 9's reliance on the grant/amendment of Terms of Reference, the conduct of public hearing, and proposed mitigation measures, does not dilute the requirement that statutory safeguards must operate in advance. Proposed control systems and future-stage compliances cannot substitute the obligation to satisfy siting norms and the discipline underlying prior environmental clearance at the relevant time. Nor can subsequent material or later regulatory developments be invoked to retrospectively validate the legality of permissions already found to be without statutory

foundation.

33. For these reasons, we are not satisfied that the siting norms and safeguards, including the PPCB notification dated 02.09.1998 and the regulatory discipline underlying prior environmental clearance under the EIA Notification, 2006, were complied with in the manner required by law on the material presently relied upon. Issue III is accordingly answered in favour of the Appellants.

34. In view of the discussion above, the appeals are allowed.

35. The common judgment and order dated 29.02.2024 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No. 20134 of 2022 and CWP No. 18676 of 2022 is set aside.

36. The Change of Land Use dated 13.12.2021 granted in favour of Respondent No. 9 is quashed. Consequently, the No Objection Certificate/Consent to Establish dated 14.12.2021 issued from the pollution angle in favour of Respondent No. 9, insofar as it proceeds on the basis of the said CLU, is also set aside.

37. Pending applications, if any, shall stand disposed of. No order as to costs.

Part II: For Writ Petition (C) 481 of 2025 and Writ Petition (C) 551 of 2025

38. The appellants in the above civil appeals have also filed the present writ petitions under Article 32 of the Constitution of India. The appellants in Civil Appeal arising out of SLP (Civil) No. 8316 of 2024 has instituted WP(C) No. 481 of 2025 and the appellant in Civil Appeal arising out of SLP (Civil) No. 8495 of 2024 have instituted WP(C) No. 551 of 2025, inter alia, assailing the revised list of industrial sector categorization issued by the CPCB in January, 2025 and the consequential notifications issued by the Ministry of Environment, Forest¹¹ and Climate Change¹².

39. During the pendency of the above appeals, the CPCB, in January, 2025, issued a revised list of industrial sector categorisation. Under the revised list, the activity described as "stand-alone grinding unit without CPP (Captive Power Plant)" was reclassified from the "Red" category to the "Orange" category. Shortly thereafter, the MoEF & CC issued Notifications GSR 84E dated 29.01.2025 and GSR 85E dated 30.01.2025, namely the Control of Air Pollution (Grant, Refusal Or Cancellation Of Consent) Guidelines, 2025 and the Control of Water Pollution (Grant, Refusal or Cancellation of Consent) Guidelines, 2025. The Appellants have accordingly instituted WP(C) No. 481 of 2025 and WP(C) No. 551 of 2025 seeking, inter alia, quashing of the revised categorisation and the aforesaid notifications to the extent they relax the applicable regulatory safeguards for such units.

40. We have gone through the material placed on record in the writ

petitions, including the revised industrial sector categorisation issued by the Central Pollution Control Board in January, 2025, the Notifications GSR 84E dated 29.01.2025 and GSR 85E dated 30.01.2025 issued by the MoEF & CC, and the submissions advanced by learned counsel for the parties.

41. In our considered opinion, the question that arises for determination in these two Writ Petitions is whether the revised industrial sector categorisation issued by the CPCB in January, 2025, insofar as it reclassifies the activity described as "stand-alone grinding unit without CPP" from the "Red" category to the "Orange" category, together with the consequential relaxation of siting and regulatory safeguards brought about by Notifications GSR 84E dated 29.01.2025 and GSR 85E dated 30.01.2025, can be sustained in law having regard to the constitutional mandate under Articles 14 and 21 of the Constitution of India and the governing principles of environmental jurisprudence.

Rationale advanced by the CPCB for the revised categorisation

42. The determination of the above issue necessarily requires an examination of the rationale offered by the Central Pollution Control Board for the revised categorisation, the implications of such reclassification on preventive environmental safeguards including siting norms, and the balance that constitutional and environmental law requires to be maintained between developmental considerations and the protection of life, health, and the environment.

43. The CPCB has relied upon a revised classification methodology based on a modified Pollution Index framework, under which industrial activities are assessed on the basis of their potential to cause air pollution, water pollution, and waste generation, and are thereafter assigned a cumulative pollution index. The stated justification for revisiting the 2016 classification is the experience gained over time, increased use of cleaner fuels, adoption of cleaner technologies, and the need to differentiate between integrated industrial operations and standalone units.

44. A central premise of the CPCB's reasoning is that a stand-alone cement grinding unit without a captive power plant has a lower pollution potential than an integrated cement plant involving clinker manufacturing and kiln operations. On this basis, the CPCB has treated such units as a distinct sub-category within the cement sector and has placed them in the "Orange" category upon application of the revised scoring methodology. The CPCB has also stated that the revised methodology was placed in the public domain, representations were invited, and the final framework was adopted after examination by a duly constituted committee.

45. The CPCB has further asserted that the revised categorisation

continues to be guided by the precautionary principle and is intended to function as a regulatory tool for consent management, inspection frequency, siting decisions, and environmental oversight, while also incentivising adoption of cleaner fuels and technologies. The PPCB has substantially adopted this position and has stated that it has implemented the revised categorisation in terms of the directions issued by the CPCB.

46. This, in essence, is the rationale advanced by the regulatory authorities in support of the revised categorisation. The validity of this rationale, when tested against constitutional requirements and the governing principles of environmental jurisprudence, now falls for consideration.

Assessment of the CPCB's rationale and its legal sustainability

47. Having considered the rationale advanced by the CPCB, we are unable to accept that the reclassification of a "stand-alone grinding unit without CPP" from the "Red" category to the "Orange" category, together with the consequential relaxation of regulatory and siting safeguards, can be sustained in law.

48. The revised categorisation proceeds on a sector-level assessment based on a Pollution Index methodology. While such a framework may serve as a regulatory tool for consent management and inspection frequency, it cannot be treated as determinative where the consequence of reclassification is dilution of preventive safeguards, particularly siting norms intended to protect habitations and sensitive receptors such as educational institutions.

49. The CPCB's principal justification rests on a comparative distinction between integrated cement plants and stand-alone grinding units, on the premise that absence of clinker manufacturing and captive power generation necessarily results in lower pollution potential. This approach, however, does not address the core concern. The relevant question is not whether a stand-alone grinding unit is less polluting than an integrated plant in relative terms, but whether its pollution potential is sufficiently low to justify a regulatory downgrade that materially relaxes safeguards governing proximity to civilian habitations.

50. It must be noted that cement grinding units, even without CPP, involve extensive handling and processing of powdered material, which inherently gives rise to particulate emissions and fugitive dust. These emissions have direct public health implications, particularly where units are located near residential areas and schools. The revised categorisation does not demonstrate, on objective and publicly disclosed material, that such exposure risks have diminished to an extent that warrants dilution of the precautionary standards earlier

applied.

51. The reliance on adoption of cleaner fuels and technologies is equally unpersuasive. The revised framework proceeds on generic, sector-level assumptions rather than on demonstrated, site-specific performance. Preventive environmental regulation does not permit safeguards to be relaxed on the assumption that mitigation will suffice at a later stage. Where the risk to life and health is foreseeable, safeguards must operate at the threshold.

52. Notably, the CPCB itself recognises that the precautionary principle governs categorisation and that deviation from a mechanical application of methodology is warranted where activities pose a high risk of environmental or ecological harm. This recognition undermines the argument that a uniform application of the revised methodology can justify dilution of siting norms in sensitive contexts. The relaxation of minimum siting distances under Notifications GSR 84E dated 29.01.2025 and GSR 85E dated 30.01.2025 further aggravates the concern. Permitting activities with known particulate emission profiles to be located closer to habitations and educational institutions, without a sector-specific justification demonstrating redundancy of earlier safeguards, cannot be regarded as reasonable or proportionate.

53. We are therefore of the view that the revised categorisation and the consequential regulatory relaxations elevate a generic classification methodology to a position where it overrides preventive environmental safeguards, without adequate regard to exposure risks, local conditions, or the constitutional obligation to protect life and health. Such an approach is inconsistent with the precautionary principle, the doctrine of sustainable development, and the content of Article 21 of the Constitution of India.

Constitutional threshold for interference with regulatory classification

54. As a general rule, this Court exercises circumspection in interfering with technical classifications and regulatory frameworks formulated by expert bodies. Matters such as industrial categorisation and pollution indices ordinarily fall within the domain of specialised authorities, and judicial review is not invoked merely because a different regulatory choice is possible. Intervention is confined to cases where the decision-making process or its consequences transgress constitutional limits.

55. However, this principle of restraint cannot apply where a regulatory classification has the direct and foreseeable effect of diluting safeguards that protect fundamental rights. When a classification decision results in a blatant erosion of preventive protections governing exposure to environmental hazards, the issue ceases to be a matter of technical regulation alone and assumes constitutional significance.

56. This Court has repeatedly recognised that while judicial restraint is the norm in matters involving policy choices and expert regulation, environmental adjudication occupies a distinct constitutional space. Where executive or regulatory action has the effect of exposing communities to foreseeable environmental harm or diluting preventive safeguards that protect life and health, judicial intervention is not an act of activism but a discharge of constitutional duty. This position has been consistently affirmed in landmark decisions such as *Vellore Citizens' Welfare Forum v. Union of India* (Supra), *M.C. Mehta v. Union of India (Shriram - Oleum Gas)*¹³, *Indian Council for Enviro-Legal Action v. Union of India*¹⁴, and *A.P. Pollution Control Board v. Prof. M.V. Nayudu*¹⁵, where this Court held that when scientific uncertainty coexists with a credible risk to human health or the environment, courts must err on the side of protection. These decisions underscore that environmental governance is not immune from constitutional scrutiny, and that judicial intervention becomes imperative where regulatory choices undermine the fundamental right to a clean and healthy environment guaranteed under Article 21 of the Constitution of India.

57. In the present case, the revised categorisation and the consequential relaxation of siting safeguards materially affect the level of protection available to civilians, including residents and school-going children, against exposure to industrial pollution. By lowering the regulatory threshold applicable to an activity with known particulate emission characteristics, the revised framework permits such units to be located closer to habitations and educational institutions. The impact is not speculative. It directly implicates public health and safety.

58. The right to life under Article 21 of the Constitution of India encompasses the right to a clean and healthy environment. Preventive environmental safeguards, including siting norms, are the means by which this right is protected. Where such safeguards are relaxed without a demonstrable and reasoned basis showing that the underlying risk has been materially reduced, the resulting action infringes the substantive content of Article 21. Further, Article 14 of the Constitution of India also comes into the picture. A regulatory downgrade that weakens environmental protection must bear a rational nexus to the object of safeguarding life and health. In the absence of a proportionate and scientifically substantiated justification, such dilution is arbitrary. Arbitrariness that impacts life and health cannot be sustained under constitutional scrutiny.

59. The precautionary principle which was recognized as the law of the land by this Court under Article 21 of the Constitution of India in *Vellore Citizens' Welfare Forum v. Union of India* (Supra), and which underlines environmental governance in this country, mandates that

where there is a plausible risk of harm, regulatory frameworks must err on the side of protection. In the present case, the revised categorisation prioritises sectoral differentiation over preventive protection, without adequately addressing exposure risks in sensitive contexts. This Court does not interfere with classification merely because it concerns industrial activity. The present intervention is warranted because the impugned actions have the effect of lowering the constitutional minimum of protection guaranteed to affected communities. Where regulatory action compromises fundamental rights under Articles 14 and 21 of the Constitution of India, judicial review becomes a constitutional necessity rather than an intrusion into policy.

Concluding Remarks and Operative Directions

60. Before we proceed to the operative directions, it is necessary to underscore, in clear terms, the constitutional balance that must govern questions of development and environmental protection. Economic development and industrial growth are legitimate and important objectives of the State. However, in a constitutional framework founded on the rule of law, development is not an abstract or absolute goal. It is conditioned by the non-derogable obligation to protect life, health, and environmental integrity. Development that undermines these foundational values ceases to be constitutionally permissible development.

61. We believe that the doctrine of sustainable development is not a slogan of compromise but a principle of prioritisation. It requires that when developmental activity poses a credible risk to human health or environmental safety, regulatory frameworks must err on the side of protection. The Constitution does not permit a trade-off where civilian life and health are exposed to foreseeable harm on the assumption that economic benefit or industrial facilitation justifies such exposure. Articles 14 and 21 of the Constitution of India do not tolerate a regulatory calculus that treats environmental safety as negotiable.

62. If regulatory dilution of the kind impugned in the present case were to be accepted, it would mark a fundamental shift in environmental governance. Sector-level reclassification, divorced from exposure realities and local sensitivities, would become a ready instrument to justify siting of polluting activities in close proximity to habitations, schools, and other sensitive receptors. Such an approach would not remain confined to the present case. It would operate as a precedent, enabling progressive erosion of preventive safeguards across regions, with cumulative and irreversible consequences. The law does not permit environmental protection to be weakened incrementally until harm becomes inevitable.

63. Equally important is the recognition that environmental harm, once caused, is often irreversible or incapable of full remediation. Public

health consequences, degradation of air quality, and long-term ecological damage cannot be undone by subsequent regulatory correction. It is for this reason that environmental regulation is designed to be preventive rather than reactive. A regulatory framework that allows risk to materialise first and seeks to address consequences later is fundamentally incompatible with constitutional environmental jurisprudence.

64. At the same time, we reiterate that this Court does not ordinarily interfere with technical classifications or policy determinations made by expert bodies. Judicial restraint in matters of regulatory policy remains a settled principle. However, restraint cannot extend to abdication. Where regulatory action results in a lowering of the constitutional minimum of protection guaranteed to citizens, particularly in matters affecting life and health, judicial intervention becomes a constitutional obligation. The present case falls squarely within that exceptional category.

65. For the reasons recorded above, we are of the considered view that the revised industrial sector categorisation issued by the CPCB in January, 2025, insofar as it reclassifies the activity described as a "stand-alone grinding unit without CPP" from the "Red" category to the "Orange" category, cannot be sustained in law. The said reclassification, read together with the consequential relaxation of siting and regulatory safeguards brought about by Notifications GSR 84E dated 29.01.2025 and GSR 85E dated 30.01.2025, has the effect of diluting preventive environmental protections in a manner that infringes the constitutional guarantees under Articles 14 and 21 of the Constitution of India.

66. Accordingly, Writ Petition (Civil) No. 481 of 2025 and Writ Petition (Civil) No. 551 of 2025 are allowed to the following extent:

- I. The revised industrial sector categorisation issued by the CPCB in January, 2025 is quashed insofar as it reclassifies the activity described as a "stand-alone grinding unit without CPP" from the "Red" category to the "Orange" category.
- II. Notifications GSR 84E dated 29.01.2025 and GSR 85E dated 30.01.2025 issued by the MoEF&CC are quashed insofar as they relax the applicable siting and regulatory safeguards for such units on the basis of the aforesaid reclassification.

67. Consequently, any consent, approval or permission that has been granted solely on the basis of the aforesaid reclassification of "stand-alone grinding unit without CPP" as an "Orange" category activity or on the basis of the relaxed siting and regulatory safeguards introduced by Notifications GSR 84E dated 29.01.2025 and GSR 85E dated 30.01.2025 shall not survive and shall stand withdrawn, and the concerned authorities shall take all consequential steps in accordance with law.

68. We clarify that this judgment shall not preclude the CPCB or the MoEF & CC from undertaking a fresh exercise of classification or regulatory review in accordance with law, provided that any such exercise is supported by a reasoned, transparent, and scientifically substantiated assessment, and is consistent with the precautionary principle and the constitutional mandate to protect life, health, and the environment.

69. With the above directions, Writ Petition (Civil) No. 481 of 2025 and Writ Petition (Civil) No. 551 of 2025 stand disposed of.

70. Pending applications, if any, shall also stand disposed of.

— — —

¹ In short "CLU"

² In short "PPCB"

³ In short "PRTPD Act"

⁴ In short "SEIAA"

⁵ In short "SEAC"

⁶ (1974) 2 SCC 506, para nos. 26-30

⁷ (1991) 4 SCC 54

⁸ (1996) 5 SCC 647

⁹ (1997) 3 SCC 715

¹⁰ (2020) 10 SCC 589

¹¹ MoEF

¹² Climate Change

¹³ (1987) 1 SCC 395

¹⁴ (1996) 3 SCC 212

¹⁵ (1999) 2 SCC 718

§ 2026 INSC 159

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.

2011 SCC OnLine Del 1318

(BEFORE RAJIV SAHAI ENDLAW, J.)

W.P.(C) 3338/2001

Freedom Fighters Social Welfare Association
Petitioner

Mr. Meet Malhotra, Sr. Advocate with Mr. Ravi S.S. Chauhan & Mr.
Gaurav Varma, Advocates

v.

UOI & Ors. Respondents

Ms. Zubeda Begum & Ms. Sana Ansari, Advocates for GNCTD.

And

W.P.(C) 3444/2001

Shree Hazur Baba Sadhu Singh Ji Maharaj Trust
Petitioner

Mr. Meet Malhotra, Sr. Advocate with Mr. Ravi S.S. Chauhan & Mr.
Gaurav Varma, Advocates

v.

UOI & Ors. Respondents

Ms. Barkha Babbar, Advocate for UOI.

Ms. Zubeda Begum & Ms. Sana Ansari, Advocates for GNCTD.

And

W.P.(C) 12695-705/2006

Dr. Tatinder Kumar Kathuria & Ors. Petitioners
Mr. Inder Bir Singh, Advocate

v.

Govt. of NCT of Delhi & Ors. Respondents

Ms. Zubeda Begum & Ms. Sana Ansari, Advocates for GNCTD.

And

W.P.(C) 12894-905/2006

Sh. Laliteshwar Kumar Chowdhary & Ors.
Petitioners

Mr. Inder Bir Singh, Advocate

v.

Govt of NCT of Delhi & Ors. Respondents

Ms. Zubeda Begum & Ms. Sana Ansari, Advocates for GNCTD.

And

W.P.(C) 13229-35/2006

Smt. Kishni & Ors. Petitioners

Mr. Inder Bir Singh, Advocate

v.

Govt. of NCT of Delhi & Ors. Respondents

Ms. Zubeda Begum & Ms. Sana Ansari, Advocates for GNCTD.

And

W.P.(C) 13428/2006

Freedom Fighters Welfare Society (Regd.)

Petitioner

Mr. Ravi S.S. Chauhan & Mr. Gaurav Varma, Advocates

v.

UOI & Ors Respondents

Ms. Ruchi Sindhwani with Ms. Megha Bharara, Advocates for GNCTD.

And

W.P.(C) 19123-34/2006

Shri Raj Kumar & Ors Petitioners

Mr. Inder Bir Singh, Advocate

v.

Govt. of NCT of Delhi & Ors Respondents

Ms. Zubeda Begum & Ms. Sana Ansari, Advocates for GNCTD.

W.P.(C) 3338/2001; W.P.(C) 3444/2001; W.P.(C) 12695-705/2006; W.P.(C) 12894-905/2006; W.P.(C) 13229-35/2006; W.P.(C) 13428/2006; and W.P.(C) 19123-34/2006

Decided on March 15, 2011

RAJIV SAHAI ENDLAW, J.

1. This batch of seven petitions entails the usual tussle of mankind i.e. of deforestation with a short time perspective to use the land of which no more is being produced for residential and commercial purposes, as against of afforestation with the long term perspective of preserving the environment necessary for the very existence of mankind.

2. The challenge in each of the petitions is to the steps taken by the respondents (being the Revenue, Forest and Flood Control Departments of the Government of NCT of Delhi (GNCTD)) pursuant to the Notification dated 2nd April, 1996 of the GNCTD. The said Notification was issued in pursuance to the directions given by the Supreme Court in orders dated 25th January, 1996 and 13th March, 1996 in I.A. Nos. 18 & 22 in Writ Petition (Civil) No. 4677/1985 titled *M.C. Mehta v. Union of India*. The Supreme Court directed that uncultivated surplus land of Gaon Sabha falling in "Ridge" be excluded from vesting in Gaon Sabha

under Section 154 of the Delhi Land Reforms Act, 1954 and be made available for the purpose of creation of Reserved Forest. The Notification declared "the uncultivated land of Gaon Sabha" specified in the said Notification and situated in Southern Ridge as surplus land and excluded the same from vesting in the Gaon Sabha and placed the said land at the disposal of Forest Department of GNCTD.

3. The contention of Mr. Meet Malhotra, Senior Advocate appearing for the petitioners in W.P.(C) Nos. 3338/2001 & 3444/2001 is that the purport of the orders aforesaid of the Supreme Court in pursuance where to the Notification aforesaid was issued and of the Notification was to place only such land at the disposal of the Forest Department, which were open and vacant and not land which had already been encroached and built upon as on the date of the Notification. Reliance is placed on copies of revenue records to show that some of the land mentioned in the said Notification was described as "Gair Mumkin Makaanat", meaning that the same was already built upon even prior to the orders aforesaid of the Supreme Court. Reliance is also placed on the affidavit dated 4th August, 2003 of Sh. Bajrang Lal, Sub Divisional Magistrate, Hauz Khas, Delhi filed in W.P.(C) No. 3338/2001 confirming that as per Khasra Girdawari of the year 1995-96, the land in Khasra Nos. 39 & 40 of village Neb Sarai was described as "Gair Mumkin Makaanat".

4. The senior counsel has fairly stated that though the petitioners admit that the land belonged to the Gaon Sabha and has been illegally encroached upon but contends that since the same had been built upon prior to the orders of the Supreme Court aforesaid and the Notification dated 2nd April, 1996, it could not have been placed at the disposal of the Forest Department.

5. The further contention of the senior counsel for the petitioners is that the GNCTD is also considering regularization of colonies which have illegally come up on the land meant for agricultural purposes and belonging to the Gaon Sabha. It is contended that the proposals for regularization of unauthorized colonies had been invited and submitted; that some of the land subject matter of the Notification dated 2nd April, 1996 (supra) is part of the said unauthorized colonies. It is contended that the land which, as on the date of the orders aforesaid of the Supreme Court or on the date of the Notification was part of the unauthorized colony and the proposal for regularization whereof was pending, could not be the part of the Notification dated 2nd April, 1996 whereby the same land was vested in the Forest Department. It is urged that there is thus an apparent inconsistency and arbitrariness

requiring this Court to intervene. The petitioners in this regard have relied upon a public notice published in the newspapers in the year 1999 in pursuance of the directions of this Court in W.P.(C) No. 4771/1993 requiring submission of lay out plans of the colonies pending consideration for regularization.

6. Though the counsels have not relied upon any orders in W.P.(C) No. 4771/1993 (supra) of this Court but I find in the files a copy of the judgment dated 2nd February, 2006 of a Single Judge of this Court in Civil Writ No. 8977-79/2003 titled *Village Pul Pehladpur Residents v. Union of India* therein setting out the order dated 17th August, 1998 of the Division Bench of this Court in W.P.(C) No. 4771/1993 titled *Common Cause (Regd.) v. Union of India* which indicates that this Court had directed the Government to take definite decision whether to regularize or not to regularize the unauthorized colonies and to take action for removal of encroachments/structures on public land, qua colonies with respect whereto decision not to regularize is taken.

7. The senior counsel for the petitioners has further argued that the directions aforesaid of the Supreme Court in the year 1996 and the Notification (supra) in pursuance thereto was to be only prospective i.e. with respect to the land which till then was open and vacant and not qua land which had already been encroached and built upon and was part of the unauthorized colony and a scheme for regularization whereof was under consideration. It is urged that the orders of the Supreme Court did not direct removal of encroachments on the land and used the expression "likely to be misused" and which indicate that the said directions were not intended for land which was not vacant and which already had been encroached and built upon. The senior counsel though during the arguments agreed that the said orders were not so unequivocal and contended that the same could be clarified by the Supreme Court only.

8. Ms. Ruchi Sindhwani, Advocate for GNCTD in some of the writ petitions invited attention to the affidavits filed of the revenue officials to the effect that there was no construction on the land prior to 2nd April, 1996. She contends that the petitioners have not shown anything to prove construction over the land since prior to the orders aforesaid of the Supreme Court. In the said affidavit, it is also pleaded that the said lands were part of the ridge area as per the Master Plan and were vide Notification dated 2nd April, 1996 (supra) vested in the Forest Department.

9. Ms. Ruchi Sindhwani, Advocate for GNCTD has also argued that

pursuant to the directions of the Division Bench of this Court in W.P.(C) no. 4771/1993 (supra), the GNCTD has on 24th March, 2008 notified the "Regulations for Regularization of Unauthorized Colonies in Delhi" and has during the course of hearing handed over a copy of the said Notification. As per the said Notification, the unauthorized colony or parts thereof falling under notified or reserved forest areas are not to be considered for regularization. It is contended that as per this Notification also, the question of the land falling in ridge/forest area being considered for regularization even if part of any unauthorized colony, does not arise and as such there is no inconsistency as has been urged.

10. I may in this regard also notice that the judgment of this Court in *Village Pul Pehladpur Residents* (supra) had also noticed that without any regulations or guidelines for regularization, action for removal of encroachments/demolition of unauthorized colonies was being taken selectively. Now in the light of the Notification of 24th March, 2008, there are clear guidelines as to which parts of the unauthorized colonies are eligible for regularization and which are not.

11. Ms. Ruchi Sindhwani, Advocate for GNCTD has also argued that the argument of the petitioners tantamount to a challenge to the Notification dated 2nd April, 1996 (supra) and the said Notification having been issued in pursuance of the directions of the Supreme Court, the challenge thereto can lie before the Supreme Court and not before this Court.

12. Ms. Zubeda Begum, Advocate appearing for the GNCTD in some other writ petitions has contended that the petitioners have not placed anything before this Court to demonstrate that any of the land with respect where to the petitions have been filed was part of any unauthorized colony pending for regularization. She has further contended that the purport of the orders aforesaid of the Supreme Court and the Notification dated 2nd April, 1996 (supra) was to vest all land mentioned therein, even if had been already encroached upon, in the Forest Department for the purpose of afforestation as part of the ridge area. She has without prejudice to the said plea contended that none of the petitioners have filed any documents to show the Khasra numbers on which their properties may be located.

13. At this stage, I may describe briefly the land subject matter of each of the petitions:

(i) W.P.(C) No. 3338/2001 has been filed by a Society claiming to be an Association of owners in possession of built up residential plots in

Freedom Fighters Enclave Colony, village Neb Sarai. The said Society contends that its members had built upon land in Khasra Nos. 39 & 40; that though as per Notification the entire Khasra Nos. 39 & 40 is with the ridge but the action with respect to only parts thereof was being taken. Vide interim order dated 23rd May, 2001 in this writ petition, the respondents were restrained from dispossessing the petitioner.

(ii) W.P.(C) No. 3444/2001 has been filed by a Religious Trust claiming to be having land in Khasra Nos. 8 & 41 in village Neb Sarai. Interim order restraining dispossession was granted in this petition also.

(iii) W.P.(C) No. 12695-705/2006 has been filed by eleven residents also of Freedom Fighters Enclave who claim their land to be in Khasra No. 26. Interim order of status quo was granted in this petition also.

(iv) W.P.(C) No. 12894-905/2006 has been filed by twelve residents also of Freedom Fighters Enclave who claim their land to be in Khasra Nos. 24 & 16.

(v) W.P.(C) No. 13229-35/2006 has been filed by seven persons who claim their land to be in Khasra No. 27. They also enjoy interim protection.

(vi) W.P.(C) No. 13428/2006 has been filed by an Association of owners having land in Khasra No. 42.

(vii) W.P.(C) No. 19123-34/2006 has been filed by twelve petitioners who claim their land to be in Khasra Nos. 223 & 224 in Chattarpur Enclave, village Chattarpur, Mehrauli, New Delhi. They contend that even though their land is not included in the Notification dated 2nd April, 1996 (supra) but is being wrongfully treated as part of forest/ridge area and when decision for regularization of the unauthorized colony which has come up on the said land is pending.

14. A perusal of the order dated 25th January, 1996 (supra) of the Supreme Court shows that the land with respect where to Notification was directed to be issued was described as "Ridge area which has to be preserved. No cultivation or any type of construction can be permitted on this area." The Supreme Court in the said proceedings was concerned with preservation of the green area to provide a lung to the ever increasing population of the city of Delhi. In the subsequent order dated 13th March, 1996, the Supreme Court further observed that the "land is part of the ridge area. Even though it is not a reserved forest, it happens to be a forest. This area cannot be utilized in any manner in view of the prohibitions contained in the Forest Conservation Act, 1980.

In this view of the matter, issuing of notification is a simple formality to secure the area. We, therefore, reiterate and request the Lieutenant Governor to have necessary notification issued within time specified by us."

15. Seen in the aforesaid perspective, when the purport of the order was preservation of environment necessary for the very survival of the city, it is irrelevant whether the encroachment by the petitioners of the land with respect whereto the Notification has been issued was before the said Notification or thereafter. Even if the petitioners, as they claim had encroached upon the said land prior to the year 1996, they cannot be permitted to continue with the encroachment. The land subject matter of the Notification is required to be afforested by removal of all encroachment, structures etc. existing thereon.

16. I am further of the view that now in any case in view of the Regulations for Regularization of Unauthorized Colonies in Delhi, 2008 which prohibit consideration for regularization of unauthorized colonies/portions thereof falling in notified or reserved forest areas, the matter has been placed beyond any pale of controversy. It cannot now be contended that the regularization of the unauthorized colony on the land is pending consideration. The conflict and inconsistency relying whereupon the petitions were filed and the interim orders obtained no longer exists. The petitions now have to necessarily fail.

17. There is another aspect of the matter. The petitioners admittedly are trespassers/encroachers on Gaon Sabha land. They have no equities or rights in their favour. Though the Government as a populist or a humane measure has agreed to consider regularization of unauthorized colonies which had come up illegally on public/private land but none can claim any right thereto. The petitioners as encroachers/trespassers on land, be it of the Gaon Sabha or of the forest, are liable to be ejected therefrom.

18. Before parting with the subject, I may record that though of the opinion that the petitions before this Court were in any case misconceived since the challenge therein was to the Notification dated 2nd April, 1996 issued under directions of the Supreme Court but since the same have remained pending before this Court for long and interim protection was also granted to the petitioners, I have deemed it appropriate to deal with them on merits rather than dismissing them on such ground only.

19. That leaves only the controversy in W.P.(C) No. 19123-34/2006, the land subject matter whereof is claimed to be in Khasra Nos. 223 & 224 in Chattarpur Village and which is stated to be not part of the

Notification dated 2nd April, 1996. The said petition has been filed contending that nevertheless the said land is being treated as part of ridge/forest.

20. The said contention is misconceived. The Notification dated 2nd April, 1996 is not the sole repository of the land in the ridge/forest area. The said Notification had to be issued only for the reason that though the said land in the Master Plan was shown as part of the ridge area but under the Delhi Land Reforms Act, 1954 vested in the Gaon Sabha. The Notification was therefore directed to be issued for exempting the said land from the land vesting in Gaon Sabha and to place the same with the Forest Department. It thus cannot be urged that the land in Khasra Nos. 223 & 224 in Chattarpur Enclave, village Chattarpur, Mehrauli, New Delhi is not part of the ridge/forest merely for the reason of not finding mention in the said Notification.

21. The counsel for the petitioners in W.P.(C) No. 19123-34/2006 however urges that in the counter affidavit filed, it is pleaded that Khasra Nos. 223 & 224 is Gaon Sabha land no action of removal of encroachment or for afforestation of Khasra Nos. 223 & 224 in pursuance to notification dated 2nd April, 1996 is being taken.

22. However, in pursuance to the specific order dated 2nd February, 2010 of this Court in the said proceedings, an affidavit of Sh. Prabhat Tyagi, Dy. Conservator of Forests (South) has been filed in which it is stated that the land in Khasra Nos. 223 & 224 village Chattarpur as also the land subject matter of all the other petitions falls within the Morphological Ridge as per Geological Survey of India Map. The said affidavit also reproduces the Master Plan providing for maintenance of the ridge in its pristine glory for maintaining ecological balance and the need to conserve the same to sustain the natural eco system.

23. Thus the position which emerges is, that the land in Khasra Nos. 223 & 224 is part of ridge since before the issuance of the Notification dated 2nd April, 1996. Thus, it cannot be said that merely because the land in Khasra Nos. 223 & 224 is not included in the Notification dated 2nd April, 1996, that the same is not part of the ridge/forest.

24. There is another aspect of the matter. Even if the petitioners in W.P.(C) No. 19123-34/2006 claim that the land in Khasra Nos. 223 & 224 of village Chattarpur is not included in ridge/forest and is Gaon Sabha land, the fora for having the same adjudicated is not by way of this writ petition but is by way of demarcation or by seeking declaration of their rights under the provisions of the Delhi Land Reforms Act, 1954

stated to be applicable. The writ petition is misconceived for this reason also.

25. I find that the Notification dated 2nd April, 1996 (supra) was also challenged before the Division Bench of this Court in *Bhagat Singh v. UOI* MANU/DE/1737/2010 on the ground that prior to issuance thereof, no exercise for assessing the requirement of the village had been undertaken. The Division Bench held that no such exercise was required to be carried out with respect to land which was part of the Ridge Area inasmuch as the objective of the Notification was to protect the Ridge.

26. None of the petitions have any merits. The interim orders granted earlier are vacated. The petitions are dismissed. The respondents are directed to forthwith take possession of the land by removal of all encroachments/constructions thereon. I refrain from imposing any costs.

— — —

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.

DDA v. KENNETH BUILDERS & DEVELOPERS (P) LTD.

561

(2016) 13 Supreme Court Cases 561

(BEFORE MADAN B. LOKUR AND N.V. RAMANA, JJ.)

a DELHI DEVELOPMENT AUTHORITY . . . Appellant;
Versus
KENNETH BUILDERS AND DEVELOPERS PRIVATE
LIMITED AND OTHERS . . . Respondents.

b Civil Appeals No. 5370 of 2016[†] with
No. 5371 of 2016[‡], decided on June 29, 2016

A. Contract and Specific Relief — Contract Act, 1872 — S. 56 — “Impossibility” of performance under — Connotation of — Explained in detail

c — Reiterated, word “impossible” used in S. 56 of the Contract Act has not been used in the sense of physical or literal impossibility — It ought to be interpreted as impracticable and useless from the point of view of the object and purpose that the parties had in view when they entered into the contract — This impracticability or uselessness could arise due to some intervening or supervening circumstance which the parties had not contemplated — However, if the intervening circumstance was contemplated by the parties, then the contract would stand despite the occurrence of such circumstance — In such an event, there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens — Words and Phrases — “Impossibility”, “impossible”

e **B. Contract and Specific Relief — Termination/Discharge of Contract — Termination by Frustration/Impossibility — Grounds of Frustration — Legal impossibility — Frustration of performance of contract — Intervening/Supervening circumstances of legal prohibition on performance of subject-matter of contract, if beyond contemplation of promisor**

f — Condition in land development agreement that project land was available on “as is where is basis”, and respondent developer was liable to obtain all clearances — Import of

g — Failure of respondent to commence project for lack of environmental clearance in view of uncertainty as to whether project land falls within the Ridge or Residential — Non-availability of “Ridge Demarcation Report” for processing case for environmental clearances — Lack of knowledge of parties as to mandatory clearance from Ridge Management Board and permission of Supreme Court prior to commencement of construction work — Whether is supervening circumstance, beyond contemplation of parties so as to frustrate performance of contract

Development agreement between appellant and respondent developer under public-private partnership project entered into for construction of 3500 houses for resettlement of slum dwellers and 750 free sale flats and per terms

h [†] Arising out of SLP (C) No. 35374 of 2010. From the Judgment and Order dated 30.7.2010 of the High Court of Delhi at New Delhi in WP (C) No. 10617 of 2009
[‡] Arising out of SLP (C) No. 13146 of 2011

562

SUPREME COURT CASES

(2016) 13 SCC

and conditions of agreement, respondent was liable to obtain various approvals and clearances from authorities concerned including environmental agencies of State and Central Government — Attempt of respondent to establish infrastructure facilities on project land objected to by Department of Forests of Government of the National Capital Territory of Delhi (GNCTD) on ground that project land falls within the Ridge and no construction activity could be carried out without consent of Ridge Management Board and permission of Supreme Court, while appellant insisted that project land was “residential” — Environmental clearance granted by Ministry of Environment and Forests (MoEF) for said project subject to obtaining “consent to establish” from Delhi Pollution Control Committee (DPCC), while DPCC required respondent to submit “Ridge Demarcation Report” — As appellant could not produce “Ridge Demarcation Report” so that respondent would obtain “consent to establish” from DPCC, respondent approached High Court for setting aside of tender/auction notice and for declaration that said project was incapable of performance and for refund of amount paid to appellant with interest Sustainability

— Rejecting said plea, High Court holding that respondent is entitled to have DPCC examine its application for grant of “consent to establish” said project once again and in case DPCC does not give its “consent to establish”, respondent would be entitled to return of entire amount with interest @ 6% till realisation — Tenability

— Held, in instant case, neither appellant nor respondent contemplated prohibition on construction activity on project land nor were they aware that any development activity on said land requires permission from Ridge Management Board and also from Supreme Court since there was morphological similarity between the Ridge and project land Hence, this is an intervening circumstance which eventually frustrated implementation of the contract

Moreover, held, terms “as is where is” or “respondent is liable to obtain environmental clearances” did not extend to commencement of construction activity prohibited by law except with permission of Ridge Management Board and Supreme Court — Hence, conditions that project land was available on “as is where is basis” and “responsibility of respondent to obtain all clearances” related only to physical issues pertaining to project land and ancillary or peripheral legal issues pertaining to actual construction activity, such as compliance with building bye-laws, environmental clearances, etc.

Therefore, appellant was obliged to ensure initial path for commencement of construction Being a statutory body, appellant could not have stated that requirements were not within its contemplation — Failure of appellant to provide a clear passage due to an intervening circumstance beyond the parties’ contemplation went to foundation of implementation of contract with respondent which frustrated its implementation

— On its part, respondent did take all necessary steps to commence construction activity on project land but due to impasse created by

DDA v. KENNETH BUILDERS & DEVELOPERS (P) LTD.

563

governmental agencies, it could not proceed in said development activity
 Hence, held, facts and circumstances made it impracticable for respondent to
 a commence construction activity on project land and hence said contract stood
 frustrated — Appeal dismissed — Contract Act, 1872, S. 56 (Paras 25 to 36)

**C. Contract and Specific Relief — Termination/Discharge of Contract —
 Termination by Frustration/Impossibility — Allocation of Risk — Extent to
 which risk of unforeseen circumstances undertaken — “As is where is” and/or
 “liable to obtain all clearances” — Meaning and import of — Held, the same
 b do not extend to a party agreeing to commencement of activity prohibited by
 law**

Held, meaning of said terms relates only to physical issues pertaining
 to project land and ancillary or peripheral legal issues pertaining to
 actual construction activity, such as compliance with building bye-laws,
 environmental clearances, etc. They did not extend to commencement of
 c activity prohibited by law — Contract Act, 1872, S. 56 (Paras 34 and 35)

**D. Practice and Procedure — Pleadings/New Plea/Additional Plea/
 Alternative Plea — Submission as to maintainability of writ petition advanced
 for first time during final hearing of appeals — Held, too late in the day for
 raising such objection and hence Supreme Court not entertained (Para 23)**

**E. Practice and Procedure — Appeal — Issues/Claims/Prayers respondent
 d may raise — Prayer by respondent in appeal for enhancement of rate of
 interest granted by High Court — Tenability — Not accepted by Supreme
 Court since respondent was not in appeal before Supreme Court on this
 issue (Para 37)**

Dismissing the appeals, the Supreme Court

Held :

e From the record it appears that the exact boundaries of the Delhi Ridge had
 not been identified by anybody and this is apparent from a Letter dated 13-6-2008
 sent by the Secretary (Environment) of Government of the National Capital
 Territory of Delhi (GNCTD) to DDA wherein it was pointed out that there is some
 discrepancy between the areas notified by the Ministry of Urban Development
 of the Government of India in the Notifications dated 8-1-2002 and 23-2-2006
 f and the boundaries of the Ridge. It was further pointed out that the process of
 identification had been initiated by the Department of Forests of GNCTD but it
 appears that the demarcation was not completed by the time the writ petition
 was filed by the respondent. All that is relevant is that GNCTD believed that the
 construction could not go on in the project land since it fell within the boundaries
 of the Ridge. In this context, even after having given environmental clearance to
 the respondent, MoEF had second thoughts regarding the status of the project land.
 g In other words, the status of the project land was generally “unclear” at least to
 GNCTD and MoEF. (Paras 26 and 27)

It appears that the respondent did take all necessary steps to commence the
 construction activity on the project land but due to the impasse created by the
 governmental agencies, it could not proceed in the development activity. Under
 these circumstances, the provisions of Section 56 of the Contract Act, 1872 (the
 h Contract Act) would be attracted to the facts of the case. (Para 28)

564

SUPREME COURT CASES

(2016) 13 SCC

The word “impossible” used in Section 56 of the Contract Act has not been used in the sense of physical or literal impossibility. It ought to be interpreted as impracticable and useless from the point of view of the object and purpose that the parties had in view when they entered into the contract. This impracticability or uselessness could arise due to some intervening or supervening circumstance which the parties had not contemplated. However, if the intervening circumstance was contemplated by the parties, then the contract would stand despite the occurrence of such circumstance. In such an event, there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens. (Para 30)

Satyabrata Ghose v. Mugneeram Bangur & Co., AIR 1954 SC 44 : 1954 SCR 310. *applied* *T.N. Godavarma Thirumulpad (50) v. Union of India*, (2013) 8 SCC 198; *T.N. Godavarma Thirumulpad v. Union of India*, (2013) 8 SCC 228; *DDA v. Kenneth Builders (P) Ltd.*, SLP (C) No. 35374 of 2010, order dated 6-10-2015 (SC); *Ashok Kumar Tanwar v. Union of India*, WP (C) No. 3339 of 2011, decided on 30-11-2011 (Del), *referred to*

E.A. Tamplin Steamship Co. Ltd. v. Anglo-Mexican Petroleum Products Co. Ltd., (1916) 2 AC 397 (HL); *Matthey v. Carling*, (1922) 2 AC 180 (HL); *T.N. Godavarma Thirumulpad v. Union of India*, (2016) 13 SCC 586 (combined orders); Order dt. 21-10-2013 reported at (2016) 13 SCC 607. *cited*

[**Ed.**: See also Contract and Specific Relief, ‘11.(C)(4)(iii) Termination/Discharge of Contract Termination by Frustration/Impossibility Grounds of Frustration Legal impossibility’, pp. 983 et seq. in **Vol. 12, Complete Digest of Supreme Court Cases**, 2nd Edn. and pp. 834 et seq. in **Vol. 1, Supreme Court on Contract & Specific Relief**, 2nd Edn.]

Insofar as the present case is concerned, DDA certainly did not contemplate a prohibition on construction activity on the project land which would fall within the Ridge or had morphological similarity to the Ridge. It is this circumstance that frustrated the performance of the contract in the sense of making it impracticable of performance. (Para 31)

It is true that the Government of India had notified the project land as “residential” and that the project land was shown as “residential” in MPD-2001 and MPD-2021. But that fact alone would not change the position at law. The exact boundaries of the Ridge do not appear to have been demarcated and in the absence of demarcation, it could not be said with any degree of certainty by DDA that merely because of the two notifications issued by the Ministry of Urban Development the project land could be used for residential purposes even if it fell within the Ridge. This would be ignoring the position at law and would be stretching the argument a little too far. DDA was unaware that even if the project land did not fall within the Ridge yet any development activity thereon would require permission from the Ridge Management Board as well as from the Supreme Court since there was morphological similarity between the Ridge and the project land. It is this intervening circumstance which eventually frustrated the implementation of the contract. (Para 32)

When DDA informed the respondent that the project land was available on an “as is where is basis” and that it was the responsibility of the developer to obtain all clearances, the conditions related only to physical issues pertaining to the project land and ancillary or peripheral legal issues pertaining to the actual construction activity, such as compliance with the building bye-laws, environmental clearances,

DDA v. KENNETH BUILDERS & DEVELOPERS (P) LTD.

565

- etc. The terms and conditions of “as is where is” or environmental clearances emphasised by the counsel for DDA certainly did not extend to commencement of construction activity prohibited by law except after obtaining permission of the Ridge Management Board and the Supreme Court. On the contrary, it was the obligation of DDA to ensure that the initial path for commencement of construction was clear, the rest being the responsibility of the developer. The failure of DDA to provide a clear passage due to an intervening circumstance beyond its contemplation went to the foundation of implementation of the contract with the respondent and that is what frustrated its implementation. “As is where is” concept primarily pertains to physical issues at site. (Paras 34 and 35)

Punjab Urban Planning & Development Authority v. Raghu Nath Gupta, (2012) 8 SCC 197 : (2012) 4 SCC (Civ) 397, *relied on*

- On a conspectus of the facts and the law, certain circumstances had intervened, making it impracticable for the respondent to commence the construction activity on the project land. Since arriving at some clarity on the issue had taken a couple of years and that clarity was eventually and unambiguously provided by the report of CEC, it could certainly be said that the contract between DDA and the respondent was impossible of performance within the meaning of that word in Section 56 of the Contract Act. Therefore, the contention of DDA that the contract between DDA and the respondent was not frustrated is rejected. (Para 36)

Kenneth Builders & Developers Ltd. v. Union of India, 2010 SCC OnLine Del 2540, *affirmed* N-D/57172/SV

- Advocates who appeared in this case :
A. Sharan and Parag Tripathi, Senior Advocates (Vishnu B. Saharya, Viresh B. Saharya, Shrehan Siddhartha, M/s Saharya & Co., Sumit Pushkarna and Alok Gupta, Advocates) for the Appellant;
Kapil Sibal, Sanjiv Sen and Ashok Panda, Senior Advocates (Mahesh Agarwal, Ankur Saigal, Rishabh Parikh, Raghav Dwivedi, E.C. Agrawala, D.N. Goburdhun, Ms Pallavi Chopra, Lal Ramtamma, Mohan Prasad Gupta, Shadman Ali, Gaurav Sharma, D.S. Mahra and Ms Sushma Suri, Advocates) for the Respondents.

Chronological list of cases cited

on page(s)

1. (2016) 13 SCC 586 (combined orders): Order dt. 21-10-2013 reported at (2016) 13 SCC 607. *T.N. Godavarman Thirumulpad v. Union of India* 577b-c, 577e-d, 577g
2. SLP (C) No. 35374 of 2010, order dated 6-10-2015 (SC). *DDA v. Kenneth Builders (P) Ltd.* 575g-h, 576a-b
3. (2013) 8 SCC 228, *T.N. Godavarman Thirumulpad v. Union of India* 577b-c, 577e-d, 577g
4. (2013) 8 SCC 198, *T.N. Godavarman Thirumulpad (50) v. Union of India* 576a
5. (2012) 8 SCC 197 : (2012) 4 SCC (Civ) 397, *Punjab Urban Planning & Development Authority v. Raghu Nath Gupta* 582a
6. WP (C) No. 3339 of 2011, decided on 30-11-2011 (Del). *Ashok Kumar Tanwar v. Union of India* 576b, 576g
7. 2010 SCC OnLine Del 2540, *Kenneth Builders & Developers Ltd. v. Union of India* 566a b, 571e f, 571g, 575c d
8. AIR 1954 SC 44 : 1954 SCR 310, *Satyabrata Ghose v. Mugneeram Bangur & Co.* 579e
9. (1922) 2 AC 180 (HL), *Matthey v. Curling* 580f
10. (1916) 2 AC 397 (HL), *F.A. Tamplin Steamship Co. Ltd. v. Anglo Mexican Petroleum Products Co. Ltd.* 580d

The Judgment of the Court was delivered by

MADAN B. LOKUR, J.— Delay condoned. Leave granted in both petitions. The appellant (Delhi Development Authority or DDA) in the first appeal is aggrieved by the judgment and order dated 30-7-2010 passed by a Division Bench of the High Court of Delhi in *Kenneth Builders & Developers Ltd. v. Union of India*¹. The grievance of DDA is that even though the High Court held that the project land that we are concerned with was “residential” as contended by DDA, yet the High Court held that in the event construction activity thereon is not permitted by the Delhi Pollution Control Committee (or DPCC) the developer (Kenneth Builders) would be entitled to a refund of the entire amount deposited with DDA pursuant to the acceptance of the developer’s bid in an auction, along with interest thereon.

2. In the connected appeal, the appellants (Government of the National Capital Territory of Delhi or GNCTD and its Department of Forests) are aggrieved by the same judgment and order to the extent that it has been held that DDA is the final authority to determine land use, even though its determination pertains to the Ridge in the National Capital Territory of Delhi.

3. Before referring to the facts of the case, which we have taken from the appeal filed and argued by DDA, we would like to mention that there has been protracted correspondence between DDA, Kenneth Builders and the Secretary (Environment)-cum-Chairman of the Delhi Pollution Control Committee of GNCTD. However, we are of the opinion that it is not necessary to detail the contents of every letter between them and we propose not to burden this judgment with avoidable details, as long as the narrative does not suffer.

4. The principal question that arises for our decision is whether the development agreement between DDA and the developer Kenneth Builders was frustrated within the meaning of Section 56 of the Contract Act, 1872 due to some intervening circumstances not contemplated by either party. Our answer to the question is in the affirmative.

The facts of the case

5. DDA proposed a public-private partnership project for the development of an area of 14.3 ha of prime land at Tehkhand in South Delhi for the construction of 750 premium residential flats in a self-contained community to be sold by private real estate development on free sale basis. In addition to the premium residential flats, the developer would have to construct 3500 resettlement houses for the economically weaker sections of society with each house having a super area of 26 sq m. These resettlement houses and the developed common facilities relating thereto would be handed over to DDA for allotment.

6. According to DDA (and there is no dispute about this) the project land was notified on 1-8-1990 for “recreation” (District Park) in the Master Plan for Delhi — 2001 (MPD, 2001). According to DDA (and again there is no dispute in this regard) two notifications were issued by the Ministry of

¹ 2010 SCC OnLine Del 2540

DDA v. KENNETH BUILDERS & DEVELOPERS (P) LTD. (*Lokur, J.*) 567

Urban Development of the Government of India on 8-1-2002 and 23-2-2006 converting the project land from “recreation” (District Park) to “residential”.

- a 7. On 20-3-2006, DDA issued an advertisement for involving the private sector in Delhi’s development and for the development of the project land for the construction of 750 residential flats and 3500 resettlement houses. Pursuant to the advertisement, an auction was held by DDA in terms of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 on an “as is where is basis” and as per the terms and conditions prescribed for the auction. The terms and conditions for the auction specifically mentioned that the bid would be for the amount of premium offered for the project land to execute the project and that the project was being offered on an “as is where is basis”. It was stated that the presumption is that the intending purchaser has inspected the site and has familiarised himself with the prevalent conditions in all respects including status of infrastructure facilities available, etc. before giving its bid. It was stated that on acceptance of the bid, the highest bidder would be required to deposit 25% of the bid amount as earnest money and the balance 75% of the bid amount was required to be deposited with 90 days of the issuance of the allotment-cum-demand letter. It was also stated that possession of the project land would be handed over on payment of the entire bid amount and on execution of the development agreement, except an area of approximately 4 ha on which there is a JJ Cluster. The terms and conditions also required the developer to comply with all the statutory requirements and rules and regulations of all public bodies including payment of fees and taxes, etc.
- b
- c
- d

8. Kenneth Builders was the highest bidder in the auction held on 26-4-2006 and its bid was accepted. On 15-6-2006, a demand-cum-allotment letter was issued to it requiring payment of balance 75% of the bid amount. It is not in dispute that Kenneth Builders deposited the entire bid amount of Rs 450.01 crores with DDA on 11-9-2006. Pursuant to the deposit of the entire bid amount by Kenneth Builders, a no-objection certificate was issued by DDA on 6-11-2006 for submission of building plans for the project to the Planning Department of DDA. Thereafter, on 4-12-2006 possession of 11.70 ha of the project land was handed over to Kenneth Builders but an area of approximately 2.60 ha covered by the JJ Cluster was left out and possession thereof was not given.

- e
- f 9. On 5-9-2007, a Development Agreement was signed between DDA and Kenneth Builders whereby it was agreed, inter alia, that Kenneth Builders would construct 3500 houses for the resettlement of slum dwellers and 750 free sale flats which Kenneth Builders would be entitled to dispose of. Kenneth Builders would also develop roads and peripheral services for the entire project. In terms of the Development Agreement it was the responsibility of Kenneth Builders to obtain various approvals and clearances from the appropriate authorities including environmental agencies of the State and the Central Government. Clause 6 of the Development Agreement is important in this regard and this reads as follows:
- g

“6. Responsibility of developer to get various approvals and clearances

- h 6.1. The developer shall be responsible for approval of drawings and for obtaining other no-objection certificate; from the appropriate authorities

568

SUPREME COURT CASES

(2016) 13 SCC

and departments not limited to MCD, Delhi Jal Board, electric supplying agency concerned, Delhi Fire Services, DUAC, the environmental agencies of the State and Central Government. Authority or its authorised officers who are duly authorised to give approval on behalf of the Authority. (sic)

a

6.2. The delay in submission of applications, drawings, construction plans and compliance with the observation: shall be the responsibility of the developer, and any delay in grant of approvals by the aforesaid government bodies shall not relieve the developer of any of its responsibilities under the contract."

b

10. Kenneth Builders was also deemed to have inspected the site and its surroundings and checked the information available in connection therewith including the subsurface conditions, the hydrological and climatic conditions, etc. It was also deemed to have satisfied itself of the correctness and sufficiency of all the material and all its obligations under the contract, including dealing with authorities concerned such as environmental agencies of the State and Central Government. Clause 11.1 of the Development Agreement in this regard is important and this reads as follows:

c

"11.1. *Sufficiency of information*

The developer shall be deemed to have satisfied itself of the correctness and sufficiency of all the material and all its obligations under the contract, including dealing with the authorities concerned not limited to MCD, Delhi Jal Board, electric supplying agency concerned, Delhi Fire Services, DUAC, the environmental agencies of the State and Central Government, Authority or its authorised officers who are duly authorised to give approval on behalf of the Authority at its own cost and expense, as well as all the contingencies and all matters and things necessary for the proper execution and completion of the project and the remedying of any defects therein, before submitting the tender. The developer has agreed and understood that no request for change in the terms and conditions of the contract shall be entertained at any stage on any ground whatsoever."

d

e

11. The problems for Kenneth Builders began when, pursuant to the Development Agreement, it attempted to establish infrastructure facilities on the project land such as its site office, DDA office, sample flat for the economically weaker sections, etc. sometime in February/March 2008. It was then that the Department of Forests of GNCTD raised objections to carrying out such activities on the ground that the project land falls in the Ridge and hence, all activities were required to be suspended.

f

12. The objection of the Department of Forests compelled Kenneth Builders to stop all building activity on the project land and that resulted in an exchange of letters for the next several months between DDA, GNCTD and Kenneth Builders. To cut a long story short, DDA insisted that the project land was "residential" and that the project could be undertaken thereon. GNCTD was equally clear that the project land falls within the Ridge and no construction activity could be carried out without the consent of the Ridge Management

g

h

DDA v. KENNETH BUILDERS & DEVELOPERS (P) LTD. (*Lokur, J.*) 569

- a Board and the permission of this Court. On its part, the Ministry of Environment and Forests, Government of India (or MoEF) kept aloof from the controversy and gave environmental clearance for the project on 15-7-2008 subject to the condition that a “consent to establish” shall be obtained by Kenneth Builders from DPCC under the Water (Prevention and Control of Pollution) Act, 1974 (for short “the Water Act”) and the Air (Prevention and Control of Pollution) Act, 1981 (for short “the Air Act”) and a copy submitted to the said Ministry before the start of any construction work at the site. The relevant extract of the
- b environmental clearance given by MoEF reads as follows:

“*Subject:* Construction of residential housing project at Tehkhand New Delhi by M/s Kenneth Builders and Developers (P) Ltd. Environmental Clearance Reg.

Dear Sirs,

- c This has reference to your Application No. nil, dated 15-1-2008 and subsequent letters dated 23-4-2008 and 23-5-2008 seeking prior environmental clearance for the above project under the EIA Notification, 2006. The proposal has been appraised as per prescribed procedure in the light of provisions under the EIA Notification, 2006 on the basis of the mandatory documents enclosed with the application viz. the
- d Questionnaire, EIA, EMP and the additional clarifications furnished in response to the observations of the Expert Appraisal Committee constituted by the competent authority in its meetings held on 13-3-2008/14-3-2008, 1-5-2008 and 3-5-2008 and 26-5-2008 and awarded “Silver” grading to the project.

2. * * *

- e 3. The Expert Committee after due considerations of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observation have accorded environmental clearance as per the provisions of Environmental Impact Assessment Notification — 2006 and its subsequent amendments, subject to strict compliance with the terms and conditions as follows:

f *Part A — Specific conditions*

I. Construction Phase

- (i) “Consent for Establishment” shall be obtained from the Delhi Pollution Control Committee under the Air and Water Act and a copy shall be submitted to the Ministry before start of any construction work at the site.

g (ii) to (xxvi) * * *

II. Operation Phase

* * *

Part B — General conditions

h * * *

4. and 5. * * *

570

SUPREME COURT CASES

(2016) 13 SCC

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

a

7. All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department. The Forest Conservation Act, 1980 and the Wildlife (Protection) Act, 1972, etc. shall be obtained, as applicable by project proponents from the respective competent authorities.

b

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

c

9. Environmental clearance is subject to final order of the Hon'ble Supreme Court of India in the matter of *Goa Foundation v. Union of India* in Writ Petition (Civil) No. 460 of 2004 as may be applicable to this project.

10. * * * *

13. In view of the above, Kenneth Builders applied to DPCC for "consent to establish" on 4-11-2008. In response, DPCC required Kenneth Builders to submit a "Ridge Demarcation Report" at the earliest. Despite its asking by Kenneth Builders, DDA did not give any such report to Kenneth Builders on the ground that the issue had already been clarified to GNCTD in a letter dated 17-10-2008. The letter dated 17-10-2008 is a little ambiguous inasmuch as it mentions that the boundaries of the Ridge have been delineated, but they have not been identified at the site. The letter dated 17-10-2008 reads as follows:

d

e

"Subject: Regarding residential housing project at Tehkhand, New Delhi by M/s Kenneth Builders and Developers (P) Ltd.

Sir,

f

This has reference to Letter No. DPCC/MCH/3154 dated 6-8-2008, enclosing the copy of the letter of Secretary (Environment)-cum-Chairman, Delhi Pollution Control Committee, Government of National Capital Territory of Delhi dated 13-6-2008. In the Master Plan for Delhi 2001, Ridge has been defined in an area of 7777 ha which is to be preserved in its pristine glory. In the Preamble of the said Master Plan for Delhi 2001, one conceptual sketch indicating the Ridge has been shown as one of the eight concepts only, whereas the land use plan is the legal documents/plan showing the details which are to be referred for the purpose of establishing the area/land use, in this case for the ridge/regional park.

g

The Delhi Government through its Notification dated 24-5-1994 has delineated the boundaries of the Ridge but the same has not been identified

h

DDA v. KENNETH BUILDERS & DEVELOPERS (P) LTD. (*Lokur, J.*) 571

on the site. This notification is under Section 4 for the areas to be earmarked as reserved forests under the Delhi Forest Act.

- a* The land pocket where DDA has proposed residential development, was clearly shown under District Part in MPD, 2001, and the land use of the same has already been changed from recreational use (District Park) to residential vide Gazette of India Notifications Nos. A-13011/30/1995-DDIB dated 8-1-2002 and 23-2-2006 (copies enclosed). The said notifications were issued following the due process of law and taking relevant factors into consideration. No objection in respect of the land use of the project land were raised by any departments including the Forest Department at that stage.
- b*

- c* The Ministry of Environment and Forests, after considering and taking on record the representation from both the Delhi Pollution Control Committee and DDA [Letter No. F.3(60)MP/D.116 dated 30-6-2008] with respect to land use of the project land, has accorded the environment clearance to our project on 15-7-2008, copy of the same is attached herewith.

- d* All the facts, documents and detailed plans have been shared and discussed in detail between the two departments, in meeting. In the light of facts been legally converted from recreational use (District Park) to residential.

In view of the facts, it is requested that the “consent to establish” from the Delhi Pollution Control Committee under the Air and Water Acts be granted to the applicant at the earliest.”

- e* 14. Faced with this impasse and unable to obtain the Ridge Demarcation Report and therefore the “consent to establish” from DPCC, Kenneth Builders approached the Delhi High Court by way of a writ petition on 1-8-2009 resulting in the impugned judgment and order¹. In the writ petition, Kenneth Builders prayed, inter alia, for setting aside of the tender/auction notice dated 20-3-2006 as also the allotment letter dated 15-6-2006 and a declaration that the project was incapable of performance. It was further prayed that the auction had become void and that Kenneth Builders was entitled to a refund of the amount paid to DDA along with interest @ 18% p.a. till realisation.
- f*

Decision of the High Court

- g* 15. The High Court has elaborately discussed the various letters exchanged between the parties concerned and has thereafter very succinctly put the controversy in focus in paras 26 and 27 of the impugned judgment and order. These paragraphs read as follows: (*Kenneth Builders case*¹, SCC OnLine Del)

- h* “26. The foregoing demonstrates the controversy between the parties. The petitioner’s stand is that it had made the bid for the project and had paid the entire amount of Rs 450.01 crores on the clear understanding that the project site was residential. This understanding, according to the petitioner,

¹ *Kenneth Builders & Developers Ltd. v. Union of India*, 2010 SCC OnLine Del 2540

was based on the representation made by DDA as the detailed facts referred to above would reveal. In fact, DDA has maintained and continues to maintain its stand that the project site is not within the Ridge area and the land use of the same has been clearly shown as residential. According to DDA, the land in question was earlier earmarked for recreational (District Park) purposes. However, that was subsequently altered by the two Notifications dated 8-1-2002 and 26-2-2006 by carrying out modifications in the Master Plan (MPD, 2001). The stand of DDA is also this that the land use of any particular area is to be determined under the Master Plan and the authority which does such determination is DDA and not any other authority, such as DPCC. The clear stand of DDA is that DPCC has no right or business to raise any objection with regard to the land use and that is solely within the domain and powers of DDA. The stand of DDA is, however, not accepted either by DPCC or the Department of Forests, Government of NCT of Delhi. In fact, both DPCC and the Department of Forests (Respondents 2 and 4 herein) along with the Government of NCT of Delhi (Respondent 3) have taken a unified stand that the land in question falls within the Ridge and more so because the Department of Forests has found the said land to be part of Khasra Nos. 444 and 445 of Village Tehkhand which, in the revenue record, has been shown as "gair mumkin pahar". Thus, according to the said respondents, no construction activity can be carried out in the land in question inasmuch as, according to them it falls within the Ridge area. Consequently, DPCC has refrained from issuing the "consent to establish" under the Water and Air Acts, which was a requirement and a condition of the clearance given by the Ministry of Environment and Forests, Government of India.

27. It is in this backdrop that the petitioner felt that there is virtually no chance of the project going ahead in view of the stalemate between DDA and the various governmental departments. It is on the basis of this situation that the petitioner has sought the setting aside of the tender/auction as also the allotment letter dated 15-6-2006 in its favour and has sought the return of the money paid by it along with interest thereon."

16. By the impugned judgment and order, the High Court held that Kenneth Builders was not entitled to have the tender/auction in which it had participated and in which it was a highest bidder set aside. Kenneth Builders was also not entitled to have the letter of allotment issued to it pursuant to the acceptance of its bid in the auction conducted by DDA set aside or to the return of money paid by it to DDA. However, it was held that Kenneth Builders would be entitled to have DPCC examine its application for the grant of "consent to establish" from the standpoint of the Water Act and the Air Act within two months for carrying out the project which was the subject-matter of the writ petition. It was also held that in the event DPCC does not give its "consent to establish" and the project cannot be carried out then Kenneth Builders would be entitled to a return of the entire amount (with interest @ 6% till realisation) paid by it to DDA since the project would stand frustrated and would be incapable of performance.

DDA v. KENNETH BUILDERS & DEVELOPERS (P) LTD. (*Lokur, J.*) 573

17. For arriving at the above conclusions, the High Court held that once the Master Plan for Delhi prepared by DDA earmarks land for a particular use, then no other authority can challenge the same. As far as the project land was concerned, DDA had earmarked it for residential use and this could not be challenged. The High Court also held that after MoEF had given the environmental clearance, the role of DPCC was limited to the grant of "consent to establish" under the Air Act and the Water Act. It was not open to GNCTD, the Department of Forests or DPCC to question the land use of the project land as determined by DDA on the ground that it was within the Ridge.

18. At this stage, it is necessary to mention that during the pendency of the writ petition in the High Court, it came out that during a meeting convened by the Lieutenant Governor on 23-6-2009 on some other issue, the case of Kenneth Builders came up, perhaps for an informal discussion. Nevertheless, it was decided in that meeting that the question of the status of the project land should be referred to MoEF (even though it had already granted environmental clearance) and that the decision of MoEF would be accepted as final. These facts were put to the learned Additional Solicitor General appearing in the matter and he sought time to take instructions. Eventually, the following response dated 3-12-2009 was sent by MoEF to the learned Additional Solicitor General:

"Sub.: Opinion of the Ministry of Environment and Forests in regard to WP (C) No. 0647 of 2009

Ref.: Secretary, Environment, NCT's DO No. F.11 (105/PA/CF/Part/09/4582 dated 27-11-2009)

Sir,

This is with regard to Writ Petition (C) No. 10647 of 2009 of *Kenneth Builders and Developers Ltd. v. Union of India* in the High Court of Delhi. An opinion was sought from the Ministry of Environment and Forests to the effect that the land in the subject-matter of the writ petition mentioned under subject is a part of Ridge or not. The opinion of the Ministry of Environment and Forests in this regard is as follows:

"Keeping in view the purely legalistic position taken by DDA and exercise undertaken for identification of Ridge, based upon one or more criterion decided by NCT of Delhi, as relevant for classification of any land as "Ridge" in Delhi, the said piece of land measuring 14.3 ha falling in Khasra Nos. 444 and 445 reflected as "gair mumkin pahar" in revenue land, needs to be considered as ridge in accordance to the spirit of various orders of the Hon'ble Supreme Court in WP (C) No. 4677 of 1985, morphological features and revenue records. The Hon'ble Apex Court is still looking into various aspects of protection and conservation of Delhi Ridge, in WP (Civil) No. 4677 of 1985 from time to time. However, the Hon'ble High Court of Delhi, if deemed appropriate, the opinion of the Central Empowered Committee, set up by the Hon'ble Supreme Court may be taken."

574

SUPREME COURT CASES

(2016) 13 SCC

It is requested to intimate the Hon'ble Court about the opinion of the Ministry of Environment and Forests when the case will come up on 4-12-2009."

It will be seen from the above that MoEF had taken a virtual volte face and had opined that the project land needs to be considered as Ridge, but if deemed appropriate the opinion of the Central Empowered Committee might be taken. This was apparently not brought to the notice of the High Court.

19. Be that as it may, DDA has challenged the order of the Delhi High Court which has effectively directed DDA to refund the tender amount to Kenneth Builders since "consent to establish" and continue with the project had not been granted by DPCC. GNCTD as well as the Department of Forests also filed a petition for special leave to appeal being SLP (C) No. 13146 of 2011 challenging the decision of the Delhi High Court to the effect that DDA is the competent authority to decide the land use.

Subsequent events

20. After the decision of the Delhi High Court, Kenneth Builders requested DPCC on 3-8-2010 in terms of the order of the Delhi High Court, for "consent to establish". By its letter of 28-10-2010 DPCC made it quite clear that since Kenneth Builders did not have any clearance to carry out any construction on the project land from the Ridge Management Board or from this Court or from the Department of Forests, "consent to establish" under the Air Act and Water Act could not be given. It was also mentioned that the Department of Forests would be challenging the order of the Delhi High Court in this Court. The letter dated 28-10-2010 reads as follows:

"Sub.: Refusal of Consent under the Water (Prevention and Control of Pollution) Act, 1974 and (Prevention and Control of Pollution) Act, 1981 as amended to date.

Whereas, you M/S KENNETH BUILDERS AND DEVELOPERS (P) LTD., MAA ANANDMAYI MARG, TEIKHAND, DELHI (hereinafter referred as "addressee") have applied for consent to establish (Orange Category) on 30-5-2008 vide ID No. 25891 under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and under Sections 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 for activity of Residential Construction Project.

And whereas, a letter dated 27-3-2008 addressed to the Commissioner (I.M), DDA was received from Deputy Conservator of Forests, South to provide a copy of environmental clearance with respect to large-scale earth work undertaken by you (the addressee).

And whereas, a copy of letter dated 4-4-2008 addressed to the Commissioner (I.M), DDA was received from the Deputy Conservator of Forests, South to stop all construction activity on the said land until the permission for the same is accorded by the Ridge Management Board.

And whereas, as decided by the Consent Management Committee (Orange) in its meeting held on 3-6-2008, a letter was issued to the Deputy Conservator of Forests, South, on 13-6-2008 regarding status of forest clearance with respect to the said project.

DDA v. KENNETH BUILDERS & DEVELOPERS (P) LTD. (*Lokur, J.*) 575

a And whereas, a D.O. letter issued by the Chairman, DPCC on 13-6-2008 to the Vice-Chairman, DDA regarding immediate cessation of all construction work on the project site till the clearance from the same obtained from the competent authorities including the Ridge Management Board and the Hon'ble Supreme Court.

b And whereas, a letter dated 23-6-2008 has been received from the Deputy Conservator of Forest Department informing that the clearance from the Ridge Management Board and the Hon'ble Supreme Court has not been communicated by DDA so far.

And whereas a letter was issued to the Deputy Conservator of Forests, South on 19-2-2009 to confirm whether any forest clearance and ridge demarcation report to the said project has been granted or not.

c And whereas, a reply was received from the Deputy Conservator of Forests, South on 17-3-2009 informing that no forest clearance has been accorded so far.

And whereas, a letter was issued to the Deputy Conservator of Forests, South on 16-4-2009 along with the site plans of the project to inform the status of the area as per the ridge demarcation report.

d And whereas, the Hon'ble High Court vide its judgment dated 30-7-2010¹ directed DPCC to examine the application of the petitioner for grant of "consent to establish" from the standpoint of the Water and Air Acts alone within two months from the date of judgment.

And whereas, after examination, as decided by the Consent Management Committee (Orange) in its meeting held on 22-9-2010, a letter was issued to the Forest Department on 1-10-2010 to send the opinion on the judgment at the earliest as the issue pertains to the Forest Department.

e And whereas, the case was again taken up by the Consent Management Committee (Orange) in its meeting held on 1-10-2010 and it was decided:

"Forest Department is going for appeal, therefore, consent be refused."

f Now, therefore, as decided by the said Committee aforementioned consent to establish application under the Air and Water Acts to the addressee unit is hereby refused with immediate effect.

Please note that the activity of Residential Construction Project without having valid consent under the Air and Water Acts is a punishable offence and attracts penal action under the provisions of the said Act."

g **21.** In view of the categorical response, broadly speaking, the controversy remains whether the project land is a part of the Ridge or not and whether the contract between DDA and Kenneth Builders has been frustrated due to supervening factors or not. To resolve the first controversy, this Court passed an order on 6-10-2015² for ascertaining whether the project land falls within the Ridge or not. This was in view of the uncertainty in the status of the project land as well as the view expressed by MoEF in the Letter dated 3-12-2009 addressed to the learned Additional Solicitor General appearing in the High Court that

h ¹ *Kenneth Builders & Developers Ltd. v. Union of India*, 2010 SCC OnLine Del 2510
² *DDA v. Kenneth Builders (P) Ltd.*, SLP (C) No. 35374 of 2010, order dated 6-10-2015 (SC)

576

SUPREME COURT CASES

(2016) 13 SCC

the issue could be best resolved (if deemed appropriate) by a reference to the Central Empowered Committee set up by this Court. Accordingly, we referred this issue to the Central Empowered Committee (CEC) set up in *T.N. Godavarman Thirumulpad (50) v. Union of India*³.

22. Pursuant to the order of 6-10-2015², CEC submitted its Report dated 18-11-2015 in which it was concluded that non-forestry use of land falling in the Ridge was permitted only after a development project was cleared or recommended by the Ridge Management Board and permitted by this Court. However, a decision was rendered by the Delhi High Court in a case filed by Ashok Kumar Tanwar [WP (C) No. 3339 of 2011 decided on 30-11-2011⁴] to the effect that a development project on land outside the notified Ridge area but having morphological features conforming to the Ridge would also require clearance from the Ridge Management Board and this Court. Therefore, as far as the present case is concerned though the project land falls outside the Ridge but has morphological features conforming to the Ridge bringing it within the extended Ridge, the project of DDA involving non-forestry use of the land could be permitted only after obtaining clearance from the Ridge Management Board and after obtaining the permission of this Court. CEC in its Report stated in this regard as follows:

“6. The non-forestry use of land falling in Delhi Ridge for implementation of the various development projects are being permitted only after the proposal is cleared/recommended by the Ridge Management Board and permitted by this Hon’ble Court. Such permissions have been granted by this Hon’ble Court subject to deposit of 5% of the estimated project cost with the Ridge Management Board Fund for conservation and development of Delhi Ridge and compensatory afforestation over equivalent non-forest land/Ridge land at project cost.

7. Earlier, the clearance from the Delhi Ridge Management Board and the permission of this Hon’ble Court was being insisted upon only in respect of the notified Ridge areas. One Shri Ashok Kumar Tanwar filed Writ Petition (Civil) No. 3339 of 2011 before the Hon’ble High Court of Delhi against the construction of buildings and other infrastructure facilities being done by the Directorate General, Border Road Organisation in 2.25 ac of land belonging to Ministry of Defence at Naraina, Delhi Cantonment on the ground that the said land falls in the Central Ridge and wherein pursuant to the directions of this Hon’ble Court the non-forestry uses are prohibited. The Government of NCT of Delhi after considering the view of the Delhi Ridge Management Board filed before the Hon’ble High Court of Delhi an affidavit dated 30-11-2011 wherein it was stated that the land in question is situated outside the notified ridge areas but is having morphological features conforming to the Ridge. The Hon’ble High Court of Delhi by order dated 30-11-2011⁴ disposed of the said writ petition with the directions that the Border Road Organisation is restrained from carrying out any further construction works on the land till it obtains

³ (2013) 8 SCC 198

² *DDA v. Kenneth Builders (P) Ltd.*, SLP (C) No. 35374 of 2010, order dated 6-10-2015 (SC)

⁴ *Ashok Kumar Tanwar v. Union of India*, WP (C) No. 3339 of 2011, decided on 30-11-2011 (Del)

DDA v. KENNETH BUILDERS & DEVELOPERS (P) LTD. (*Lokur, J.*) 577

a necessary clearance from the Delhi Ridge Management Board or (and) this Hon'ble Court through CEC. A copy of the said order of the Hon'ble High Court of Delhi is enclosed at ANNEXURE R-2 to this Report. Since then, non-forestry use of any land having morphological features conforming to the Ridge but falling outside the notified ridge areas (commonly referred to as "extended ridge areas") is also being permitted only after obtaining clearance from the Delhi Ridge Management Board and permission of this Hon'ble Court.

b 8. The said project of the Border Road Organisation was subsequently cleared/recommended by the Delhi Ridge Management Board, recommended by CEC and thereafter this Hon'ble Court by order dated 2-11-2012⁵ granted permission for implementation of the project on 2.25 ac of land falling on the "extended ridge areas". This Hon'ble Court by another order dated 21-10-2013⁶ has granted permission for implementation of a project by Delhi Metro Rail Corporation (DMRC) involving use of lands falling in "extended ridge area". The copies of the abovesaid orders of the Hon'ble Court dated 2-11-2012⁵ and 21-10-2013⁶ are enclosed at Annexure R-3 and Annexure R-4 respectively to this Report.

c 9. In the present case, the Delhi Forest Department has found that the project area falls in "extended ridge area" i.e. outside the areas identified as Ridge area in MPD, 2001/MPD, 2021 but having morphological features conforming to the ridge and that a large extent of areas in and around the project site are recorded as "gair mumkin pahar" in the revenue records. The stand taken by the Forest Department has been verified by CEC during the site visit. Copies of the photographs of the project site taken during the site visit of CEC are collectively enclosed at Annexure R-5 to this Report.

d A copy of the sketch map prepared by the Forest Department showing the details of gair mumkin pahar areas in and around project site is enclosed at Annexure R-6 to this Report. A copy of the satellite imagery made available by DDA showing the project area in question and the adjoining areas is enclosed at Annexure R-7 to this Report.

e 10. From the above, it may be seen that in the present case the land falls in the "extended Ridge area" i.e. outside the Ridge areas identified in MPD, 2001/MPD, 2021 having morphological features conforming to Ridge. Implementation of all the similarly placed cases i.e. the projects involving non-forestry use of the areas falling in "extended ridge areas" have been permitted only after obtaining clearance from the Ridge Management Board and permission of this Hon'ble Court. In two similarly placed projects of the Border Road Organisation and DMRC this Hon'ble Court by orders dated 2-11-2012⁵ and 21-10-2013⁶ respectively has granted permission from the non-forestry use of the lands falling in the "extended Ridge area".

h 5 *T.N. Godavarman Thirumulpad v. Union of India*, (2013) 8 SCC 228

6 *T.N. Godavarman Thirumulpad v. Union of India*, (2016) 13 SCC 586 (combined orders); Order dt. 21-10-2013 reported at (2016) 13 SCC 607

578

SUPREME COURT CASES

(2016) 13 SCC

11. In the above background CEC is of the considered view that in the present case the proposed construction of buildings can be undertaken only after obtaining clearance from the Ridge Management Board and permission of this Hon'ble Court."

Discussion

23. The first submission of the learned counsel for DDA was that a writ petition under Article 226 of the Constitution was not maintainable for the reliefs claimed by Kenneth Builders. The reliefs arise out of a contractual dispute and the High Court ought not to have entertained the writ petition. We are not inclined to consider this submission for the reason that no such objection was raised by DDA before the High Court or even in the petition filed in this Court. The submission has been advanced by the learned counsel for DDA for the first time during the final hearing of these appeals. It is too late in the day for the learned counsel to raise such an objection and we are not inclined to entertain it.

24. On merits, it was submitted that in view of the terms and conditions of the auction and the development agreement between DDA and Kenneth Builders, it was the duty and responsibility of the developer to obtain all necessary clearances including environmental clearance and consent from DPCC for completing the project. It was pointed out that MoEF had given environmental clearance for the project on 15-7-2008 subject to the developer obtaining "consent to establish" from DPCC under the Air Act and the Water Act. It was, therefore, the obligation of Kenneth Builders to approach DPCC and obtain the necessary consent which it failed to do.

25. What has been overlooked by the learned counsel is that the fresh view of MoEF is that the project land needs to be considered as Ridge. Consequently, no construction activity is permissible on the project land. That apart, Kenneth Builders did apply to DPCC for "consent to establish" for starting construction activity on the project land. For considering the request, DPCC required a ridge demarcation report which was not given by DDA to Kenneth Builders or to DPCC. Therefore, DPCC was not inclined to give its consent in the absence of the ridge demarcation report. Even after judgment was delivered by the High Court, Kenneth Builders applied to DPCC for "consent to establish" but to no effect in the absence of a ridge demarcation report and forest clearance.

26. It does appear from the record that the exact boundaries of the Ridge had not been identified by anybody and this is apparent from a Letter dated 13-6-2008 sent by the Secretary (Environment) of GNCTD to DDA wherein it was pointed out that there is some discrepancy between the areas notified by the Ministry of Urban Development of the Government of India in the Notifications dated 8-1-2002 and 23-2-2006 and the boundaries of the Ridge. It was further pointed out that the process of identification had been initiated by the Department of Forests of GNCTD but it appears that the demarcation was not completed by the time the writ petition was filed by Kenneth Builders. According to DDA the letter was based on an incorrect appreciation of facts, but that does not concern us. All that is relevant is that GNCTD believed that the construction could not go on in the project land since it fell within the boundaries of the Ridge.

DDA v. KENNETH BUILDERS & DEVELOPERS (P) LTD. (*Lokur, J.*) 579

27. In this context, it must not be forgotten that even after having given environmental clearance to Kenneth Builders, MoEF had second thoughts regarding the status of the project land. This led MoEF to send the Letter dated 3-12-2009 referred to above. In other words, the status of the project land was generally “unclear” at least to GNCTD and MoEF.

28. Be that as it may, it appears to us that Kenneth Builders did take all necessary steps to commence the construction activity on the project land but due to the impasse created by the governmental agencies, it could not proceed in the development activity. We agree with the learned counsel for Kenneth Builders that under these circumstances, the provisions of Section 56 of the Contract Act, 1872 (the Contract Act) would be attracted to the facts of the case.

29. Section 56 of the Contract Act reads as follows:

“56. Agreement to do impossible act. An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.”

30. The interpretation of Section 56 of the Contract Act came up for consideration in *Satyabrata Ghose v. Mugneeram Bangur & Co.*⁷ It was held by this Court that the word “impossible” used in Section 56 of the Contract Act has not been used in the sense of physical or literal impossibility. It ought to be interpreted as impracticable and useless from the point of view of the object and purpose that the parties had in view when they entered into the contract. This impracticability or uselessness could arise due to some intervening or supervening circumstance which the parties had not contemplated. However, if the intervening circumstance was contemplated by the parties, then the contract would stand despite the occurrence of such circumstance. In such an event, “there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens”. This is what this Court had to say: (AIR pp. 46-49, paras 9-10 & 17)

“9. The first paragraph of the section lays down the law in the same way as in England. It speaks of something which is impossible inherently or by its very nature, and no one can obviously be directed to perform such an act. The second paragraph enunciates the law relating to discharge of contract

⁷ AIR 1954 SC 44 : 1954 SCR 310

580

SUPREME COURT CASES

(2016) 13 SCC

by reason of supervening impossibility or illegality of the act agreed to be done. The wording of this paragraph is quite general, and though the illustrations attached to it are not at all happy, they cannot derogate from the general words used in the enactment.

a

This much is clear that the word “impossible” has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do.

b

10. Although various theories have been propounded by the Judges and jurists in England regarding the juridical basis of the doctrine of frustration, yet the essential idea upon which the doctrine is based is that of impossibility of performance of the contract; in fact impossibility and frustration are often used as interchangeable expressions. The changed circumstances, it is said, make the performance of the contract impossible and the parties are absolved from the further performance of it as they did not promise to perform an impossibility.

c

The parties shall be excused, as Lord Loreburn says⁸: (*Tamplin case*⁸, AC p. 406)

d

‘... If substantially the whole contract becomes impossible of performance or in other words *impracticable* by some cause for which neither was responsible.’

*

*

*

e

17. It must be pointed out here that if the parties do contemplate the possibility of an intervening circumstance which might affect the performance of the contract, but expressly stipulate that the contract would stand despite such circumstance, there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens. As Lord Atkinson said in *Matthey v. Curling*⁹: (AC p. 234)

f

‘... a person who expressly contracts absolutely to do a thing not naturally impossible is not excused for non-performance because of being prevented by the act of God or the King’s enemies ... or *vis major*.’

g

This being the legal position, a contention in the extreme form that the doctrine of frustration as recognised in English law does not come at all within the purview of Section 56 of the Contract Act cannot be accepted.” (emphasis supplied)

⁸ *E.A. Tamplin Steamship Co. Ltd. v. Anglo-Mexican Petroleum Products Co. Ltd.*, (1916) 2 AC 397 (HL.)

h

⁹ (1922) 2 AC 180 (HL.)

DDA v. KENNETH BUILDERS & DEVELOPERS (P) LTD. (*Lokur, J.*) 581

31. Insofar as the present case is concerned, DDA certainly did not contemplate a prohibition on construction activity on the project land which would fall within the Ridge or had morphological similarity to the Ridge. It is this circumstance that frustrated the performance of the contract in the sense of making it impracticable of performance.

32. It is true that the Government of India had notified the project land as “residential” and that the project land was shown as “residential” in MPD, 2001 and MPD, 2021. But that fact alone would not change the position at law. The exact boundaries of the Ridge do not appear to have been demarcated and in the absence of demarcation, it could not be said with any degree of certainty by DDA that merely because of the two notifications issued by the Ministry of Urban Development the project land could be used for residential purposes even if it fell within the Ridge. This would be ignoring the position at law and would be stretching the argument a little too far. DDA was unaware that even if the project land did not fall within the Ridge yet any development activity thereon would require permission from the Ridge Management Board as well as from this Court since there was morphological similarity between the Ridge and the project land. It is this intervening circumstance which eventually frustrated the implementation of the contract.

33. It is one thing for DDA to now contend before us that Kenneth Builders could have applied to the Ridge Management Board for permission to carry out development activity and also approached this Court for necessary permission but it is another thing to say that these requirements were not within the contemplation of DDA and certainly not within the contemplation of Kenneth Builders. For a statutory body like DDA to contend that in the face of the legal position (with which DDA obviously does not agree), Kenneth Builders ought to have persisted and perhaps initiated or invited litigation cannot be appreciated.

34. When DDA informed Kenneth Builders that the project land was available on an “as is where is basis” and that it was the responsibility of the developer to obtain all clearances, the conditions related only to physical issues pertaining to the project land and ancillary or peripheral legal issues pertaining to the actual construction activity, such as compliance with the building bye-laws, environmental clearances, etc. The terms and conditions of “as is where is” or environmental clearances emphasised by the learned counsel for DDA certainly did not extend to commencement of construction activity prohibited by law except after obtaining permission of the Ridge Management Board and this Court. On the contrary, it was the obligation of DDA to ensure that the initial path for commencement of construction was clear, the rest being the responsibility of the developer. The failure of DDA to provide a clear passage due to an intervening circumstance beyond its contemplation went to the foundation of implementation of the contract with Kenneth Builders and that is what frustrated its implementation.

35. Reliance by the learned counsel for DDA on the “as is where is” concept as well as Clauses 6 and 11 of the Development Agreement in this context is misplaced. As mentioned above, this primarily pertains to physical issues at site. This is clear from the following passage referred to by the learned

582

SUPREME COURT CASES

(2016) 13 SCC

counsel from *Punjab Urban Planning & Development Authority v. Raghu Nath Gupta*¹⁰; (SCC p. 201, para 14)

“14. ... Evidently, the commercial plots were allotted on “as-is-where-is” basis. The allottees would have ascertained the facilities available at the time of auction and after having accepted the commercial plots on “as-is-where-is” basis, they cannot be heard to contend that PUDA had not provided the basic amenities like parking, lights, roads, water, sewerage, etc. If the allottees were not interested in taking the commercial plots on “as-is-where-is” basis, they should not have accepted the allotment and after having accepted the allotment on “as-is-where-is” basis, they are estopped from contending that the basic amenities like parking, lights, roads, water, sewerage, etc. were not provided by PUDA when the plots were allotted. Over and above, the facts would clearly indicate that there was not much delay on the part of PUDA to provide those facilities as well. As noted, the electrical works and health works were completed by 24-12-2002 and 22-11-2002 respectively and all the facilities like parking, lights, roads, water, sewerage, etc. were also provided.”

36. On a conspectus of the facts and the law placed before us, we are satisfied that certain circumstances had intervened, making it impracticable for Kenneth Builders to commence the construction activity on the project land. Since arriving at some clarity on the issue had taken a couple of years and that clarity was eventually and unambiguously provided by the report of CEC, it could certainly be said that the contract between DDA and Kenneth Builders was impossible of performance within the meaning of that word in Section 56 of the Contract Act. Therefore, we reject the contention of DDA that the contract between DDA and Kenneth Builders was not frustrated.

37. The learned counsel for Kenneth Builders urged that the amount deposited with DDA ought to be returned with interest at 12% p.a. and not 6% p.a. as directed by the High Court. We are not inclined to accede to this request. Kenneth Builders had prayed for interest at 18% p.a. in the High Court but that was declined and only 6% p.a. was awarded. Kenneth Builders is not in appeal before us on this issue. However, we make it clear that the calculation of interest on the amount deposited would be with effect from 11-9-2006 when the entire amount of Rs 450.01 crores was deposited by Kenneth Builders with DDA.

38. GNCTD and DPCC raised an issue before us that DDA was not the final authority in the matter of determining the land use, particularly when it related to the Ridge. In the view that we have taken, it is not necessary to go into this question.

Conclusion

39. The appeal filed by DDA is dismissed. DDA should now refund the deposit made by Kenneth Builders with interest at 6% p.a. calculated from 11-9-2006 till realisation. The question raised in the connected appeal filed by GNCTD and the Department of Forests of GNCTD is left open for consideration in an appropriate case. There will be no order as to costs.

¹⁰ (2012) 8 SCC 197; (2012) 4 SCC (Civ) 397



2021 INSC 796

REPORTABLE

IN THE SUPREME COURT OF INDIA

JURISDICTION ORIGINAL JURISDICTION

I.A. Nos.169030/2019 and 105674/2020

In

Writ Petition (C) No.202/1995With

IA Nos.142873/2021, 142876/2021 and 144462/2021

InI.A. No.105674/2020 in Writ Petition (C) No.202/1995

In Re: T.N. Godavarman Thirumulpad Petitioner(s)

VS.

Union of India & Ors

RESPONDENT(s)

O R D E RNAGARATHNA J.

IA Nos.169030/2019 & 105674/2020 in Writ
Petition (C) No.202/1995 With IA Nos.142873/2021,
142876/2021 & 144462/2021 In I.A. No.105674/2020
in Writ Petition (C) No.202/1995

Heard Sri Tushar Mehta, learned Solicitor
General appearing for Union of India and Delhi
Metro Rail Corporation Ltd; Sri Chirag M. Shroff,
learned counsel appearing for the Government of

National Capital Territory of Delhi (for short, the 'GNCTD'), and Sri Rajiv Dutta, learned Senior Counsel appearing for the applicants and perused the material on record.

2. IA Nos.169029 and 169030 of 2019 have been filed by the applicant viz., Delhi Metro Rail Corporation Ltd. (for short, the 'DMRC').

3. By order dated 02.02.2021, IA No.169029 of 2019 for impleadment was allowed and the applicant - DMRC was impleaded as party respondent in the matter for the purpose of passing orders on IA No.169030 of 2019.

4. The following prayers are sought in IA No.169030 of 2019 :

(a) Refer the matter to the Central Empowered Committee appointed by this Hon'ble Court for detailed consideration and examination of the proposal of the applicant for construction of metro alignment, tunnels and metro station forming

part of 22.34 km Aerocity - Tughlakabad Metro Corridor, being proposed for construction for Phase-IV of the MRTS Project on South Central/morphological Ridge as enclosed in Annexure P-1.

(b) Allow the Applicant for carrying out the aforesaid Alignment, Tunnelling/station/shaft construction activity, in the South Central/Morphological Ridge for construction of the tunnels and metro corridor forming part of 22.34 km Aerocity - Tughlakabad Metro Corridor being proposed for construction for Phase-IV of the MRTS Project, under the supervision of the Ridge Management Board.

(c) Pass such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

5. IA No.105674/2020 has been filed by the applicant-DMRC seeking the following prayers:

- (i) Allow the instant application, by declaring (1) the 5.34 km stretch on Road No.26 between Vikaspuri to Peeragarhi; (2) 1288.973 sqm land at Najafgarh drain, (3) area admeasuring 16097.75 sqm land located at Mangolpuri, and (4) area admeasuring 55.78 sqm at Krishna Park are non-forest areas and there is no requirement for the applicant to obtain permission for diversion of these lands as Forest land under the Forest (Conservation) Act, 1980.
- (ii) Permit the applicant to carry out the construction activities of Phase-IV of Delhi Mass Rapid Transit System Project on the locations referred to in prayer (i) above, without any

restrictions in the larger interest of the Project.

(iii) Pass such other order as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the case.

6. I.A. No.144462/2021 has been filed by the GNCTD seeking permission to file the additional documents in I.A. No.105674/2020. The said application contains:

- (i) Report of Deputy Conservator of Forest, West Forest Division, GNCTD, on DMRC proposal for construction of corridor from Janakpuri to Derawal Nagar, Delhi (Annexure A-1);
- (ii) Copy of submissions of GNCTD dated 24.02.2021 in the matter of DMRC and P.C. Prasad Vs. UOI (Annexure A-2);
- (iii) Minutes of Meeting of the Ridge Management Board (for short, the 'RMB') dated 05.03.2021 (Annexure A-3) in which Agenda Item No.8 is relevant

which is concerning the construction of metro line (Aerocity - Tughlakabad Corridor) of Delhi Mass Rapid Transit System (for short, the 'MRTS') Project Phase IV.

The RMB has noted that the DMRC has submitted the proposal for use of forest land for construction of metro line, stations and other operational requirement of Delhi MRTS Project Phase IV. The length of alignment falling under Southern Ridge, South Central Ridge and Morphological Ridge is 2.844 km, 1.491 km and 3.774 km respectively, giving further details of the exact location of the railway alignment in the forest land of the Ridges referred to above. It is also noted that 1109 trees are proposed to be felled in certain parts of the Southern Ridge, South Central Ridge and Morphological Ridge. Since the

Central Empowered Committee (for the sake of convenience hereinafter referred to as the 'CEC') is visiting the entire railway alignment, the consideration of the matter was deferred.

- (iv) Submissions of GNCTD dated 29.05.2021 through the Department of Forest & Wildlife, GNCTD and in the matter of DMRC is at Annexure A-4.
- (v) The reply of GNCTD dated 29.05.2021 to the CEC is at Annexure A-5 in IA No.144462/2021.
- (vi) The affidavit of the Conservator of Forest, GNCTD, dated 15.09.1997 filed before this Court is at Annexure A-6. The said affidavit is accompanied by nine annexures giving the details of protected forest, forest land and plantation areas under the management of Department of Forest, GNCTD.

7. I.A. Nos.142873/2021 and 142876/2021 have been filed by the applicants in I.A. No.105674/2020 who have prayed for intervention/impleadment as party respondents and have also sought appropriate directions for accepting and allowing the bona fide objections filed by the applicants and for rejecting Report No.8 of 2021 dated 13.05.2021 filed by the CEC in terms of the order dated 02.02.2021 passed by this Court in IA No.105674/2020 along with other directions sought in the prayer of the instant IA No.142876/2021.

8. In IA No.142876/2021, the applicants viz., Dr. PC Prasad and Aditya N. Prasad have filed their objections to Report No.8 of 2021 dated 13.05.2021 in IA No.105674/2020 and contended that the aforesaid application(s) filed by the DMRC is not maintainable as this Court cannot grant a declaration that certain areas are non-forest areas in the National Capital Territory of Delhi (for short, the 'NCT of Delhi'). It is averred that DMRC ought to have approached the

Regional Office of the Ministry of Environment, Forest & Climate Change (for short, the 'MoEF&CC'), Government of India (for short, 'GoI'), as per the Guidelines laid down by this Court in *Lafarge Umiam Mining Corporation Vs. Union of India & Ors.* - (2011) 7 SCC 338; that DMRC has directly approached this Court seeking a declaration without first approaching the MoEF&CC, GoI; that in fact, DMRC has already addressed letter dated 25.08.2020 to the Deputy Conservator of Forest (West Forest Division), GNCTD, informing that it is in the process of applying for permission to use various land for the purpose of project as per FC Act, 1980; that DMRC has undertaken that in case diversion of forest land is denied it would realign through the alternative route. A copy of the said letter is produced as Annexure-17 in IA No.105674/2020.

9. Objections have also been raised to the CEC Report No.8/2021 filed in IA No.105674/2020 by the aforesaid applicants in IA No.142876/2021 which are summarized as under :

- (i) That none of their submissions raised before the CEC has been recorded nor referred to in the said Report.
- (ii) The Chief Wildlife Warden and the concerned Tree Officer(s) were not invited for the hearing nor have comments been sought from the said officers by the CEC.
- (iii) It is stated that majority of the areas where DMRC is proposing to construct have been identified as 'deemed forest' areas in the affidavit dated 15.09.1997 submitted by the Conservator of Forest, GNCTD, before this Court in this very matter.
- (iv) The metro line cannot be allowed to be constructed bypassing the requirement of obtaining forest clearance under the Forest (Conservation) Act, 1980 (for short, the 'FC Act, 1980').
- (v) DMRC has to follow the statutory scheme of the FC Act, 1980 before any forest land is diverted for non-forest use. The statutory

scheme under the said Act has been highlighted as under :

- (a) The officers of the Forest Department have to fill out the form under section 2 of the FC Act, 1980 providing details of the project sought to be constructed on forest land, a cost-benefit analysis as well as alternatives examined with detailed recommendations accepting or rejecting the proposal.
- (b) Then the proposal has to be placed before the Regional Empowered Committee which looks at all linear projects including the metro in the present case;
- (c) The Regional Empowered Committee has to recommend the project and grant Stage I approval (in-principle approval).
- (d) Thereafter, as per the decision of the National Green Tribunal in Milind Pariwakam & Anr. Vs. Union of India, Original Application No.52 of 2015 (order dated 13.03.2015), an order of

the State Government under section 2 of the FC Act, 1980 has to be passed after the State I clearance, before any non-forest activity can be carried out on forest land.

(e) The National Green Tribunal in Vimal Bhai Vs. Union of India, Appeal No.7 of 2012 (order dated 07.11.2012) has held that the order under section 2 is appealable under section 16(e) of the National Green Tribunal Act, 2010 and no party can be left remediless which is why the State Government order under section 2 is a pre-requisite before any action is taken.

(f) Para 1.14 of the Guidelines issued under the Forest (Conservation) Rules, 2003 (for short, the 'FC Rules, 2003') states that where projects involve both forest and non-forest lands, works should not be started on non-forest land till approval of the Central Government for

release of forest land under the Act has been obtained unless and to the extent permitted by the Rules or guidelines issued thereunder.

- (vi) It is also stated that the construction of Phase IV of MRTS project cannot be permitted unless a critical study is carried out under the Delhi Preservation of Trees Act, 1994 (for short, the 'DPT Act, 1994') before felling of trees.
- (vii) The CEC has ignored in its report that 'Najafgarh drain basin' in New Delhi has been identified as a critically polluted area by Central Pollution Control Board (CPCB) in the Comprehensive Environment Pollution Index (CEPI) Report, 2009.
- (viii) It is also stated that ambient air quality in respect of noise has also to be taken into consideration.
- (ix) The objections in the aforesaid interlocutory application also state that the provisions of the Wildlife Protection

Act, 1972 to be considered if trees are proposed to be felled and the threat to the eco system in the context of the wildlife prevalent in the particular eco system.

- (x) It is also stated that the Deputy Conservator of Forest (West Forest Division), GNCTD, by its order dated 28.02.2020 and letter dated 11.08.2020, has restrained DMRC from carrying out any construction activity on the 5.34 km on Road No.26 between Vikaspuri to Peeragarhi and Najafgarh drain as the DMRC illegally felled trees and barricaded the area for construction activity relating to Janakpuri West to R.K. Ashram corridor.
- (xi) The objections have also averred about the economic value of the trees.

10. By order dated 02.02.2021, this Court had directed copies of the instant applications including the amended application to be served upon the CEC and directed the CEC to file its reports in the matter.

11. The CEC has submitted Report No.8 of 2021 in IA No.105674 of 2020 and Report No.10 with Corrigendum dated 09.09.2021 in IA No.169030 of 2019 in WP(C) No.202 of 1995. The said reports have been taken on record.

12. According to DMRC, which is a government company incorporated under the Companies Act, 1956 and which is engaged in Delhi MRTS Project to provide a pollution free transport system to the people of the NCT of Delhi/National Capital Region(for short, the 'NCR'), it has sought the aforesaid prayers with regard to a declaration that

- (i) 5.34 km stretch on Road No.26 between Vikaspuri to Peeragarhi;
- (ii) 1288.973 sqm land at Najafgarh drain;
- (iii) area admeasuring 16097.75 sqm land located at Mangolpuri; and
- (iv) area admeasuring 55.78 sqm at Krishna Park

are non-forest areas and hence, the requirement to obtain permission for diversion of these lands

as forest land under the FC Act, 1980 would not arise.

13. As a sequel, permission has been sought by the applicant-DMRC to carry out the construction activities of Phase-IV of MRTS Project on the aforesaid locations without any restrictions as such.

14. In IA No.105674/2020, according to the applicant-DMRC, 61.679 Km of Phase IV of MRTS Project has been proposed, which, inter alia, includes the following construction proposed to be undertaken :

- (i) 20.201 km Metro corridor from Aerocity to Tughlakabad,
- (ii) 28.920 km corridor from Janakpuri West to R.K. Ashram, and
- (iii) 12.558 km metro corridor from Mukundpur to Maujpur.

15. The total cost of Phase-IV of MRTS Project is estimated to the tune of Rs. 24948.65 crores.

16. This Court vide its order dated 06.09.2019 in WP(C) No.13029 of 1985, observed that the parties have to ensure that there would be no delay caused in Phase IV of the Project and that the requisite amount has to be released in a timely manner to the acquiring authority. The commencement of Phase IV of MRTS Project by construction of civil works was made in November, 2019 and the said project is to be completed and commissioned by June, 2024.

17. The application being IA No.105674/2020 contains the following steps that have been taken so far which are encapsulated as under:

- (i) The Detailed Project Report (DPR) of 103.93 km long Phase -IV MRTS Project was submitted to the Union Government and the GNCTD. The project report was reviewed in terms of the New Metro Policy, 2017 and the alignment was thereafter finalized in April, 2018.

- (ii) It appears that in the period from 2018 to 2020, the DMRC carried out tree survey and applied for permission for cutting trees before the concerned department of Forest and Wildlife, GNCTD.
- (iii) The concerned Public Works Department (PWD) has granted a No Objection Certificate (NOC) for carrying out the construction activity on the Right of Way (ROW) in the year 2019.
- (iv) Similarly, permission has been obtained from the Police Department for diversion of traffic between Janakpuri and Mukarba Chowk and NOC from Irrigation and Flood Control Department have also been taken.
- (v) A contract has also been awarded for construction of elevated viaduct at the pertinent places and for 10 elevated stations on Janakpuri West-R.K. Ashram corridor.
- (vi) From December, 2019 to August, 2020, the officials of the Forest Department and DMRC

have conducted various joint site visits regarding permission for felling of trees falling within the area of Metro alignment. But no exact demarcation of forest areas has been made.

(vii) The Deputy Chief Conservator, Forest & Wildlife Department, GNCTD vide his letter dated 28.02.2020, restrained the DMRC from carrying out any construction activity at Najafgarh drain till necessary approval was issued by the concerned authorities.

(viii) By another letter dated 02.07.2020 issued by the Forest Department, the site near the railway line adjacent to Mangolpuri Industrial Area was stated to fall under the category of "Deemed Forest" as per the Affidavit dated 15.09.1997 filed in this case before this Court by GNCTD. Therefore, the DMRC was requested to approach the Central Government for grant of permission for diversion of forest land under the FC Act, 1980.

- (ix) The Forest & Wildlife Department, GNTCD in its letter dated 07.07.2020, stated that one patch of Line 8 from Janakpuri (West) to Mukarba Chowk falls within the category of "Deemed Forest" and therefore, approval had to be taken from the Central Government for diversion of forest land.
- (x) On 05.08.2020, the Forest & Wildlife Department, GNCTD, directed the DMRC and PWD officials to attend a joint site visit on 10.08.2020 for ascertaining the exact location of 5.34 km area on Road No.26 between Keshorpur to Mukarba Chowk, as Road No.26 was mentioned as Forest/Planation Area in the affidavit dated 15.09.1997 filed before this Court in the main writ petition.
- (xi) As the exact location of the forest area could not be ascertained in the joint site visit, the Forest & Wildlife Department, GNCTD, requested the applicant - DMRC to approach the PWD to mark the area as forest

area in terms of the affidavit dated 15.09.1997 filed before this Court.

(xii) The Forest & Wildlife Department, GNCTD, also stated that the Najafgarh drain is marked as a plantation area as per Geospatial Delhi Ltd. (GSDL) Map and hence, no construction activity has been carried out on the said area.

(xiii) Thereafter, on 14.09.2020, the Forest & Wildlife Department, GNCTD, permitted construction activity in the non-forest area subject to seeking approval of the competent authority vis-à-vis the trees in the said non-forest area.

18. In the above circumstances, the present application has been filed by the DMRC before this Court seeking permission to carry out construction activities of Metro Rail on the following stretches/locations:

(a) A stretch of 2.99 km, falling on Road No.26 between Keshopur to Mukarba Chowk being part of 28.920 km extension of

Line-8 of MRTS Project; from Janakpuri West to R.K. Ashram of Phase IV Metro Project being constructed by the Applicant, which area forms part of Road No.26 (5.34km) classified as Forest Area/Plantation area by the Forest & Wildlife Department, GNCTD, in the above noted Affidavit dated 15.09.1997.

- (b) An area admeasuring 1288.973 sqm at Najafgarh drain, classified as Forest Area/Plantation Area, by the Forest & Wildlife Department, GNCTD, under Irrigation & Flood Control Department.
- (c) An area admeasuring 16097.75 sqm at Mangolpuri for construction of Mangolpuri Metro Station, classified as Forest Area by the Forest & Wildlife Department, GNCTD, on the basis of availability of 100 trees per acre in an area above 2.5 acres.
- (d) An area admeasuring 55.78 sqm; 36.475 mt of which forms part of Road No. 26

(5.34km) at Krishna Park for construction of Entry/Exit of underground station at Krishna Park of the Metro corridor/project.

19. Several averments have been made in the aforesaid application to contend that the aforesaid areas in respect of which the permission is sought, for carrying out the construction activity of Phase IV Metro Rail, are not forest areas and permissions/approvals are not required. They are summarized as under:

- (i) The project involves a huge capital expenditure and stoppage of construction activities and consequent delay in completion of the project would involve heavy financial implications owing to cost escalation, which would have a cascading effect on public exchequer.
- (ii) The DMRC has undertaken the proposed project with a view to providing the citizen of NCT of Delhi/NCR a viable

public transport option so as to reduce vehicular congestion on the road and consequently, reduce pollution in the NCT of Delhi/NCR.

- (iii) The operation of Metro project has resulted in several advantages to the public at large.
- (iv) There would be a greater advantage to the public at large and essentially in the form of saving travel time and reducing the degree of pollution in the NCT of Delhi/NCR.
- (v) Any delay in the commissioning of the project, on the other hand, would jeopardise the object and purpose of DMRC to provide efficient transport facility to the citizens.
- (vi) Hence, in IA No.105674 of 2020, the DMRC has sought a declaration that -
 - (a) the 5.34 km stretch on Road No.26 between Vikaspuri to Peeragarhi;

3239

(b) 1288.973 sqm land at Najafgarh drain;

(c) area admeasuring 16097.75 sqm land located at Mangolpuri; and

(d) area admeasuring 55.78 sqm at Krishna Park

are non-forest areas and there is no requirement for the applicant to obtain permission for diversion of these lands as Forest land under the FC Act, 1980.

20. Pursuant to the order of this Court dated 02.02.2021, the CEC has submitted its Report No.8 of 2021 dated 13.05.2021 in IA No.105674 of 2020. The relevant portions of the said report read as under:

"17. Since this IA No. 105674 of 2020 filed by DMRC Limited mainly relates to the question of applicability of the Forest (Conservation) Act, 1980 to road side planted trees specific to the Metro corridor between Janakpuri West to R. K. Ashram and the issue raised in the W.P.(C) No.1774 of 2021 before the High Court of Delhi and before the CEC by the same petitioners mainly relates to proposed felling of 11,545

trees for implementation of the entire Phase IV of the Metro project, the CEC will submit a detailed report in the matter separately and along with the Report in IA No.91869 of 2020 filed by the DMRC Ltd relating to the Metro Corridor between Aerocity and Tughlakabad.

18. The felling of planted trees outside the forest are regulated under the provision of the Delhi Prevention of Trees Act, 1994 (DPT Act, 1994). The definition of a 'tree' under DPT Act, 1994 is as follows:

"tree means any woody plant whose branches spring from and are supported upon a trunk or body is not less than five centimetre at a height of thirty centimetres from the ground level and is not less than one meter in height from the ground level."

Thus all plants of and above one meter in height are treated as trees under this Act.

The DPT Act, 1994 also prescribes planting of a minimum of 10 times the number of trees for every tree felled. The Applicant is therefore required to obtain the requisite permission under the DPT Act, 1994.

19. Keeping in view the above discussions CEC is of the considered view that the PWD land along Road No.26 on which the planted trees are seen are neither notified as 'forest' nor recorded in any government records as 'forest'. These trees not being of natural origin cannot be branded as 'forest' for the purpose of Forest (Conservation) Act, 1980. It is therefore recommended for consideration of this Hon'ble Court that the prayer of the

Applicant to declare that the 5.34 km stretch of Road No.26 between Vikaspuri to Peeragarhi, 1288.973 sqm land at Najafgarh drain, 16097.75 sqm land located at Mangolpuri and 55.78 sqm of Krishna Park are non-forest areas is allowed, subject to the condition that the Delhi Metro Corporation Limited will fell the trees only after obtaining permission under Delhi Preservation of Trees Act, 1994 from the concerned authorities and after complying with the conditions associated with such approvals including compensatory planting of 10 times the number of trees close to the site from where the trees are being felled."

21. Report No.10 of 2021 in IA No.169030 of 2019 wherein the aforesaid prayers have been extracted, pertains to the construction of Metro alignment, tunnels and Metro stations located on Southern Ridge, South-Central Ridge and Morphological Ridge falling along the 23.62 km long metro corridor between Aerocity and Tughlakabad Station in Delhi. With regard to the extent and importance of Delhi Ridge Area/Morphological Ridge Area and order of this Court in this regard, the following has been observed in the said report:

"19. i) The Master Plan for Delhi Perspective, 2001, notified by the Delhi Development Authority (DDA) on 1st August, 1990, states that the Ridge in Delhi is defined as rocky out-crop of Aravalli Ranges stretching from the University in the North of Union Territory boundary to the South and beyond. *The Delhi Ridge area extends over 7,777 ha out of which 87 ha falls in Northern Ridge, 864 ha falls in Central Ridge, and 6200 ha falls in South Central Ridge and 6200 ha falls in Southern Ridge.* The ridge area has been classified and included in the Master Plan (Land use Plan) as Regional Park.

ii) The Government of National Capital Territory of Delhi by notification dated 24th May, 1994 under Section 4 of the Indian Forest Act, 1927 notified the 7,777 ha of Delhi Ridge area as Reserved Forests commonly referred to as Notified Ridge Area. The Delhi Ridge serves as the green lungs for Delhi and acts as a buffer against rising pollution levels. The pressures of rapid urbanization in Delhi have, over the years, threatened and adversely affected the forests in Delhi Ridge area. The Ridge area thus identified needs to be conserved with utmost care and should be afforested with the indigenous species with minimum of artificial landscape.

iii) This Hon'ble Court has passed a series of directions in Writ Petition (Civil) No. 4677 of 1985 for conservation and protection of Delhi Ridge. Pursuant to this Hon'ble Court order dated 29th September, 1995 the Government of NCT of Delhi by order dated 5th October, 1995 constituted the Ridge Management Board (RMB) under the Chairmanship of Chief Secretary,

Delhi. The Board has been assigned various functions, relating to conservation and protection of Ridge. These include execution of the management scheme for the Ridge Forests, protection of boundaries, of the Ridge and preparation and execution of detailed plans for up gradation of the Ridge.

iv) *This Hon'ble Court by order dated 10th October, 1995 directed that the Ridge Management Board shall ensure that the Ridge is not occupied or encroached by any person for any unauthorised purpose. This Hon'ble Court further directed the Chairman RMB to file an affidavit by a responsible officer after every eight weeks, indicating the progress made in preserving the status of the Ridge as a forest and also keeping it free from encroachers.*

v) This Hon'ble Court, by order dated 25.01.1996 and 13.03.1996 in IA No.18 and IA No.22 in Writ Petition (C) 4677 of 1985 directed that the uncultivated surplus land of Gaon Sabha falling in the Ridge area may be excluded from vesting in Gaon Sabha u/s 154 of the Delhi Land Reforms Act, 1954 and made available for the purpose of Reserved Forest.

vi) The Government of NCT of Delhi in compliance of the above said orders of this Hon'ble Court issued Notification dated 2nd April, 1996 u/s 154 of the Delhi Land Reform Act, 1954 declaring 10,517 acres (about 4,206.68 ha) of uncultivated land of Gaon Sabha situated in Southern Ridge as surplus land and excluded the same for vesting in Gaon Sabha. Further by Notification dated 2nd April, 1996 placed the said 4206.68 ha land at the disposal of the

Forest Department of Delhi Government and this 4206.68 ha of land stands included in the 7777 ha of Notified Ridge Area.

vii) *This Hon'ble Court by order dated 9th May, 1996 directed that the Ridge is to be kept free from encroachers and its pristine glory must be maintained for all times.*

viii) The Geological Survey of India (GSI) in the year 2001-02 carried out geological and geomorphological mapping of about 1482 sq km area of NCT of Delhi on 1: 10,000 scale with a view to provide the base map for seismic microzonation of Delhi and which map was published in the year 2006. *In the geological and geomorphological map prepared by the GSI the land forms found to be under rocky surface have been included and shown under the geomorphic unit "residual hills I Ridges".* It is relevant to mention that all the areas identified as Residual Hills I Ridges in the geological and geomorphological mapping done by the GSI are not included and shown as Ridge areas in the MPD 2001 and MPD 2021. For example, the areas between Tughlakabad to Okhla via Greater Kailash and Nehru Place have been identified as Ridge areas in the said Report of GSI but are not included as Ridge areas in the MPD 2001 and MPD 2021.

ix) Initially, the clearance from the Ridge Management Board and the permission of this Hon'ble Court was being insisted upon only in respect of the Notified Ridge Areas. This Hon'ble Court by order dated 23.03.2007 has granted permission to the Delhi Metro Rail Corporation Limited for use of forest land and non-forest land

falling in the Delhi Ridge area for the construction of the Central Secretariat -Qutab Minar -Gurgaon corridor of the metro line and by order dated 07.12.2007 has granted permission for use of forest land and non-forest land for construction of Express Metro Link to the Airport through the Central Ridge.

x) Subsequently by order dated 03.11.2011 the Hon'ble High Court of Delhi in Writ Petition (Civil) No.3339 of 2011, filed by Shri Ashok Kumar Tanwar, held that lands situated outside the Notified Ridge Areas but which have morphological features conforming to the ridge should be given the same protection as is given to the notified areas. Consequently, all the concerned agencies were restrained from carrying out construction works on such lands (Morphological Ridge) also referred to as "Extended Ridge Area" till necessary clearance from the Ridge Management Board and through the CEC the permission of this Hon'ble Court is first obtained.

20. This Hon'ble Court by orders issued from time to time, since 02.11.2012 and till 06.09.2019, has given permission to various agencies of Central Government and Delhi Government for carrying out construction activities in notified Ridge area on forest land and non-forest land situated outside the notified Ridge Area in extended Ridge Area Morphological Ridge Area. These include the Border Roads Organization, the Delhi Metro Rail Corporation Limited, Jawaharlal Nehru University, Central Bureau of Investigation, Ministry of Defence, Ministry of External Affairs, Ministry of

Textiles, South Delhi Municipal Corporation, Delhi Development Authority, Central Public Works Department, National Highways Authority of India (NHAI} and the Delhi Police."

22. The observations and recommendations are given in paragraph 21 of Report No.10 of 2021 in IA No.169030 of 2019 which read as under:

"OBSERVATIONS AND RECOMMENDATIONS

21. After considering that

i) the project is in public interest;

ii) it is proposed to construct the 23.62 km long Aerocity to Tughlakabad corridor Mass Rapid Transport System forming part of Phase IV Project in Delhi at an estimated cost of Rs. 8230 crores and scheduled to be commissioned by year 2024;

iii) the metro corridor will serve the densely populated areas and is integrated with

a) Airport Express Line which provides metro connectivity of South Delhi to Indira Gandhi International Airport;

b) Samaypur Badli to HUDA City Centre (Yellow Line) at existing Chhatarpur Metro Station which integrates the metro connectivity of South Delhi to Gurgaon and Faridabad;

iv) the vehicular traffic of IG Airport from Delhi will be drastically reduced with consequent reduction in traffic on NH-8, Mahipalpur - Mehrauli Road, Mehrauli - Badarpur Road apart from the Metro Project providing the connectivity to Line-6 at Tughlakabad for commuters of Faridabad;

v) the total Ridge Area involved including Morphological Ridge is 12.97 ha extending over a length of 5.29 kms. Out of this 12.97 ha an area of 4.5 ha will be for tunnels 20 m below the ground while the remaining 8.4 ha is required for constructing Metro Stations;

vi) since tunnel boring machines will be used surface breaking is limited to 8.4 ha. required for constructing metro stations and therefore there will be minimal impact to the ecology or structure on Ridge I Morphological Ridge;

vii) the land required on permanent and temporary basis has been restricted to 14865 sqm and 69793 sqm respectively with minimal impact. The 69793 sqm land, held on temporary basis, shall be restored back after the completion of the Project;

viii) it is not possible to align the corridor outside the ridge area; .

ix) the total number of trees involved is 6961 trees break up being 1072 trees located in 12.97 ha over a length of 5.29 km in Ridge Area including Morphological Ridge, 2536 trees located in 3.79 ha identified as deemed forest over a length of 0.97 kms and 3353 trees located on 27.06 Ha non-forest land over a length of 17.35 km. A total of 2195 trees out of 6961

trees are to be transplanted while the remaining 4766 trees are to be felled;

x) the compensatory planting will involve about 34,000 saplings {ten times 3353 trees to be felled/transplanted) and will be located on land made available by DDA while transplantation of 2195 trees will be undertaken on open lands of DDA, Ministry of Defence and multiple land owing agencies in the vicinity of the Project;

xi) the corridor proposed has been found to be the most feasible route economically, environmentally and technically for the purpose of daily ridership and will be covering a sizeable population;

xii) the Ridge Management Board has recommended the proposal;

xiii) no viable alternative is feasible and the use of the ridge area has been restricted to the minimum; and

xiv) this Hon'ble Court by orders issued from time to time has for site specific projects given permission to various Central Government agencies and Delhi Government for carrying out construction activities on forest land, deemed forests and non-forest land situated

a) in the Notified Ridge Area

b) outside the Notified Ridge Area but located in extended Ridge area/ Morphological Ridge area which have morphological features.

It is recommended that this Hon'ble Court may consider permitting use of 7.42 Ha. Ridge area including Morphological Ridge and 3.79 Ha of deemed forest land involving 6961 trees (break up being felling of 4766 trees and transplantation of about 2195 trees) for construction of metro alignment tunnels and metro stations in the Southern Ridge, South Central Ridge and Morphological Ridge along the 23.62 km Aerocity -Tughlakabad Metro Corridor forming part of Phase IV of the Mass Rapid Transport System (MRTS) Project subject to the following conditions :

a) The Applicant Delhi Metro Rail Corporation Limited will deposit 5% of the Project cost proportionate to the area falling within the Southern Ridge, South Central Ridge and Morphological Ridge, with the Ridge Management Board Fund and which amount, under the close supervision of the Ridge Management Board, will be used by the Forest Department of Delhi Government for conservation and protection of the Delhi Ridge.

b) The Applicant will obtain the statutory forest clearance for diversion of 7.42 Ha. forest land falling in Southern Ridge, South Central Ridge and 3.79 Ha of deemed forest for non-forest use in accordance with the provisions of the Forest (Conservation) Act, 1980 from the competent authority and shall comply with all the conditions that are laid down in the order to be passed for diversion of forest land.

c) The 25 Ha of land allotted by DDA for compensatory afforestation

in Dhusiras Village, Dwarka shall be notified as protected forests under the provisions of the Indian Forest Act 1927 and shall be managed by the Forest Department of Delhi Government.

d) The area falling within the Delhi Ridge area I Morphological Ridge area will not be used for commercial purposes by the Applicant or any other party.

e) The Applicant shall pay Net Present Value as assessed by the Forest Department, Delhi Government.

f) The applicant shall obtain necessary approvals under the Delhi Preservation of Trees Act, 1994 from the competent authority before felling of trees standing on non-forest land.

g) Compensatory plantation of 34,000 saplings of indigenous species, being ten times in lieu of 3353 trees standing on non-forest land and proposed to be felled/transplanted, will be undertaken by the Forest Department of Delhi Government on the lands provided by ODA for the said purpose.

h) The cost of raising 34,000 saplings and raising compensatory afforestation in lieu of the diversion for forest land for non-forest use. will be deposited in advance by the Applicant with the Forest Department of Delhi Government who will undertake the planting and maintenance of the above trees for seven years.

i) Transplantation of 2195 trees will be undertaken by DMRC on open identified lands made available by DOA, Ministry of Defence and other multi land owing agencies including private trusts.

j) The transplantation of trees will be undertaken near the impact area itself.

k) The felling of tress proposed is limited to the bare minimum required for execution of the project.

Note : By corrigendum dated 09.09.2021 to Report No.10 of 2021 in IA No.169030/2019, the figure 12.98 Ha forest land to be read as 7.42 Ha of forest land.

23. The justification for Aerocity - Tughlakabad Corridor Project is stated in paragraph 17 of the aforesaid Report i.e. Report No.10 of 2021 as under:

"JUSTIFICATION FOR AEROCITY - TUGHLAKABAD CORRIDOR PROJECT"

17. i) According to DMRC the proposed metro Corridor is to serve the densely populated areas of Mahipalpur, Vasant Kunj, Chhatarpur, IGNOU, Maidangarhi, Neb Sarai, Saket, Khanpur, Sangam Vihar and Tughlakabad. The alignment is based on the proximity to the populated areas to be served and which areas are mostly along the Mahipalpur - Mehrauli Road and Mehrauli ~ Badarpur Road. There have been and

there still are many constraints while finalizing the alignment such as minimum distance from the Protected Monuments avoiding built up areas and at the same time also minimizing the Ridge area as there are large extent of Ridge areas along the corridor. The present alignment is the best fit alignment meeting the above constraints and also simultaneously meets the technical requirements of metro alignments/stations and proximity to the target population to be served. There is a vast extent of Ridge on either side of the alignment because of which it has not been possible to shift the alignment out of Ridge area but efforts have been made to minimize the Ridge area involved. The daily ridership. has been estimated at 1.66 lakhs trips per day by 2024.

ii) The proposed Aerocity - Tughlakabad corridor is to be integrated with Airport Express Line which provides metro connectivity of South Delhi to Indira Gandhi International Airport. It is also to be integrated with Samaypur Badli to HUDA City Centre Line (Yellow Line) at existing Chhatarpur Metro Station which integrates the metro connectivity of South Delhi to Gurgaon and Faridabad.

iii) This corridor provides connectivity to Chhatarpur Mandir, IGNOU University, Karni Singh Shooting Range and ASI Monuments including Tughlakabad Fort, Adilabad Fort and Ghyasuddin Tughlakabad Tomb.

iv) The vehicular traffic of IGI Airport from Delhi will get drastically reduced with consequent reduction in traffic on N-H-8,

Mahipalpur - Mehrauli Road, Mehrauli Badarpur Road apart from the Metro Project providing the connectivity to Line - 6 at Tughlakabad for commuters of Faridabad.

v) The reduction in vehicular traffic will also bring down the number of road accidents and pollution levels.

vi) Public interest is involved in the completion of Aerocity to Tughlakabad corridor as this corridor is the most feasible route economically, environmentally and technically for the purpose of the daily ridership and also will be covering a sizeable population.

24. It is noted in the aforesaid Report that the RMB in its meeting held on 14.07.2021 is said to have stated that the original alignment proposed by DMRC involving minimum use of forest area (12.97 Ha) and minimum felling of trees (1072 trees) has recommended the proposal subject to the following conditions:

(a) The User Agency shall obtain necessary permission for diversion of forest area for non-forestry purposes as per provisions under FC Act, 1980.

(b) The User Agency shall deposit 5% of the project cost proportionate to the area

falling within Morphological Ridge area to RMB fund on the lines of conditions imposed by Hon'ble Supreme Court of India in Writ Petition (Civil) 202 of 1995 titled "T.N. Godavarman Thirumulpad Vs Union of India and Ors." for management of the Ridge.

25. As already noted, we have heard learned Senior Counsel and counsel appearing for the respective parties at length and perused the earlier orders of this Court and the aforesaid reports submitted by the CEC, the relevant portions of which are extracted above.

26. We have given our anxious consideration to the prayers sought by the applicant - DMRC in these applications.

27. At the outset, we may preface our discussion by observing that learned counsel appearing for the respective parties submitted at the Bar that in principle, their parties are not opposed to Phase IV of MRTS Project. The main consideration is making available transport facility to the

public at large in NCR of Delhi in the form of Metro rail while at the same time, preserving the ecology and environment of the areas surrounding the alignment of the metro railway.

28. To put it in a nutshell, the issue herein concerns sustainable development and preservation of the environment and ecology of NCT of Delhi/NCR.

29. An introspection on the issue raised before this Court would draw our attention to the grave and pressing problem the world over including India, namely, degradation of environment and ecology resulting in what is simplistically called 'Climate Change' and the problem of 'greenhouse gas emissions'.

30. The United Nations Conference on the Human Environment at Stockholm in 1972, United Nations Conference on Environment and Development (UNCED) known as the Rio de Janeiro Earth Summit in 1992; World Summit on Sustainable Development in Johannesburg in 2002 and Glasgow Climate Change

Conference currently held in October-November, 2021, have all voiced grave concerns about the global environmental degradation resulting in extinction of certain flora and fauna and its cascading effect on planet Earth owing to man's growing need for development particularly economic development.

31. Projects such as the metro railway in question have already been implemented in parts of NCT of Delhi/NCR. One cannot lose sight of the fact that it has resulted in loss of vegetation as well as flora and fauna in certain areas. The implementation of Phase IV of MRTS Project may be a further threat to the ecology of NCT of Delhi/NCR.

32. To meaningfully arrest the problem of declining tree cover, the civil society must also be placed with the responsibility to carry out reafforestation activities. While we cannot ignore the importance of governmental responsibility in materializing the goals of

sustainable development through reafforestation, we strongly endorse the idea of collective responsibility towards ensuring a sustainable future. The engagement, inclusion and participation of citizens and perhaps more significantly, the ownership of the sustainable development agenda by empowered citizens and community-level actors will contribute in a significant manner to achieving the economic, social and environmental pillars of the sustainable development agenda.

33. Citizens, as the ultimate beneficiaries of development, have a critical role to play, not just in terms of effort and action towards the achievement of the environmental goals but also in terms of the associated monitoring of the progress towards these goals.

34. One of the important steps that Parliament has taken is to have enacted the Environment (Protection) Act, 1986 and the FC Act, 1980. The

FC Act, 1980 is a short but effective enactment comprising only of five sections. Section 2 of the FC Act, 1980 reads as under:

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.— Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,—

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.]

[Explanation.—For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for—

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing

plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.]”

35. While interpreting the word “Forest”, this Court in this very matter, speaking through J.S. Verma and B.N. Kirpal, JJ as their Lordships then were, on 12.12.1996, have observed, *inter alia*, as under:

“It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest (Conservation) Act, 1980 (for short the ‘Act’) and the meaning of the word “forest” used therein. There is also a resulting misconception about the need of prior approval of the Central government, as required by section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

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 herewith 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(1) of the Forest Conservation Act. The term 'forest land', occurring in section 2, will not only include "Forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this court in *Ambica Quarry Works v. State of Gujarat* (1987 (1) SCC 213). *Rural Litigation and Entitlement Kendra v. State of U.P.* (1989 Suppl. (1) SCC 504), and recently in the order dated 29th November, 1996 in W.P. (c) No. 749/95 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority and Ors.* (1985 (3) SCC 643) has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this court. It is reasonable

to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

We further direct as under:-

I) General - In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any 'forest'. In accordance with section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and, are therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

The felling of trees in all forests is to remain suspended except in accordance with the Working Plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular state, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

Each State Government should constitute within one month an Expert Committee to:

(i) Identify areas which are 'forests' irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

(ii) Identify areas which were earlier forest but stand degraded, denuded or cleared; and

(iii) Identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

36. We have considered the applications made by the applicants in the light of the aforesaid orders passed by this Court, the additional documents filed by GNCTD, Report Nos.8 and 10 submitted by the CEC and the recommendations made therein and the objections filed by the applicants vide I.A. No.142876/2021.

37. Pursuant to the Order of this Court dated 12.12.1996, an affidavit dated 15.09.1997 was filed by the Conservator of Forests, GNCTD. In the said affidavit under the head "Forest Areas and Plantation Areas along the Roads managed by PWD", the State Government has included the trees planted along the road side including Road No.26

in respect of which the application is filed as part of Annexure IX of the said affidavit.

38. On the other hand, the DPT Act, 1994 regulates felling of trees falling outside the notified forests and deemed forests. Under this Act, the user agency has to bear the cost of raising and maintenance of ten times the number of trees to be felled.

39. Therefore, the crucial issue whether the areas through which the metro railway lines are to be constructed and pass through as noted hereinabove are forest areas or non-forest areas has to be determined by GNCTD. In this context, we note that the applications have already been filed by DMRC under the FC Act, 1980 on 02.11.2020 before the Chief Conservator (Forest) and Nodal Officer (FCA), GNCTD, seeking sanction under the FC Act, 1980, for conversion of 50,421 Ha of forest land for construction of underground stations at Krishna Park and elevated corridor to Keshopur to Mukarba Chowk from Janakpuri corridor

in Phase-4 of MRTS project with a request to forward documents to the MoEF&CC, GoI for its consideration. Therefore, there has already been an application made seeking permission for diversion of Forest land or non-forest activity namely, the construction of the Metro railway line in respect of the aforesaid areas.

40. Further, the MoEF&CC (Forest Conservation Division), GoI, has also communicated by its letter dated 14th November, 2019 to the Principal Secretary, Forest of State and Union Territories as under:

"2. Based on the recommendation of the FAC with regards to the definition of forests, the Ministry has decided as follows:

(i) India is a vast country with varied geo-physical units and soil-climatic conditions that has given rise to a number of forest types. There are variations even within the forest types.

(ii) As far as developing criteria for 'deemed forests' is concerned, there cannot be any uniform criteria applicable to all forest types or all states. There has to be different criteria for different forest types or states.

(iii) It is only that Hon'ble Supreme Court had directed states to identify their own forests, in fact the states, having well

established forest departments, are in a better position, rather than MoEF&CC, to understand their own forests and needs, and should frame criteria for their forests.

(iv) While framing criteria, due diligence should be exercised taking into to account spirit of order of Supreme Court, National Forest Policy, the rationale of having adequate forests, site quality of naturally occurring forest species etc., for supporting a healthy environment.

(iv) The criteria so finalised by a state, need not be subject to approval of MoEF&CC. This issues with the approval of competent authority."

41. On perusal of Report No.8 of 2021 in IA No.105674/2020 submitted by the CEC, it is observed that where any area is declared to be forest area (within the meaning of the definition given by this Court in the aforesaid order dated 12.12.1995), for diversion of the said area for a non-forest purpose would require approval under the provisions of the FC Act, 1980. However, if there is need for felling of trees outside any forest area then the provision of DPT Act, 1994 has to be complied with.

42. As far as, 23.62 km long Metro Corridor between Aerocity and Tughlakabad stations in

Delhi passing through Southern ridge, South-Central Ridge, Report No.10 of 2020 in IA No.169030/2019 states that an extent of 7,777 Ha of land of Delhi Ridge Area falls in the Northern Ridge, Central Ridge and South-Central Ridge as well as the Southern Ridge. The Ridge area has been described in the Master Plan (Land use Plan) as Regional Park.

43. By notification dated 24th May, 1994 under Section 4 of the Indian Forest Act, 1927, 7,777 Ha of Delhi Ridge area has been notified as Reserved Forest. It serves as the green lung for Delhi and acts as a buffer against rising pollution level and hence the Ridge area has to be conserved with utmost care and should be afforested with the indigenous species with minimum of artificial landscape is the recommendation of the CEC.

44. Pursuant to the directions issued by this Court, the RMB under the Chairmanship of Chief Secretary, Delhi, has been constituted for the

conservation and protection of Ridge. This is to ensure that the Ridge is not occupied or encroached upon by any person for any unauthorised purpose so as to preserve its status as 'forest'.

45. Further, notifications have been issued to exclude areas comprising in the Ridge from the provisions of the Delhi Land Reforms Act and not vesting the same in the Gram Sabha.

46. This Court by order dated 03.11.2011 passed in WP(C) No.3339/2011, held that land situated outside the notified Ridge areas but which have morphological features conforming to the Ridge should be given the same protection as is given to the notified areas. Therefore, any construction work to be carried out on such lands also referred to as 'Extended Ridge Areas', must have clearance from the RMB. Accordingly, recommendations have been made by the CEC in the

aforesaid Report No.10 while also noting the recommendations of the RMB.

47. In view of the above discussion, having regard to the specific recommendations of the CEC, the present interlocutory applications are disposed of in the following terms:

- (i) DMRC to file applications under the FC Act, 1980 to the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, seeking permission for diversion of the following extents of land for the construction of Metro, Phase-IV of MRTS Project with a request to forward the said documents to the MoEF&CC, GoI, for its consideration under Section 2 of the FC Act, 1980:

3269

- (a) 5.34 km stretch on Road No.26 between Vikaspuri to Peeragarhi;
- (b) 1288.973 sqm land at Najafgarh drain;
- (c) area admeasuring 16097.75 sqm land located at Mangolpuri; and
- (d) area admeasuring 55.78 sqm at Krishna Park.

- (ii) It is needless to observe that the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, shall consider the said application/s and forward the same to MoEF&CC, GoI, with his recommendations within a period of one month from the date of receipt of the said application/s.
- (iii) MoEF&CC, GoI, on receipt of the application/s, shall consider the same expeditiously and within a period of three months from the date of its receipt, communicate its decision to the applicant-DMRC as well as to the Chief Conservator

(Forest) and Nodal Officer (FCA),
GNCTD.

(iv) Insofar as the prayer sought by the Applicant-DMRC vis-à-vis South Central/morphological Ridge forming part of Aerocity-Tughlakabad Metro Corridor is concerned, having regard to the recommendations made by the RMB, the DMRC is directed to file an application before the RMB so as to seek necessary permission for diversion of the aforesaid Ridge areas for the purpose of Phase IV of the MRTS project passing through the said areas.

(v) On such application being made, the RMB shall make its recommendations on the same and forward a copy of the said recommendations to the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, as well as to the MoEF&CC, GoI, for its consideration

under section 2 of the FC Act, 1980 within a period of one month from the date of receipt of the said application.

- (vi) MoEF&CC, GoI, shall on receipt of the said application along with the recommendations of RMB and the Chief Conservator (Forest) and Nodal Officer (FCI), GNCTD, if any, shall consider the said application within a period of three months from the date of its receipt.
- (vii) DMRC shall also comply with all other conditions imposed by the RMB and also the orders passed by this Court in this very matter concerning the management of the Ridge.
- (viii) It is needless to observe that while considering the said applications, the directions and orders passed by this Court referred to above as well as the statutory scheme and guidelines and

parameters prescribed by MoEF&CC, GoI, shall be borne in mind by the concerned authorities. The Reports referred to above may also be taken into consideration.

- (ix) Irrespective of and *de hors* the decision to be taken by the concerned departments with regard to the recommendations made by the CEC in the aforesaid Report Nos.8 and 10, since the citizens of NCT of Delhi have had and would continue to have the facility of the metro rail, the GNCTD as well as DMRC are directed to conceive a plan of action for the purpose of planting trees in the NCT of Delhi. For that purpose, GNCTD may involve school and college students, educational institutions, Non-Governmental Organizations, Citizen Welfare Associations, public servants and every citizen or person who is interested in the ecology of NCT of

Delhi to plant trees/saplings and ensure that they are nurtured and protected so that the NCT of Delhi would in passage of time have more greenery leading to afforestation. The aforesaid direction is issued having regard to the precautionary principle as well as principle of sustainable development by ensuring citizens' participation in the preservation of the environment and ecology. It is needless to observe that such a plan of action would be conceived by the Department of Forest and Environment of NCT of Delhi in consultation with the Public Works Department, Education Department and such other departments who will involve themselves in ensuring the planting of saplings and trees in NCT of Delhi. Such a plan of action be conceived and the same be placed on record before this

Court within a period of twelve weeks
for consideration of this Court.

..... J
[L. NAGESWARA RAO]

..... J
[B.R. GAVAI]

..... J
[B.V. NAGARATHNA]

NEW DELHI;
NOVEMBER 29, 2021.

3275

ITEM NOS.18 & 19

COURT NO.8

CORRECTED FOR APPEARANCE
SECTION PIL-WS U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 202/1995

IN RE : T.N. GODAVARMAN THIRUMULPAD

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS. & ORS.

Respondent(s)

(INTERLOCUTORY APPLICATIONS FOR 15.03.2023

"ONLY"

[1] I. A. No. 108146 OF 2022
[APPLICATIONS FOR DIRECTIONS]
IN I.A. NOS. 982-984/2003 (DISPOSED OF)
[APPLICATIONS FOR DIRECTIONS]
IN RE : SMT. MAGAN DEVI MEENA

WITH

W.P. (C) NO. 633 OF 2022

AND

[2] I. A. Nos. 118236 AND 129623 OF 2020
[APPLICATIONS FOR IMPEADMENT AND DIRECTIONS]
IN RE : M/O AGRICULTURE AND FARMERS WELFARE

WITH

I.A. No. 179389/2018

[APPLICATION FOR MODIFICATION OF COURT'S ORDER DATED 07.05.2002 IN
I. A. NO. 502]

AND

I.A. No. 69399/2021

[APPLICATION FOR PERMISSION TO FILE ADDITIONAL AFFIDAVIT]

AND

I.A. No. 144539/2021

[APPLICATION FOR INTERVENTION IN I.A. NO. 179389/2018]

AND

I.A. No. 13413/2023

[CEC REPORT NO. 2/2023 - NOTE FILED BY MEMBER SECRETARY, CEC
IN I.A. NO. 179389/2018]

IN RE : U.T. OF ANDAMAN AND NICOBAR ADMINISTRATION

AND

[3] I. A. Nos. 90862 AND 90864 OF 2021

[APPLICATIONS FOR DIRECTIONS AND EXEMPTION FROM FILING O.T.]

IN RE : M/S. JAIPUR SILICA SUPPLY CO., RAJASTHAN

AND

[4] [I] CONTEMPT PETITION (CIVIL) NO. 319 OF 2021

Signature of Mr. N. P. S. Naranda
 Digitally signed by N. P. S. Naranda
 Date: 2023.04.24 12:08:12 IST
 Reason: []

3276

WITH

I. A. No. 66719 OF 2021
 (APPLICATION FOR EXEMPTION FROM FILING NOTORIZED AFFIDAVIT)
 IN

I. A.No. 90182 OF 2019
 (APPLICTION FOR DIRECTIONS)
 IN RE : RAJAJI TIGER RESERVE, UTTARAKHAND
 WITH

[ii] I. A. No. 186910/2022
 (CEC REPORT NO. 30/2022 - REPORT OF CEC IN APPLN. NO. 1557/2022
 FILED BEFORE IT BY GAURAV KUMAR BANSAL)
 IN RE : GAURAV KUMAR BANSAL

AND

[iii] I.A. NO. 20650/2023
 (CEC REPORT NO. 3/2023 - REPORT OF CEC IN APPLN. NO. 1558/2021
 FILED BEFORE IT BY GAURAV KUMAR BANSAL)

IN RE : GAURAV KUMAR BANSAL

AND

[5] IN RE : "CONSTRUCTION OF MULTI STOREYED BUILDINGS IN FOREST
 LAND MAHARASHTRA"

[i] I. A. No. 2079/2007
 [APPLICATION FOR IMPLEADMENT AND DIRECTIONS]

WITH

[ii] I.A Nos. 2301-2302
 [APPLICATIONS FOR IMPLEADMENT AND DIRECTIONS]

AND

[iii] I.A. Nos. 3044-3045
 [APPLICATIONS FOR IMPLEADMENT AND DIRECTIONS]

AND

[iv] I.A. Nos. 2771-2772
 [APPLICATIONS FOR IMPLEADMENT AND DIRECTIONS]

AND

[v] I.A.Nos. 111725 AND 154041/2018
 [APPLICATIONS FOR SUBSTITUTION OF APPLICANT, i.e. SMT. HOUSABAI
 HARIBHAU BHAI RAT AND CONDONATION OF DELAY

IN FILING APPLICATION FOR SUBSTITUTION IN I.A. NOS. 2771-
 2772/2009]

WITH

[vi] W.P.(C) NO. 301/2008

AND

[6] I.A. Nos. 2930 AND 3963
 [APPLICATIONS FOR DIRECTIONS AND
 PERMISSION TO FILE ADDITIONAL DOCUMENTS]

WITH

I.A. No. 160714 OF 2019
 [APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION]

IN RE : M/S SHEWALKER DEVELOPERS LTD.

AND

[7] .A. No. 26663/2023 [APPLICATION FOR DIRECTIONS]

3277

IN RE : VISHANT VASUDEV VAZE

AND

[8] I. A. Nos. 21531 AND 21636/2023

[APPLICATIONS FOR DIRECTIONS AND IMPLEADMENT]

IN RE : M/S. BALASORE ALLOYS LIMITED, ODISHA

AND

[9] I. A. No. 191635/2022

(CEC REPORT NO. 31/2022 - REPORT OF CEC IN APPLN. NO. 1559/2022

FILED BEFORE IT BY MINISTRY OF FINANCE)

LISTED ONLY FOR DIRECTIONS TO MoEF IN VIEW OF ORDER DT. 08.02.2023)

IN RE : MINISTRY OF FINANCE

AND

[10] . NOS. 32471 AND 43586/2023

IN SLP(C) NO. 25047/2018

AND

[11] I. A. Nos. 195467 AND 195468/2022

[APPLICATIONS FOR MODIFICATION OF COURT'S ORDER DT. 03.06.2022 AND EXEMPTION FROM FILING O.T.]

IN RE : STATE OF UTTAR PRADESH

AND

[12] I. A. NOS. 131377 AND 147102 OF 2022

[APPLICATIONS FOR MODIFICATION OF COURT'S ORDER DT. 03.06.2022 AND PERMISSION TO FILE APPLICATION FOR MODIFICATION]

IN RE : MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE
(MoEFCC)

WITH

I.A. No. 205092/2022

[Application for modification of court's order dt. 03.06.2022 on b/o State of Karnataka]

WITH

I.A. 162283 and 162284 of 2022 in I. A. D. No. 125746/2022

[Appeal under order XV rule 5 against impugned order dated 19.09.2022 and condonation of delay in filing the same]

WITH

I.A. No. 5764/2023

[Application for intervention]

WITH

I.A. No. 6804/2023

[Application for intervention]

AND

I. A. No. 10911/2023

[Application for intervention]

AND

I.A. Nos. 118604 AND 118606/2022

[Applications for Impleadment and exemption from filing notarized affidavit]

WITH

I. A. Nos. 119400, 119401 AND 119404/2022

3278

[Applications for Modification of Court's Order dt. 03.06.2022, Clarification/Directions and exemption from filing notarized affidavit]

AND

I.A. Nos. 137132, 137138, 137140 AND 137143/2022

[Applications for Impleadment, Modification of Court's Order dt. 03.06.2022, Stay and Exemption from filing notarized affidavit]

AND

[13] [i] IN RE : JANMAM ESTATES IN TAMIL NADU

[ALONG WITH AFFIDAVITS DATED 24.10.2017 AND 17.11.2017 FILED ON BEHALF OF CHIEF SECRETARY, GOVT. OF TAMIL NADU IN I.A.No. 2702] WITH

[ii] I. A. No. 2702 (Applications for Permission)

WITH

[iii] I. A. No. 19859/2018 [Applications For Impleadment]

WITH

[iv] I. A. No. 133562/2019 [APPLICATION FOR INTERVENTION]

In Re : NILAMBUR KOVILAKAM

WITH

[v] CONTEMPT PETITION (CIVIL) NO.193/2001

WITH

I. A. No. 4 (Application for Directions)

In re : Permission to carry out work related to basic amenities in the Janmam Lands in the State of Tamil Nadu

AND

[14] I. A. No. 3949 OF 2016 [APPLICATION FOR DIRECTIONS]

IN RE : GRANT OF MINING LEASE TO M/S PUTAMBEKAR MINERALS

AND

[15] CIVIL APPEAL NOS. 12234-12235 OF 2018

WITH CONTEMPT PETITION (CIVIL) NO. 938/2021

AND

[16] INTERLOCUTORY APPLICATION NO. 107443/2021

(CEC REPORT NO. 11)

[APPLICATION FOR DIRECTIONS FILED BEFORE CEC

BY DR. P.C. PRASAD AND ADITYA PRASAD, APPLICANTS]

WITH

INTERLOCUTORY APPLICATION D. NO. 161311 AND

INTERLOCUTORY APPLICATION NO. 161312/2021

[APPLICATIONS FOR INTERVENTION AND DIRECTIONS

ON BEHALF OF BY DR. P.C. PRASAD AND ADITYA PRASAD, APPLICANTS IN I.A. NO. 107443/2021]

IN RE : DELHI METRO RAIL CORPORATION (DMRC)

[(ONLY S. NO. 16) IS TO BE TAKEN UP ALONGWITH

WRIT PETITION (CIVIL) NO. 149/2023 IN VIEW OF ORDER DT.

21.02.2023)]

IN WRIT PETITION (CIVIL) NO. 202/1995

3279

WITH

CONMT.PET.(C) No. 193/2001 In W.P.(C) No. 202/1995 (PIL-W)
(FOR ON IA 4/2006)

C.A. No. 12234-12235/2018 (XVII)

(FOR APPLICATION FOR PERMISSION ON IA 39315/2021

FOR impleading party ON IA 100097/2021

FOR INTERVENTION/IMPLEADMENT ON IA 100097/2021

FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 100099/2021

FOR impleading party ON IA 116495/2022

FOR INTERVENTION/IMPLEADMENT ON IA 116495/2022

FOR APPLICATION FOR VACATION OF INTERIM ORDER ON IA 116496/2022

IA No. 39315/2021 - APPLICATION FOR PERMISSION

IA No. 126327/2021 - APPLICATION FOR PERMISSION

IA No. 116496/2022 - APPLICATION FOR VACATION OF INTERIM ORDER

IA No. 100099/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 100097/2021 - INTERVENTION/IMPLEADMENT

IA No. 116495/2022 - INTERVENTION/IMPLEADMENT)

SLP(C) No. 25047/2018 (XVI)

(IA No. 32471/2023 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 43586/2023 - INTERVENTION/IMPLEADMENT)

CONMT.PET.(C) No. 938/2021 in C.A. No. 12234-12235/2018 (XVII)
(FOR ADMISSION)

W.P.(C) No. 633/2022 (X)

(IA No. 113675/2022 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 113674/2022 - EXEMPTION FROM FILING O.T.)

W.P.(C) No. 301/2008 (PIL-W)

(IA No. 2/2008 - EXEMPTION FROM FILING O.T.)

W.P.(C) No. 149/2023 (X)

(List on 14.3.2023 along with IA Nos. 161311/2021, 161312/2021 and
IA No. 107443/2021 in W.P.(C) No. 202/1995 AS PER HON'BLE COURT'S
ORDER DATED 21.02.2023

IA No. 13029/2023 - EX-PARTE STAY

IA No. 13030/2023 - EXEMPTION FROM FILING O.T.)

CONMT.PET.(C) No. 319/2021 in W.P. (C) No. 202/1995 (PIL -W)
(WITH APPLN. FOR EXEMPTION FROM FILING AFFIDAVIT)

Date : 15-03-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE VIKRAM NATH

HON'BLE MR. JUSTICE SANJAY KAROL

Amicus Curiae**Mr. A.D.N. Rao, Sr. Adv. (Amicus Curiae)****Mr. K. Parameshwar, Adv. (Amicus Curiae)****Ms. Arti Gupta, Adv.****Ms. Kanti, Adv.****Mr. Harish N. Salve, Sr. Adv. (N.P.)****Ms. Aparajita Singh, Sr. Advocate (N.P.)****Mr. Siddhartha Chowdhury, Advocate (N.P.)****Counsel for parties****Mr. Balbir Singh, A.S.G.****Ms. Aishwarya Bhati, A.S.G.****Mr. Gurmeet Singh Makker, AOR****Ms. Archana Pathak Dave, Adv.****Mr. Chinmayee Chandra, Adv.****Ms. Suhashini Sen, Adv.****Mr. S. S. Rebello, Adv.****Mr. Shyam Gopal, Adv.****Mr. Raghav Sharma, Adv.****Mr. Sughosh Subramanyam, Adv.****Dr. Arun Kumar Yadav, Adv.****Mr. Piyush Beriwal, Adv.****Mr. Naman Tandon, Adv.****Mr. Navanjay Mahapatra, Adv.****Mr. Samarvir Singh, Adv.****Mr. Amrish Kumar, Adv.****Ms. Suhasini Sen, Adv.****Ms. Shagun Thakur, Adv.****Ms. Manisha Chava, Adv.****Ms. Shivika Mehra, Adv.****Mr. Manish Chaurvedi, Adv.****Mr. K.M. Nataraj, A.S.G.****Mr. Shreekant Neelappa Terdal, AOR****Mr. Mrinal Elkar Mazumdar, Adv.****Mr. Mukesh Kr.verma, Adv.****Mr. Neeraj Kr.sharma, Adv.****Ms. Indira Bhakar, Adv.****Mr. S. Nagamuthu, Sr. Adv.****Mr. S. Hariharan, Adv.****Ms. Jaikriti S. Jadeja, AOR****Ms. Bhavana Duhoon, Adv.****Mr. Shakul Ghatole, Adv.****Mr. Shreyans Raniwala, Adv.****Mr. Amaan Shreyas, Adv.****Mr. Jaideep Gupta, Sr. Adv.****Mr. D. Kumanan, Adv.****Mrs. Deepa S., Adv.**

3281

Mr. Sheikh Fakhruddin Kalia, Adv.
 Ms. Racheta Chawla, Adv.
 Ms. Divya Singh, Adv.

Mr. Ashok Basoya, Adv.
 Mr. Sandeep Kumar Jha, AOR
 Mr. Arpit Prakash, Adv.

Mr. C.U. Singh, Sr. Adv.
 Mr. Andrews C.M., Adv.
 Mr. Romy Chacko, Adv.

Mr. Dhruv Mehta, Sr. Adv.
 Mr. Yashraj Singh Deora, Adv.
 Mr. Priyesh Mohan Shrivastava, Adv.
 Mr. Siddhant Singh, Adv.
 Mr. Abhishek Singh, Adv.
 M/S. Mitter & Mitter Co., AOR

Mr. Gopal Sankaranarayanan, Sr. Adv.
 Ms. Pooja Dhar, Adv.
 Ms. Trisha Chandran, Adv.
 Mr. Pratul Pratap Singh, Adv.

Mr. Siddharth Bhatnagar, Sr. Adv.
 Ms. Ila Shikhar Sheel, AOR
 Mr. Karan Mathur, Adv.
 Mr. Aditya Sidhra, Adv.

Mr. K. Radhakrishnan, Sr. Adv.
 Dr. Joseph Aristotle S., AOR
 Mr. Shobhit Dwivedi, Adv.

Mr. Ranjit Kumar, Sr. Adv.
 Mr. Mohit Paul, Adv.

Mr. Raj Bahadur Yadav, Adv.

Mr. Rajat Arora, Adv.

Mr. P.K. Manohjar, Adv.

Mr. Dharmendra Kumar Sinha, AOR
 Mr. Subodh Kr. Pathak, Adv.
 Mr. Shashi Ranjan, Adv.
 Mr. Vinod K Soni, Adv.
 Mr. Pawan Kumar Sharma, Adv.
 Mr. Akash Swami, Adv.

Mr. Gaurav Kumar Bansal, AOR

Ms. Srishti Agnihotri, Adv.

3282

Petitioner-in-person

Dr. Abhishek Atrey, AOR
Mr. Krishnam Mishra, Adv.
Ms. Ambika Atrey, Adv.

Mr. Chinmoy Khaladkar, Adv.
Ms. Salonee Pranjape, Adv.
Mr. B.K. Pal, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR
Ms. Ranjana Rohatgi, AOR

Mr. Prashant Bhusan, Adv.
Mr. Kunal Chatterji, AOR
Ms. Maitrayee Banerjee, Adv.
Mr. Rohit Bansal, Adv.
Ms. Kshitij Singh, Adv.

Mr. C.S. Ashri, AOR

Mr. Neeraj Shekhar, AOR
Mr. Animesh Kumar, Adv.
Mr. Sumit Kumar, Adv.

Mr. Harsh Parashar, AOR

Mr. Naveen Kumar, AOR

Mr. Kamendra Mishra, Adv.

Mr. G.S. Makker, Adv.

Mr. V.N. Raghupathy, Adv.

Dr. Joseph Aristotle S., Adv.

Mr. Nishe Rajan Shonker, Adv.

Ms. Usha Nandini V., Adv.

Mr. V. K. Biju, Adv.
Ms. Ria Sachthey, Adv.
Mr. Chetanya Singh, Adv.
Dr. Ranjeet Bharti, Adv.

Mr. Deepak Prakash, Adv.
Ms. Vishnu Priya, Adv.
Ms. Divyangana Mallik, Adv.
Mr. Shuam Nair, Adv.

Mr. Yogesh Kannam, Adv.

3283

Ms. Sangeeta Kumar, Adv.

Mr. R. Chandrachud, Adv.

Mr. Nikhil Nayyar, Adv.

Mr. R. Nedumaran, Adv.

Mr. K.K. Mani, Adv.

Mr. V. Ramasubramanian, Adv.

Mr. Pratap Venugopal, Adv.

Ms. Surekha Raman, Adv.

Mr. Akhil Abraham Roy, Adv.

Mr. Abhishek Anand, Adv.

M/S. K J John And Co, AOR

Ms. Srikala Gurukrishna Kumar, Adv.

Mr. Subramonium Prasad, Adv.

Mrs. Manik karanjawala, Adv.

Ms. Prabha Swami, Adv.

Mr. M.A. Chinnasamy, Adv.

Mr. S. Srinivasan, Adv.

Mr. E.M.S. Anam, Adv.

Mr. C.N. Sreekumar, Adv.

Mr. Naveen R. Nath, Adv.

Mrs. Ravathy Raghavan, Adv.

Mr. L.C. Agrawala, Adv.

Mr. Shiv Prakash Pandey, Adv.

Mr. P.K. Manohar, Adv.

Mr. Vikash Kumar Jha, Adv.

Mr. Satatya Anand, Adv.

Mr. Nikhil Aradhe, Adv.

M/s. Cyril Amarchand Mangaldas, Adv.

Ms. Shalini Kaul, Adv.

Ms. Pragya Baghel, Adv.

3284

Ms. Soumya Dutta, Adv.
Mr. Samrat Sengupta, Adv.
Mr. Parag Chatyurvedi, Adv.
Mr. Soumya Dutta, Adv.

Mr. Mohit D. Ram, Adv.

Mr. Nishant R. Katneshwarkar, Adv.

Mr. Kunal Cheema, Adv.

Mr. Kunal Chaterji, Adv.

M/s. Khaitan & Co.,

Mr. Naveen Kumar, Adv.

Mr. Tarun Johri, AOR

Mr. Chirag M. Shroff, AOR

Mr. Manan Verma, AOR

Mr. Prashant Kumar, Adv.

Mr. Shishir Deshpande, Adv.

Mr. Syed Jafar Alam, Adv.

Ms. Astha Sharma, Adv.

Mr. Naresh Kumar, Adv.

Mr. G.S. Makker, Adv.

Ms. Sabina Shahid, Adv.

Mr. M.K.S. Menon, Adv.

Ms. Usha Nandini V., Adv.

Mr. Biju P. Raman, Adv.

Mr. Ravi Lamod, Adv.

Mr. Arun Kumar Jaiswal, Adv.

Mr. Shibashish Misra, AOR

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

W.P.(C) NO.633/2022 & I.A. NO.108146/2022 (ITEM NO.1)

3285

1. Report No.14 of 2023 of the CEC, prima facie, reveals that the applicant has undertaken mining activities outside the boundary of the sanctioned area. The details are given in paragraph 15 of the Report. The report also states that large scale illegal mining has taken place outside the legal boundary and the lease is located adjacent to Jamwa Ramgarh Wildlife Sanctuary (JRWS).
2. The CEC has prayed for directions to the State of Rajasthan to fix the boundary of JRWS along the mining lease of the applicant and assess the extent of encroachment, if any, of the forest land.
3. We, therefore, direct the State of Rajasthan to:
 - (i) to fix the boundary of JRWS along the mining lease of the applicant.
 - (ii) to assess the extent of encroachment, if any, of the forest land by the applicant.
4. The same shall be done by the State of Rajasthan within a period of four weeks from today and file a report in this regard.
5. A copy of the report be supplied to the counsel for the applicant as well as to the learned Amicus Curiae. A copy of the report be forwarded to the CEC also.
6. The CEC shall submit its further report within a period of three weeks thereafter.
7. List after seven weeks.

I.A. NO.118236 & 129623/2020, 179389/2018, 69399/21, 144539/21 & 13413/23. (ITEM NO.2)

1. When the matter was listed on 16.01.2023, in view of the conflicting reports of two earlier committees, learned Solicitor General had made the following statement:-

“the Union of India is appointing a third Committee of experts which will address all the issues which have not been addressed by the earlier two committees. He further

3286

states that report is expected within four weeks from today."

2. Accordingly, the additional affidavit dated 14.03.2023 on behalf of Respondent No.1/Ministry of Environment, Forest and Climate Change (MoEFCC) is tendered in the Court, which is taken on record, stating therein that vide Office Memorandum dated 31.01.2023, a Committee of following persons has been appointed:-

"i. Shri C. Achalender Reddy, Chairman, National Biodiversity Authority, Chennai- Chairman.

ii. Dr. S. Jayakumar, Principal Andaman College, Chakkargaon, Port Blair, South Andaman - Member.

iii. Prof. K. Sivakumar, Department of Ecology and Environmental Sciences, School of Life Sciences, Pondicherry University, R.V. Nagar, Kalapet, Puducherry - Member

iv. Dr. L. Rasingam, Scientist E, BSI Deccan circle, Hyderabad - Member

v. Dr. M. Shirish S, Principal Scientist, SACON, Anaikatty, Coimbatore- Member

vi. Dr. Sajeev Chief Scientists, KFRI, Pecchi, Kerala - Member

vii. Dr. R.P. Pandey, National Institute of Hydrology, Roorkee - Member

viii. DIG/AIG from Ministry of Environment, Forest & Climate Change - Convener."

3. A perusal of the Minutes of the First Meeting of the said High Level Technical Committee (HLTC) would reveal that after elaborate discussion, the Committee found that to come to a specific finding it will be necessary that a complete study of one season of Red Oil Palm (ROP) plantation along with incidental issues would be required. The Minutes would also show that this exercise would require a period of almost two years.

4. As such, we find that the request made by the MoEFCC for grant

of 18 months to complete the study is reasonable.

5. We, therefore, grant 18 months period to the said Committee to study the issue and submit its report.

6. Stand over to 18 months.

I.A. NO.90862 & 90864/2021 (ITEM NO.3)

1. Learned counsel for the applicant(s) states that he has received the counter affidavit yesterday only and seeks time to file rejoinder affidavit.

2. Four weeks' time is granted for the same.

3. List on 19.04.2023.

C.P. (C) NO.319/2021, I.A. NO.186910/22 & 20650/23 (ITEM NO.4)

List on 19.04.2023.

I.A. NO.2079/2007 ETC. (ITEM NO.5.)

Adjourned.

I.A. NO.2930/10 ETC. (ITEM NO.6)

List on 19.04.2023.

I.A. NO.26663/2023 (ITEM NO.7)

1. List on 19.04.2023.

2. Reply, if any, be filed by the State of Karnataka, in the meantime.

I.A. NO.21636/2023 & 21531/2023 (ITEM NO.8)

1. Application for impleadment is allowed.

2. Leave to implead State of Odisha and Union of India through Ministry of Environment, forest and Climate Change (MoEFCC) is granted. Necessary amendment be carried out forthwith.

3288

3. Issue notice in I.A. No. 21635/2023, returnable on 19.04.2023.
4. Mr. Shibashish Misra, learned counsel, appears and accepts notice for the State of Odisha.
5. Ms. Suhasini Sen, learned counsel, appears and accepts notice for the Union of India on behalf of Mr. G.S. Makker, learned counsel.
6. Shri Misra, learned counsel appearing on behalf of the State of Odisha submits that the present application is nothing else but an attempt to overcome the directions issued by this Court on 06.06.2022 in SLP(C) No.10237/2022 arising out of order dated 20.05.2022 in WPC No.4157/2016.
7. Learned counsel for the applicant(s) is directed to place on record the present status with regard to the said writ petition.

I.A. NO.191635/2022 (ITEM NO.9)

1. In pursuance of the orders dated 08.02.2022, Shri Balbir Singh, learned Additional Solicitor General of India, has handed over a note in the Court today, the same is taken on record. A perusal of the said note would reveal that the Committee, which has been appointed by this Court vide the said order has made substantial progress after its meeting on two occasions. It has identified the parameters which are necessary to be taken into consideration for identification of the land which has morphological features, similar to the notified ridge.
2. Since the said work involves various technical aspects, the Committee has also resolved, subject to the approval of this Court, the constitution of the Committee to do the technical background work. The scope of the reference to the said technical committee is also identified in paragraph 11 of the note.
3. A perusal of paragraph 12 of the note would reveal that a High-Powered Committee under the Chairmanship of Chief Secretary, Delhi will guide and monitor the demarcation process.
4. We appreciate the progress made by the MoEFCC in this regard.
5. We approve the Committee of technical experts which is proposed to be appointed by the Court appointed Committee.

3289

6. List this matter after four months to monitor/know the further progress.

1. The present application has been filed with the following prayer:-

"a. Directing the Delhi Forest Department, Govt. of NCT of Delhi to examine and grant necessary permissions in accordance with existing policy with regard to the application(s) preferred by the Implementing Agencies for removal of actual number of affected trees at the time of granting permission for immediate implementation of the project."

2. We have heard Ms. Aishwarya Bhati, learned Solicitor General of India, Mr. Gopal Shankarnarayanan, learned senior counsel appearing for the original writ petitioner before the High Court, Mr. A.D.N. Rao, learned senior counsel and Mr. K. Parameshwar, learned counsel, who are assisting as Amicus Curiae in this matter.

3. Ms. Aishwarya Bhati, learned Solicitor General of India, submits that the present situation has arisen out of certain peculiar facts. She submits that when the order in the High Court was passed on 03.10.2018, the number of affected trees was specified to be 6997. She, however, submits that on account of certain intervening situations like Covid-19 etc., the number of trees, which ordinarily would not have been termed as tree, but only on account of a definition of 'tree', as defined in clause (i) in Section 2 of the Delhi Preservation of Trees Act, 1994 (for short, 'the said Act') are covered under the said definition.

4. She, therefore, submits that the number of trees has now increased to 15413.

5. We must place on record the vehemence with which Shri Gopal Sankaranarayanan, learned senior counsel, has argued the matter in order to protect the environment. He took us through various orders passed by the Delhi High Court in the writ petition to point out that even Delhi High Court has expressed its concern with

regard to haphazard growth of buildings in an unplanned manner.

6. He further submits that in the last five years the permission for felling trees have been granted by the Tree Officers without following the provisions of Section 9 of the said Act.

7. The prayer made in this application is innocuous. When an application is made for permission to fell/translocate the trees, the authority is bound to follow the provision of law including Section 9 of the said Act.

8. We find that the apprehension of Shri Gopal Sankaranarayanan that the Tree Officers would not take into consideration the provisions of law is ill-founded.

9. Every citizen including the officers of the Government are bound to follow the provisions of law.

10. We, therefore, allow the application in terms of prayer clause 'a' directing the Tree Officer to strictly take into consideration the provisions of law, while considering the applications for grant of such permission.

11. I.A. No.43586/2023 is also disposed of.

I.A. NOS.195467 & 195468/22 (ITEM NO.11), I.A. NOS.147102 & 131377/2022 ETC. (ITEM NO.12)

List tomorrow i.e. on 16.03.2023, as part heard.

I.A. NO.31204 & 31206/2023

List tomorrow i.e. on 16.03.2023

CONTEMPT PET.(c) NO.193/2001 & I.A. NO.4/2006 ETC. (ITEM NO.13)

List on 03.05.2023.

I.A. NO.107443/21, 161311 & 161312/21 & W.P.(C) NO.149/2023

1. Two weeks' time, as prayed for, is granted to the learned counsel for the Government of National Capital Territory of Delhi.

2. List on 28.03.2023.

3292

3. It is made clear that no further request for adjournment will be entertained at the instance of any of the parties on future dates.

I. A. No. 3949 OF 2016

As prayed by Mr. Ranjit Kumar, learned senior counsel appearing for the applicant(s), list this matter on 29.03.2023.

C.A. NOS.12234-35/2018 & CONT. PET. (C) NO.938/2021

List on 26.04.2023.

(NARENDRA PRASAD)
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)
COURT MASTER (NSH)

Encl :

1. Additional affidavit dated 14.03.2023, on behalf of Respondent No.1/Ministry of Environment, Forest and Climate Change.
2. A copy of the note handed over by Shri Balbir Singh, learned Additional Solicitor General of India in I.A. No.191635/2022.



2025 INSC 784

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL / INHERENT / CRIMINAL JURISDICTION**

**Contempt Petition (Civil) No. _____ / 2025
(Diary No. 21171/2024)**

IN

Writ Petition (Civil) No. 4677 / 1985

Bindu Kapurea

....Petitioner(s)

versus

Subhashish Panda and others

....Respondent(s)

WITH

SMC (CrI.) No. 2/2024

WITH

I.A. No. 98622 / 2024 in Writ Petition (Civil) No. 202 / 1995

JUDGEMENT

SURYA KANT, J.

1. The instant petition has been filed invoking Article 129 of the Constitution of India, Section 12 of the Contempt of Courts Act, 1971, and Rule 3(c) of the Rules to Regulate Proceedings for

Contempt of the Supreme Court, 1975. It prays for the initiation of contempt proceedings against the Respondents for wilful disobedience of this Court's order dated 09.05.1996 passed in W.P. (C) No. 4677/1985, titled ***MC Mehta v. Union of India & Others***.

2. These proceedings arise from a decades-long saga that is associated with a series of writ petitions, wherein this Court has consistently endeavoured to mitigate further environmental degradation in the National Capital Territory of Delhi and across the country.

A. FACTS

3. At this juncture, it becomes imperative to set out the sequence of events from the outset, in order to provide a comprehensive understanding of the developments that have culminated into the present proceedings.

A.1 Brief background of the cases giving rise to the present controversy

- 3.1. ***MC Mehta (supra)*** is an ongoing matter comprising petitions through which this Court has pronounced several landmark judgments giving new dimensions to environmental jurisprudence, with the specific objective of regulating land use and shutting down of hazardous industries to protect the environment. The said Writ Petition was initially instituted on 16.04.1985 in public interest, to bring to light the grave and escalating pollution of the river Ganga,

caused by the indiscriminate discharge of vast quantities of sewage from the city of Kanpur, Uttar Pradesh. It thereafter metamorphosed into a case through which this Court routinely addressed various threats posed to the environment and ecological biodiversity.

3.2. The Delhi Development Authority (**DDA**) notified the Master Plan for Delhi Perspective 2001 on 05.08.1990 (**Delhi Master Plan**), wherein it was expressly provided that no further encroachment or infringement upon the Delhi Ridge would be permitted, and that the Ridge would be preserved and maintained in its pristine condition. To explicate, the Delhi Ridge constitutes a natural rock formation, forming a part of the ancient Aravalli hill range. It encompasses approximately 7,777 hectares of forest land and extends over a stretch of nearly 35 kilometres—commencing from the Bhatti Mines area in the southeast, traversing through Tughlaqabad, and tapering towards the northern periphery of the city at Wazirabad. Commonly referred to as the ‘Lungs of Delhi’, the Ridge plays a vital ecological role and forms part of one of the oldest geological formations on the planet, with its origins dating back to the Proterozoic era.

3.3. The Delhi Master Plan accordingly recognised that, in light of the pressures exerted by rapid urbanisation over the years, the Delhi

Ridge Area had been subjected to significant threats and adverse environmental impacts. In response, the Master Plan mandated that the Ridge Area be clearly identified and conserved with the utmost care, taking into consideration its critical role as a natural buffer against escalating pollution levels in the National Capital Territory. It further stipulated that afforestation efforts within the Delhi Ridge must prioritise the use of indigenous species, with minimal reliance on artificial landscaping, in order to preserve the ecological integrity and natural character of the forest.

- 3.4.** Commensurately, in *M.C. Mehta (supra)*, this Court issued a series of directions for the conservation and protection of the Delhi Ridge. Pursuant thereto, the then Lieutenant Governor of Delhi issued an order dated 06.10.1995, constituting a dedicated body, known as the Ridge Management Board (**RMB**), which was entrusted with the responsibility of protecting and restoring the Delhi Ridge Forest. The RMB was established under the Chairmanship of the Chief Secretary of Delhi and was assigned various functions, including the implementation of the management scheme for the Ridge forests, protection and demarcation of its boundaries, and the preparation and execution of detailed plans for the ecological upgradation and long-term preservation of the Ridge area.

- 3.5.** In furtherance of the aforementioned directions, this Court, *vide* orders dated 25.01.1996 and 13.03.1996, directed that regardless of the mandate contained in Section 154 (vii) of the Delhi Land Reforms Act, 1954, the uncultivated surplus land of the Gaon Sabha falling within the Delhi Ridge shall not vest in the Gaon Sabha, and shall instead be used for the creation of a Reserved Forest. In compliance with the said directions, the Government of the National Capital Territory of Delhi (**GNCTD**) issued a notification dated 02.04.1996, declaring 10,517 acres of uncultivated Gaon Sabha land, as surplus and placed it at the disposal of the Forest Department. This area now forms a part of the aforementioned 7,777 hectares of the Notified Ridge Area.
- 3.6.** To this end, this Court also passed the order dated 09.05.1996, which the Petitioner herein alleges has been violated by the Respondents. The order reads as follows:

“The provisions of the Master Plan makes it mandatory that the Ridge is to be kept free from encroachers and its pristine glory must be maintained for all times. It is a pity that neither the Central Government nor the N.C.T., Delhi Administration has ever applied its mind towards maintaining the Ridge and River Yamuna, which is necessary to maintain the ecological balance of the city. We are of the view that no cut off date can come in the way of relocating the J.J. dwellers which are encroaching on the Ridge. The directions given by this Court in the order dated April 9, 1996 shall have to be complied with. We have already directed in the said order that all encroachers must be shifted from the Ridge before October 31, 1996. Mr. Khanduri, present in Court, has very fairly stated that the work of relocation of J.J. dwellers from Ridge has already

been undertaken on war footing. We have no doubt that the Union of India shall render all assistance to the N.C.T., Delhi Administration in clearing the Ridge area. The next progress report be filed in July, 1996.”

3.7. It may be seen from the contents of the aforesaid order that this Court reiterated the exigency of protecting the Delhi Ridge and ensuring that it remains free from encroachment, so as to preserve its pristine condition. In doing so, the Court referred to the statutory Delhi Master Plan, which unequivocally proscribed any infringement upon the Ridge and mandated its continuous protection and maintenance. The Court further observed that neither the Central Government nor the GNCTD had, until then, adequately addressed the imperative of maintaining the Delhi Ridge and the River Yamuna—both of which were essential to preserving the ecological balance of the city. Accordingly, the Court issued stringent directions to the concerned authorities to ensure the removal of all encroachments from the Ridge area on or before 31.10.1996.

3.8. Parallely, a public interest litigation, being W.P. (C) No. 202/1995, titled ***T.N. Godavarman Thirumulpad v. Union of India***, had been instituted before this Court on 18.02.1995. The proceedings had initially arisen out of concerns regarding large-scale deforestation, illegal logging, and unsustainable practices affecting forest lands in the Nilgiris region. Over time, this case also came to

be regarded as one of the most significant judicial interventions in the realm of forest preservation, environmental governance and conservation of natural resources in India through the innovative interpretation and application of the Forest Conservation Act, 1980 (**FCA 1980**). We find it necessary to highlight this matter, as the directions issued therein in relation to the Delhi Ridge subsequently intersect with the issues raised in the instant Contempt Petition.

3.9. Thereafter, in congruence with the directions put forth in **M.C. Mehta (supra)**, this Court in the **T.N. Godavarman (supra)** constituted the Central Empowered Committee (**CEC**) on 09.05.2002, tasked with monitoring the implementation of its orders in respect of removal of encroachments in ecologically sensitive areas, implementation of working plans, compensatory afforestation, plantations and other conservation issues. This Court, in both of these cases, thus sought to continuously monitor initiatives geared towards the protection and conservation of the environment in the country, and also, specifically, the Delhi Ridge.

3.10. Thus, to recapitulate, the forested expanse known as the Delhi Ridge continues to enjoy the protection of this Court, as reaffirmed in **MC Mehta (supra)** by the order dated 09.05.1996. In tandem with the establishment of the CEC in **T.N. Godavarman (supra)**, it

stands settled that any construction or developmental activity within the Delhi Ridge must receive prior approval from the RMB and thereafter from this Court, for which a proposal is to be mooted through the CEC.

A.2 Events leading to the filing of the Contempt Petition

3.11. In this backdrop, the Principal Chief Conservator of Forests, Delhi, cum Member Secretary of the RMB *vide* letter dated 21.09.2023, forwarded the Board's recommendation to the CEC. This communication pertained to an application submitted by the DDA seeking approval for the construction of approach roads connecting the main Chattarpur Road to SAARC University, the Central Armed Police Forces Institute of Medical Sciences (**CAPFIMS**), and other establishments located in Maidangarhi, including the areas of Sayurpur and Satbari—all of which fall within the ecologically sensitive Southern Ridge region.

3.12. According to the DDA, the area in question had witnessed the emergence of several large-scale residential and institutional developments, including the SAARC University; housing for officials of the Central Bureau of Investigation (**CBI**), Delhi Police, and the National Investigation Agency (**NIA**); as well as CAPFIMS. Despite the scale and significance of these developments, the region was reportedly beset with inadequate access infrastructure. The

DDA accordingly proposed specific alignments and upgradations traversing notified forest land within the Delhi Ridge, with the stated objective of facilitating seamless access to the residential and institutional establishments referred to above.

3.13. Given the impending interventions into ecologically sensitive areas, the DDA, through the aforementioned application, sought permission to construct two approach roads—namely, the ‘Gaushala Road’ connecting Chattarpur Road to SAARC University and the ‘SAARC University–CAPFIMS Road’. The DDA proposed to utilise 3.60 hectares of the ecologically sensitive Southern Ridge and an additional 0.968 hectares of Morphological Ridge land for the alignment, construction, and widening of these roads, spanning a total length of 2.72 kilometres, which entailed the felling of approximately 1,051 trees. To clarify, Morphological Ridge land refers to areas that, while lying outside the officially notified boundaries of the Delhi Ridge, exhibit geological and ecological features characteristic of the Ridge itself. Owing to their environmental significance, such lands are accorded the same level of protection as the notified Ridge areas, and any activity thereon is subject to the same regulatory safeguards and judicial supervision.

3.14. Thereupon, the CEC, after due consideration of the DDA's application, approved such proposal and submitted Report No. 36/2023 dated 06.12.2023, containing its detailed observations and recommendations. In arriving at its conclusions, the CEC took into account, *inter alia*, the following considerations:

- i.** That the proposed project is in public interest, and the extent of forest land sought to be utilised for the road development represents the bare minimum required;
- ii.** That the existing seven-metre-wide road is already in use and necessitates upgradation to a four-lane divided configuration with footpaths on either side to facilitate access to institutions of national significance being developed in the vicinity;
- iii.** That a portion of the forest land proposed for the project is already in use by commuters;
- iv.** That all requisite statutory clearances are to be obtained by the user agency/DDA under the FCA 1980 for the diversion of 3.60 hectares of forest land for non-forest purposes, along with necessary approvals from the Standing Committee of the National Board for Wild Life (**SCNBWL**) under the Wildlife (Protection) Act, 1972 for areas falling within the eco-sensitive zone;

- v. That the user agency/DDA shall bear the cost of planting and maintaining 2,960 saplings—ten times the number of trees (296) proposed to be cut or transplanted from non-forest land;
- vi. That the DDA has expressed its willingness to make available suitable land for undertaking such compensatory plantation; and
- vii. That the DDA has already earmarked 3.68 hectares of non-forest land at Sector 29, Dwarka, Delhi, to be transferred to the Forest Department in lieu of the 3.60 hectares of forest land proposed to be diverted.

3.15. The CEC finally concluded as follows:

“It is recommended that this Hon’ble Court may consider granting approval to the Applicant, Delhi Development Authority for construction of the approach road from Chattarpur Main Road to SAARC University (1.070 kms) and SAARC University to CAPFIMS (1.650 kms) subject to the following conditions:

- i. *the user-agency shall deposit 5% of the project cost, proportionate to the area falling within the ridge area, with the Ridge Management Board Fund and which fund under the close supervision of the Ridge Management Board shall be used for protection of the Delhi Ridge by the Forest Department of Delhi Government;*
- ii. *the user-agency shall obtain prior clearance under Forest (Conservation) Act 1980 in respect of the forest land being diverted for construction of the road and abide by all the conditions of forest clearance including payment of NPV and cost of compensatory afforestation;*
- iii. *the user-agency shall obtain necessary approval from the Standing Committee of the National Board for Wildlife in*

respect of the project land falling within the eco-sensitive zone of Asola Bhati Wildlife Sanctuary;

- iv. the user-agency before felling/removal of 296 trees shall obtain necessary permission under the provisions of Delhi Preservation of Tree Act, 1994;*
- v. the user-agency shall deposit the cost of planting and maintenance of 2960 indigenous plants with the Forest Department, Government of Delhi and make available suitable land for compensatory planting before the permission for felling is granted under the provisions of Delhi Preservation of Tree Act 1994;*
- vi. the Forest Department, Government of NCT Delhi will undertake the planting of 2960 saplings of the indigenous species at the site to be made available by DDA for the purpose; and*
- vii. Forest Department will raise compensatory planting over 3.68 ha. of non forest land at Sector-29, Dwarka, Delhi in lieu of the 3.60 ha. of forest land proposed to be diverted for non forest use.”*

3.16.As matters stood thus, a Gazette Notification dated 14.02.2024 was issued, wherein the Lieutenant Governor of Delhi (**LG**), exercising powers conferred under Section 29 of the Delhi Preservation of Trees Act, 1994 (**1994 Act**), granted an exemption in terms of Section 9(3) of the said Act—in public interest—for an area measuring 4.9955 hectares to facilitate the construction of approach roads from Chattarpur to SAARC University, CAPFIMS, and other adjoining establishments. The notification stipulated an advance deposit of ₹2,40,54,000/- by the DDA towards a security amount earmarked for the creation and maintenance of compensatory plantation. Furthermore, it laid down a series of

binding conditions upon the DDA to be fulfilled: prior to undertaking the felling or transplantation of trees, during the execution of such activities, and thereafter for the purpose of assessing the success of the plantation efforts. The release of the aforementioned security deposit by the Tree Officer/Deputy Conservator of Forests was made contingent upon the satisfactory fulfilment of these stipulated conditions.

3.17. On 15.02.2024, the DDA moved I.A. No. 40494/2024 in **MC Mehta** (*supra*), seeking this Court's permission for the felling and translocation of 1,051 trees in connection with the construction of the proposed approach roads. In the *interim*, the Petitioner came to learn of tree-felling activities underway in the Satbari area of South Delhi on 23.02.2024. They visited the site on 24.02.2024 and allegedly observed that a substantial portion of the Ridge Forest had been decimated, with heavy machinery actively engaged in levelling the land. Disturbed by the scale and apparent brazenness of the activity, the Petitioner then contacted the Green Helpline of the Department of Forests and Wildlife, GNCTD, to register a complaint. They however, received a telephonic response on 25.02.2024 from a Forest Guard, who informed them that the ongoing tree cutting was being carried out pursuant to due

authorisation, having been permitted by the LG *vide* the Gazette Notification dated 14.02.2024.

3.18.It is pertinent to highlight that the aforesaid IAs preferred by the DDA were dismissed by this Court on the grounds of vagueness *vide* its order dated 04.03.2024. The Court underscored that the DDA, being an instrumentality of the State, bore a heightened responsibility to prioritise environmental protection and was expected to explore all viable alternatives before resorting to the felling of trees, limiting such action strictly to those instances where it was absolutely unavoidable. The Court further noted that no prior permission had been sought under the FCA 1980. Consequently, the DDA was directed to revisit its proposal by engaging the services of qualified experts and ensuring that the revised exercise would be conducted in a manner that minimised tree felling to the greatest extent possible. Only upon undertaking these corrective steps was the DDA permitted to file a fresh application seeking the same relief.

3.19.The Petitioner has alleged that the DDA failed to disclose to this Court, during the hearing on 04.03.2024, that the area for which it had sought permission to fell trees had, in fact, already been cleared. It is the Petitioner's case that the DDA, without awaiting the Court's adjudication on its applications and in the absence of

any express permission, proceeded with the clearing of the Ridge reserved forest as well as the felling of trees on non-forest land to facilitate construction of the approach roads. In view of the above, the Petitioner has preferred the instant Contempt Petition, asserting that such actions on the part of the First Respondent constitute a wilful and deliberate violation of this Court's binding order dated 09.05.1996 passed in **MC Mehta (supra)**. The Petitioner has accordingly prayed for the initiation of contempt proceedings against the Vice Chairman of DDA/First Respondent.

A.3 Events subsequent to initiation of Contempt Proceedings

3.20. In addition to the events averred in the Contempt Petition, it will be appropriate to bring the subsequent developments of material significance that merit due consideration. The instant Contempt Petition came up for hearing on 09.05.2024, when notice was issued, the First Respondent was directed to maintain *status quo* and refrain from carrying out any further felling of trees.

3.21. On the following date of hearing, i.e., 16.05.2024, this Court took cognisance of the averments made in the affidavit filed by the First Respondent and deemed it appropriate to issue *suo motu* notice of criminal contempt, registered as SMC (Crl.) No. 2/2024. That affidavit revealed that a substantial number of trees had been felled without obtaining the requisite permissions from the prescribed

authorities, besides the blatant contravention of this Court's binding orders. This Court, therefore, expressed grave concern, observing that the DDA's actions of unauthorised felling of more than 1100 trees constituted a shocking disregard for the Rule of Law and amounted to interference with the administration of justice.

3.22. This Court thereafter proceeded to pass a series of consequential orders, namely: **(i)** the First Respondent was directed to produce the document evidencing the approval of the LG and to furnish the names of all officers responsible for the breach of this Court's orders; **(ii)** the First Respondent was mandated to personally address a letter to the LG disclosing that, while the proposal for approval was forwarded to him, the material fact that the trees had already been felled was wilfully suppressed; **(iii)** ordered an inquiry into the conduct of the officers who had entrusted the tree felling to the contractor; **(iv)** directed the DDA to immediately halt all further activities pertaining to the two approach roads and to deploy appropriate officers to ensure strict compliance; **(v)** appointed an Independent Agency comprising of three eminent environmentalists (**Committee**) who were to be duly assisted by officers from the Forest Survey of India (**FSI**) to assess the number of trees felled, the extent of environmental degradation caused, and

to propose suitable species for replantation along with other ecological restoration measures; and **(vi)** directed the DDA to conduct an internal inquiry into the lapse committed by its Legal Department in failing to brief its counsel correctly on 04.03.2024 regarding the ongoing tree felling. Further, this Court also restrained the RMB from clearing project proposals for the diversion of the Ridge forests without seeking permission from this Court.

3.23.In the meantime, the Committee constituted by this Court submitted its preliminary report detailing the number of trees felled and the extent of environmental degradation caused. The report observed that the DDA had failed to offer a satisfactory explanation for the urgency with which the tree felling was undertaken. It cautioned that the absence of tree cover along the road could result in the creation of a heat island and lead to intensified urbanisation of the adjoining areas. The Committee further noted that no transplantation had taken place at the designated site and that, of the 145 trees transplanted at alternate, non-designated locations, nearly half comprised the invasive Subabool species, which ought to be removed. In light of these findings, the Committee recommended both possible outcomes—either the removal of the

road to facilitate restorative measures or its completion, should this Court so deem fit.

3.24. Pursuant to the aforesaid directions, the First Respondent also filed an affidavit dated 19.06.2024, tendering an unconditional apology and detailing steps undertaken in compliance. It was submitted that: **(i)** corrective measures were underway, including disciplinary action against the errant DDA officials and the formulation of Standard Operating Procedures (**SOPs**) to prevent recurrences; **(ii)** the First Respondent was on sanctioned medical leave from 16.02.2024 to 02.03.2024, and worked from home until 12.03.2024, during which period he remained unaware of the tree felling and therefore failed to apprise this Court; **(iii)** an internal Inquiry Committee found the following officials responsible: Executive Engineer Manoj Kumar Yadav (who instructed the contractor to fell the trees), Engineering Division officials Pawan Kumar and Ayush Saraswat (who permitted the felling), and Superintendent Engineer Pankaj Verma (who, along with Yadav, was found to have suppressed material facts from this Court on 04.03.2024); **(iv)** all four officers had been suspended and disciplinary proceedings initiated; **(v)** while prior contractor agreements did not include clauses mandating Court permission for tree felling, all future tenders would expressly incorporate such

terms; **(vi)** work at the site had been fully halted, and approximately 174 trees in non-forest areas and 468 in forest areas were confirmed to have been felled; **(vii)** the DDA would cooperate fully with the Committee constituted by this Court in implementing all remedial measures; **(viii)** the Chief Legal Advisor of the DDA had been misinformed by Manoj Kumar Yadav, leading to incorrect submissions before this Court; and **(ix)** the DDA had identified 185 acres of land for afforestation and committed to planting 100 trees for every tree felled, in addition to 500 trees along the widened sections of the site to aid ecological restoration.

3.25. This Court, on 24.06.2024, while considering the affidavit of the First Respondent, also examined the Inquiry Committee Report annexed thereto. Particular attention was drawn to three emails allegedly sent by the Executive Engineer instructing the contractor to commence tree felling. These emails purportedly referenced a visit by the LG, in his capacity as Chairperson of the DDA, to the site on 03.02.2024, during which he allegedly directed the clearing of trees. However, upon further questioning, it emerged that there was ambiguity as to whether the Learned LG had actually visited the tree-felling site or only the CAPFIMS campus. In view of this uncertainty, and considering the Executive Engineer's subsequent claim before the Inquiry Committee that the emails were

manipulated, the Court directed the First Respondent to submit a clear and unequivocal statement clarifying whether any such direction had, in fact, been issued by the LG.

3.26. In this backdrop, this Court deemed it appropriate to show cause to the following officers of the DDA: **(i)** Manoj Kumar Yadav, Executive Engineer, SMD 5, DDA; **(ii)** Pawan Kumar, Assistant Engineer-I, SMD 5, South Zone, Engineering Division, DDA; **(iii)** Ayush Saraswat, Assistant Engineer-II, SMD 5, South Zone, Engineering Division, DDA; and **(iv)** Pankaj Verma, Superintending Engineer, SE/SCC-2, South Zone, DDA. Additionally, while perusing the affidavit filed by the First Respondent, the Court underscored that the appointment of serving judicial officers from the Delhi Higher Judicial Services as legal advisors to the DDA constituted a clear violation of the principle of judicial independence and the doctrine of separation of powers. Accordingly, it directed the Delhi High Court to take appropriate action concerning such appointments.

3.27. On 26.06.2024, this Court directed several individuals and institutional authorities to file affidavits to shed further light on the incident. *First*, Ashok Kumar Gupta, Member (Engineering), DDA, was directed to file a detailed affidavit clarifying the events during the visit of the Learned LG, since he had been present at the time.

Second, the discrepancies in the Gazette Notification dated 14.02.2024 were noted, observing that no permission had been granted by the designated Tree Officer, nor had any valid exemption been extended to the DDA for the felling of trees. When asked about the whereabouts of the timber from the felled trees, the First Respondent failed to provide any response. Consequently, notice was issued to the GNCTD through the Principal Secretary, Department of Environment and Forests. In this regard, notice was also issued to the Tree Authority constituted under Section 3 of the 1994 Act, directing it to file an affidavit explaining its inaction in the face of the DDA's violations. *Third*, the DDA was instructed to begin implementing certain recommendations from the Committee's preliminary report, specifically those listed under paragraph 1 of the section titled 'Suggestions and Recommendations', including the removal of the tarmac and sub-base materials of the road to expose bare soil and initiate appropriate afforestation and ecological restoration measures.

3.28. Pursuant to this Court's directions in its orders dated 24.06.2024 and 26.06.2024, multiple affidavits were filed by concerned individuals and institutions, which are briefly summarised herein. The First Respondent, in his affidavit dated 02.07.2024, explained that he had informed the office of the Engineer Member, DDA, on

02.02.2024 regarding the LG's proposed visit to CAPFIMS on 03.02.2024. However, he also acknowledged that no formal minutes of the LG's site visit were recorded, though the names of the officers present during the visit were provided in an annexure. Further, with regard to the implementation of the Committee's recommendations, the DDA has sought guidance from that Committee to ensure compliance with the directions of this Court.

3.29. Similarly, Ashok Kumar Gupta, Member (Engineering) DDA, gave details of the senior officers who were present at the time of the LG's visit on 03.02.2024 and that the said visit was only to inspect the CAPFIMS Hospital and assess the Central Public Works Department's (**CPWD**) preparedness for its timely completion. The affidavit further highlighted that the LG directed CPWD officials to expedite the completion of the project. With respect to the CAPFIMS approach road, the LG was informed that requisite permissions for tree felling were still awaited from the competent authorities. Upon hearing this, the LG allegedly emphasised the need to expedite the process.

3.30. The Principal Secretary, Environment and Forest Department of GNCTD also filed a detailed affidavit, which outlined the following: (i) several initiatives had been undertaken to expand forest and tree cover in Delhi, including efforts to convert 1,700 acres of the

Yamuna Flood Plains into forest land and the development of City Forests; **(ii)** the project in question aimed to construct roads connecting institutions of national importance, including CAPFIMS; **(iii)** the DDA had submitted three applications: one to the RMB on 18.08.2023 seeking this Court's approval for the construction of approach roads, another on 09.12.2023 for diversion of 3.6 hectares of Ridge forest land and felling of 629 trees, and a third on 29.12.2023 seeking permission to fell 422 trees in non-forest areas; **(iv)** the Gazette Notification dated 14.02.2024 merely exempted the applicability of Section 9(3) of the 1994 Act and did not amount to permission for felling trees; **(v)** while the DDA had initiated approval processes under the RMB and the FCA 1980, these had not been completed; **(vi)** action was being taken against the DDA for violations under both the 1994 Act and the FCA 1980—this included issuance of show cause notices, an interim order by the Tree Officer directing the plantation of at least 100 native trees, and initiation of a criminal case under relevant provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 and the 1994 Act; and **(vii)** adequate infrastructure had been provided to the Forest Department to enhance monitoring and vigilance over forest areas. The Tree Officer, in his affidavit, echoed similar submissions and further clarified that, as a quasi-judicial

authority, proceedings under the 1994 Act had been initiated before him since 05.03.2024.

3.31.The matter was heard again on 12.07.2024, when this Court deemed it necessary to ensure complete clarity regarding the visit of the LG. Accordingly, it directed all officials present during the site visit, along with the First Respondent and any other officer possessing relevant information, to file affidavits. In addition, since the contractor M/s. Satya Prakash and Brothers Private Limited was responsible for the felling of trees, notice was issued directing the contractor to disclose the location of the felled timber and the transplanted trees. Lastly, the GNCTD was directed to file a supplementary affidavit clarifying whether any officer of the Forest Department or the Tree Authority was present during the felling of trees.

3.32.In compliance with this Court's directions, the relevant stakeholders once again filed their respective affidavits. The Additional Principal Chief Conservator of Forests, GNCTD; Ashok Kumar Gupta, Member (Engineering) DDA; the Principal Secretary, Environment and Forest Department, GNCTD; and the Chief Secretary, GNCTD all reiterated a consistent position—that during the LG's visit on 03.02.2024, he was informed that the requisite permissions under the 1994 Act and the FCA 1980 were still

awaited. Ashok Kumar Gupta further stated that the felling of trees, which began on 16.02.2024, was carried out under the *bona fide* belief that the recommendations of the CEC dated 06.12.2023 and the subsequent Gazette Notification exempted the need for further permissions. Meanwhile, the Principal Secretary clarified, in response to the Court's queries, that no officer from the Forest Department or the Tree Authority was present during the felling and also submitted that steps had been initiated to withdraw the Gazette Notification dated 14.02.2024. Lastly, the contractor, in his affidavit, stated that he acted on the instructions of Executive Engineer Manoj Kumar Yadav, who had emailed him on 07.02.2024 regarding the removal of bushes, shrubs, and dry trees, and followed up further emails on 14.02.2024 reiterating the same while referring to the LG's visit on 03.02.2024.

3.33. This Court on 16.10.2024, further observed that the material on record required further elaboration, particularly from the LG. The Court specifically sought clarity on the role played by the LG, the point at which he became aware of the tree felling activity, the steps taken thus far to remediate the ecological damage, and the identification of officers responsible for the suppression of facts surrounding the incident.

3.34. In response, the LG filed an affidavit stating that the actual number of trees felled was approximately 642, as opposed to the alleged figure of 1,100. He further submitted that, during his visit on 03.02.2024, he had not been informed of the requirement to obtain prior permission from this Court. He first became aware of such a requirement upon reviewing the DDA's proposal dated 21.03.2024 and was subsequently informed by the First Respondent through his letter dated 10.06.2024 that the tree felling had commenced on 16.02.2024. The affidavit also noted that ecological restoration efforts were underway through tree plantations, and that the Inquiry Committee constituted by the DDA had already taken action against the officials found responsible.

3.35. Upon perusing the LG's affidavit on 24.10.2024, this Court noted that further clarity was required regarding the precise date on which the LG became aware that tree felling had commenced on 16.02.2024. Accordingly, the Court directed both the First Respondent and the LG to file supplementary affidavits. In response, the LG reiterated the submissions made in his earlier affidavit and clarified that he became aware of the tree felling only on 12.04.2024 during a meeting. The First Respondent, in his affidavit, corroborated this timeline in part and submitted that he first learnt of the felling on 18.03.2024 upon the issuance of a show

cause notice by the Delhi High Court to the Department of Forest and Wildlife. He was thereafter informed by the Member Engineer on 21.03.2024 that the felling had, in fact, commenced on 16.02.2024. With this, all affidavits and relevant material filed by the concerned stakeholders appear to have been placed on record.

3.36. After this saga of affidavits was completed, we may notice that the FSI, pursuant to this Court's order dated 16.05.2024, submitted its final report containing key findings that are critical to the adjudication of the present controversy. Based on extensive fieldwork and surveys, the FSI reported that approximately 1,670 trees were felled, both within the reserved forest area and beyond, resulting in substantial carbon stock loss. The report also uncovered alarming discrepancies in the data provided by the Delhi Forest Department and concluded with observations pointing to systemic deficiencies in the Department's operational practices.

3.37. Having undertaken the arduous task of tracing the root cause of this issue over the course of nearly a year, this Court ultimately afforded all parties an opportunity to tender their submissions and, on 21.01.2025, reserved judgment in the matter.

B. CONTENTIONS ON BEHALF OF THE PARTIES

4. Although the parties' respective positions are discernible from the multitude of affidavits examined above, it remains essential to

canvass the contentions advanced by them in support of their claims.

- 5.** Mr. Gopal Sankaranarayanan, learned Senior Advocate appearing on behalf of the Petitioner, laid a strong challenge to the actions of the First Respondent and DDA officials, emphasising the irreversible nature of the ecological damage caused. Seeking strict action against the errant officials in view of the grave nature of contempt committed, learned Senior Counsel adduced the following contentions:

- (a)** There was a deliberate and coordinated attempt to conceal material facts from this Court, during the hearing dated 04.03.2024. The felling of trees had not only commenced on 16.02.2024 but had also been wilfully carried out and completed over a span of ten days, without obtaining permission from either this Court or the relevant statutory authorities. Notably, during the same period, in some related proceedings pending before the Delhi High Court, the DDA suppressed this critical information and got the matter adjourned.
- (b)** Even the CEC and the *Amicus Curiae* appointed by this Court were not informed of the tree felling exercise. However, rather than accepting responsibility, the First Respondent has sought

to deflect blame onto the officials and engineers, attempting to make them scapegoats for this unfortunate breach.

- (c)** The material on record, along with depositions by subordinate engineers and officials, indicates that the tree felling and road construction were expedited following the LG's visit. This is corroborated by internal emails and correspondence, which suggest that the DDA, acting upon the LG's express directions, proceeded in haste and undertook the tree felling exercise despite lacking requisite permissions.
- (d)** The road was sought to be widened despite the presence of an already functional roadway, with the underlying intent of facilitating access to private residences and farmhouses of affluent individuals in the vicinity of CAPFIMS. The justification of serving the Central Armed Police Forces has been conveniently used as a pretext. This is further corroborated by the First Respondent's own affidavit dated 15.05.2024, wherein it is admitted that the infrastructure project was envisaged not solely for the benefit of CAPFIMS and other public institutions but also for adjoining areas such as the Chattarpur Residential area and other large-scale residential developments. It thus appears that the exercise was

an orchestrated effort to advance private interests, with environmental degradation reduced to mere collateral damage.

6. *Au contraire*, Mr. Maninder Singh, Mr. Vikas Singh, Mr. Aditya Sondhi, Mr. Anupam Lal Das, and Mr. Sanjay Jain, Learned Senior Counsels, along with Ms. Aishwarya Bhati, Learned Additional Solicitor General of India, appeared on behalf of the DDA and the GNCTD. Mr. Mahesh Jethmalani, Learned Senior Counsel, appeared on behalf of the LG. In the course of their oral arguments, Mr. Singh sought to candidly acknowledge that the DDA officials had defied the orders of this Court and that contempt had been committed. Having regard to the same, the learned counsels collectively advanced the following submissions:

- (a)** In light of the construction of CAPFIMS and other institutions of national importance, there was an urgent requirement to develop a broader approach road to facilitate improved access. To achieve this objective, it became necessary to undertake tree felling on both forest and non-forest land.
- (b)** The DDA accordingly initiated the statutory process by submitting the requisite applications to the competent authorities. However, the present controversy appears to have stemmed from a misunderstanding among DDA officials, who, upon receiving certain in-principle approvals from the

Government, erroneously presumed that all necessary clearances—including from this Court—had been obtained. Acting under this misconception, the DDA proceeded to carry out the tree-felling operations on both categories of land.

- (c) Significant steps have been initiated to scale up afforestation efforts, including a commitment to plant 100 trees for every tree felled, in line with the recommendations of the Committee constituted by this Court as well as that of the FSI. To this end, an area of approximately 185 acres has been identified for carrying out the afforestation programme. Furthermore, departmental proceedings have already been initiated against the DDA officials responsible for the lapses, and appropriate action will be taken in accordance with law.

C. ISSUES

7. In light of the extensive material placed on record and the detailed submissions advanced by the parties, coupled with the acknowledgement proffered by the Respondents that the orders of this Court have been disobeyed, we find that the following question falls for our consideration:
- i. Whether the breach of the orders of this Court dated 09.05.1996 and 04.03.2024 by the Respondents was wilful and deliberate, and if so, what are the remedial and corrective

measures that must be undertaken by them to purge the contempt?

D. ANALYSIS

8. Based on the factual matrix and unique circumstances of this case, we are of the view that our analysis and consequent directions must remain focused and purpose-driven. Such a calibrated approach is essential to ensure that the course adopted balances not only the interests of the parties before us but also safeguards the concerns of those who stand to be impacted by the outcome of these proceedings for years to come.
9. There is no gainsaid that this Court enjoys wide and sweeping powers to punish individuals found guilty of interfering with or obstructing the administration of justice—an act that squarely falls within the definition of contempt not only under the Contempt of Courts Act, 1971 but most importantly, under Article 129 of the Constitution of India. This Court, being a court of record, is thus vested with inherent powers to punish contempt. These broad-ranging powers are not merely procedural but are central to preserving the dignity, authority, and effective functioning of the judiciary. In fact, it has been quoted in a catena of decisions that the contempt powers afforded to this Court are integral to maintaining the sanctity of judicial proceedings.

- 10.** The majesty of law is supreme and is unequivocally recognised by the Constitution through the conferment of plenary powers of contempt upon this Court. Unlike jurisdictions where contempt is solely governed by statutory law, India, by virtue of its constitutional framework, accords this power a higher pedestal. The constitutional provision for contempt is not subordinate to Parliamentary Legislation; rather, it represents an intrinsic aspect of the judiciary's autonomy. As a nation rooted in the Rule of Law and constitutionalism, there is immense faith placed in its judiciary, so much so that orders of this Court carry a binding force equivalent to that of Legislative enactments.
- 11.** In this light, we proceed to assess the nature and gravity of contempt attributed to the First Respondent and other officials of the DDA. It must be noted at the outset that there appears to be, across a range of affidavits, an implicit if not express admission that: **(i)** no permission had been granted by this Court for the felling of trees in the Delhi Ridge area, thereby amounting to a non-compliance of this Court's order dated 09.05.1996; and **(ii)** the omission to disclose, during the hearing on 04.03.2024, that tree felling had already commenced on 16.02.2024—while the relevant application remained pending—constitutes wilful disobedience that palpably obstructed the administration of justice.

- 12.** Needless to say, these very findings and observations have consistently been recorded by this Court in its various orders passed during the pendency of this petition over the past year. Without delving into excessive detail, it is an admitted position that the First Respondent and officials of the DDA acted in an errant manner, which not only amounted to a concealment of this Court's directions but also led to an unfortunate and avoidable misconstruction of communications attributed to the LG, thereby placing him in an embarrassing position. There can thus be no second opinion but to answer the issue in the affirmative and hold that there was indeed wilful disobedience on the part of the Respondents, resulting in contempt of this Court's orders.
- 13.** As already recapitulated, this Court possesses wide discretion in matters pertaining to contempt. Given that the First Respondent, through his affidavits, has conceded that there was a violation of this Court's orders tantamount to contempt and has consequently expressed his willingness to purge it, the question that then arises is the approach which ought to be adopted by this Court in these circumstances—whether it should be liberal, magnanimous, or retributive? In answering this, this Court must be guided not by vengeance or punitive action but rather by the overarching objective of upholding the Rule of Law and restoring public

confidence in the judicial process. The power to punish for contempt, though wide and constitutionally entrenched, is to be exercised with circumspection in a manner that serves the ends of justice rather than merely penalising the individual.

- 14.** Public authorities and public servants are duty-bound to act in the furtherance of public interest, with every action aligned to subserve the common good. In adjudicating contempt, the Court must necessarily consider the nature and degree of contempt. To instantiate, while public officials may be engaged in the performance of their duties, if there is even an attempt to exhibit wilful and deliberate disregard for the orders of this Court, such conduct would not merely amount to contempt in the narrow sense defined under Statute. Rather, it has a cascading effect—it fosters a perception that judicial directives can be defied with impunity. This cannot be viewed as routine disobedience but must be recognised as a serious affront to the Rule of Law itself. Such acts are generally classified as grave and offensive instances of contempt, warranting appropriate punishment without any misplaced sympathy or unwarranted magnanimity from the Court.
- 15.** On the contrary, where the Court finds that a breach of its order amounts to technical contempt, absent any intent to wilfully defy or disobey its authority, this Court has evolved the practice of

affording an opportunity to purge such contempt. For example, where the breach of the Court's order stems from an act genuinely intended to serve the larger public interest and undertaken in good faith, the Court may lean towards magnanimity and provide the contemnor(s) with an opportunity to purge the contempt.

- 16.** In this backdrop, we deem it appropriate to divide the contemptuous conduct attributed to the Respondents into two distinct parts: *first*, the simpliciter non-compliance of this Court's order dated 09.05.1996, which mandated obtaining prior permission for the felling of trees; and *second*, the deliberate concealment from this Court of the fact that tree felling had already commenced. The gravity and degree of contempt must, therefore, be assessed on a composite evaluation of both these aspects.
- 17.** Even if the first limb of the contempt is assumed to have arisen from a *bona fide* misapprehension of the permissions granted, the second limb is entirely indefensible. The conscious non-disclosure of material facts before this Court during the course of proceedings strikes at the very heart of the justice delivery system. It contaminates the sanctity of judicial proceedings, may cause irreversible prejudice to the opposite parties, and carries the potential to result in erroneous precedents being laid down.

- 18.** We are thus left with no hesitation in holding that the Respondents' conduct has been gravely contumacious, and when viewed cumulatively, their actions amount to a blatant obstruction of the administration of justice. These acts, in our considered view, fall squarely within the ambit of 'criminal contempt' as defined under Section 2(c) of the Contempt of Courts Act, 1971.
- 19.** Having said that, it must be emphasised that while the misadventure undertaken by the errant officials of the DDA was in clear and flagrant contravention of this Court's orders, the underlying objective—namely, to facilitate improved access through broader approach roads for CAPFIMS and other public institutions—appears, does not seem to be in bad faith and certainly not to defy the authority of this Court. The Court is conscious of the distinction between *mala fide* abuse of power and genuine administrative misjudgement, and we are inclined to deem that the present instance falls within the latter category.
- 20.** We say so because, as a Constitutional Court, it often becomes our solemn duty to incline towards decisions that, in the long run, subserve the larger public interest. In a scenario such as the present, where competing claims of public interest are at play—some capable of being fulfilled and others falling short of expectations—this Court is guided in its adjudication by the

principles of constitutional morality. Our decision in such circumstances ought to be grounded in the constitutional values of equality, social justice, and economic justice, which lie at the very nucleus of our Constitution.

- 21.** To provide extrapolation, we have duly considered the relevance of CAPFIMS as an institution, which was established primarily as a tertiary care hospital to cater to the medical needs of personnel serving in paramilitary forces (such as the Border Security Force, Central Reserve Police Force, Central Industrial Security Force, Indo-Tibetan Border Police, and others), who, in the discharge of their duties to the nation, are frequently exposed to grave risks and injuries. CAPFIMS seeks to address these exigencies by offering world-class medical facilities not only to such personnel but also to their families, pensioners, beneficiaries under the Central Government Health Scheme, and the general public at large.
- 22.** Such institutions become particularly very pertinent when personnel are stationed in remote areas, often with no access to basic communication such as phone connectivity, and their families—including women, elderly parents, and young children—reside far away, frequently in circumstances of vulnerability. In such a context, ensuring access to quality medical care is not a privilege but an imperative necessity, one that is both essential and

urgent. The provision of such infrastructure is not merely an administrative act—it reflects the moral compass of a welfare state and echoes the principle of *parens patriae*, whereby the State bears responsibility for the well-being of those who may not be in a position to secure it for themselves. This duty extends equally to the elders, homemakers, and children of the force personnel who dedicate their lives to serving the nation.

- 23.** Given these noble objectives, it is imperative to recognise the significance of an institution like CAPFIMS, particularly in the lives of families of personnel belonging to the lower ranks of the paramilitary forces. These are the kith and kin of individuals who routinely place themselves at risk to protect the nation and defend its borders under extremely harsh conditions. We are of the considered view that such individuals, who remain largely voiceless and without representation in proceedings such as the present one, stand to benefit directly from the construction of an improved approach road to CAPFIMS. Better road access would enable emergency vehicles, including ambulances, to reach the facility swiftly, thereby potentially saving the lives of those who routinely safeguard ours. In the discharge of our judicial function, this overarching public interest weighs heavily upon the conscience of this Court.

- 24.** We are compelled to, however, add that any incidental benefit or ancillary use of such infrastructure by other institutions or adjoining residential localities does not, in any manner, dilute or detract from the primacy of its intended purpose. We must further clarify that in the event it is found that the development of such a facility has been undertaken under the ostensible guise of serving the needs of paramilitary forces, but in actuality is intended to confer undue benefit upon affluent individuals or private interests, such actions will be viewed by this Court through an entirely different lens and with the seriousness they warrant.
- 25.** In spite of that, this Court remains equally cognizant of the clamant ecological concerns arising from the refractory conduct of the Respondents. Undeniably, the reckless decimation of a substantial portion of the Delhi Ridge, carried out without any discernible effort to mitigate environmental harm, has resulted in an alarming loss of biodiversity. It must be recognised that a forested area is not solely a collection of trees—it is a delicate and intricate ecosystem comprising of mammals, migratory birds, amphibians, critters and countless other life forms that together inexplicably contribute to the region's ecological balance. As has already been reiterated, the Delhi Ridge functions as the lungs of the city. In light of this, there is no gainsaying that urgent and sustained measures must be

taken not only to preserve it but also to restore and enhance its ecological vitality.

26. That being so, having holistically considered the matter from multiple dimensions, this Court finds itself confronted with a difficult juxtaposition—between the imperative of much-needed development and improved access to medical facilities on the one hand and the undeniable and pervasive harm caused to the environment on the other. In this vein, we must remain mindful that the establishment of CAPFIMS, the felling of trees, and the construction of approach roads are now *fait accompli*. While it may be theoretically possible to contemplate a reversal of these actions, such a course is practically untenable. In our view, the die is cast, and what is done cannot now be undone—any refusal to put institutions like CAPFIMS to optimal use or to undo road construction at this stage risks not only undermining public interest but also squandering significant public resources.

27. However, that by no means can connote that this Court has its hands tied and is entirely powerless when affronted with such issues. We have taken the liberty of meticulously scrutinising the reports submitted by the Committee and the FSI, which set out in detail the extent of environmental degradation and the corresponding remedial measures recommended. In this respect,

we are sanguine that the long arms of justice can be equipped towards issuing directions aimed at not only purging the contempt but also advancing the broader objective of strengthening environmental safeguards and restorative efforts.

E. CONCLUSION AND DIRECTIONS

28. In light of the aforesaid analysis, we dispose of these Contempt Petitions, discharge the rule *nisi* and issue the following directions:

- i.** In light of the extensive ecological damage caused, urgent and time-bound remedial measures must be undertaken by the DDA in coordination with the GNCTD. These efforts shall be guided and overseen by the Committee constituted by this Court and comprising of Shri Ishwar Singh, Shri Sunil Limaye and Shri Pradip Krishen. The following directions are issued to be complied with strictly within a period of three (3) months:
 - a.** The DDA is directed to arrange the visit of the Committee to see the suitability of the 185 acres of land identified and proposed to be used towards compensatory afforestation;
 - b.** If the Committee opines that such land can be utilised for the purposes of afforestation, it may then, with the assistance of other domain experts, initiate the process of selection or shortlisting of appropriate native species, the

methodology of plantation, survival rate monitoring, and post-plantation maintenance and care;

- c. The Committee may commence the afforestation exercise by formulating a plan that ensures the plantation of trees is undertaken in a manner that optimally maximises the ecological advantage of the impending monsoon season.

ii. In order to ensure strict and effective enforcement of **(i)** above, the Forest Department shall work under the supervision of the Committee, for which, the entire expenditure is to be borne by the DDA and disbursed to the Forest Department. The Forest Department is directed to strictly abide by the directions issued by the Committee and will be responsible for maintaining detailed records of the health, survival, and mortality rates of the saplings planted.

iii. In furtherance thereof, the DDA and the Forest Department shall submit a jointly signed bi-annual compliance report before this Court, duly supported by photographic and video documentation, clearly evidencing the status and upkeep of the afforested areas. The veracity of such report shall be cross-checked by this Committee. The directions enumerated in **(i)** to **(iii)** are also applicable to the afforestation efforts already claimed to have been undertaken by the DDA;

- iv.** The DDA, in conjunction with the GNCTD and the Forest Department, are further directed to implement in full earnest the comprehensive measures recommended by the Court-appointed Committee in its final report, aimed at enhancing and restoring the green cover within the National Capital Territory of Delhi. These measures shall be treated as binding and implemented under the supervision of the Committee, with periodic progress reports filed before this Court;
- v.** The directions contained in (i) to (iii) shall equally apply to I.A. No. 98622/2024 in W.P. (C) No. 202/1995, which involves the diversion of 6,200 square metres of Morphological Ridge land located at Plot No. 11B Vasant Kunj, New Delhi. Accordingly, the DDA, in conjunction with the Forest Department, is directed to identify an appropriate parcel of land and report the same to the Committee to ensure effective compliance and implementation of these directions;
- vi.** The DDA is further directed to ensure the expeditious completion of the approach roads as envisaged, keeping in mind that the construction was at varying stages of progress prior to the cessation of work. The Committee, in this context, may also explore the possibility of implementing a thick

coverage of healthy trees on both sides, in congruence with such road construction;

vii. In view of the concerns raised regarding the potential undue benefit accruing to certain affluent residential owners from the construction of the approach roads, the GNCTD, in consultation with DDA, is directed to undertake a due identification exercise of such beneficiaries. Upon such identification, the GNCTD, along with DDA, shall be at liberty to impose a one-time levy, commensurate with the proportionate cost of construction, on such affluent individuals who may be the direct beneficiaries of the newly constructed road. Such a fee shall, however, be levied in accordance with principles of natural justice;

viii. Since the First Respondent was not an officer in the DDA cadre and is no longer holding any position in that organisation, we deem it appropriate to close the proceedings *qua* him. However, all other Respondents and officials of DDA found responsible by the internal inquiry for the acts leading to the present contempt are directed to deposit a sum of Rs. 25000 each as an environmental fee with the Forest Department, in addition to and without any prejudice to the departmental action that may be taken against them. This sum can be utilised towards

the remedial measures sought to be undertaken, as the Committee deems fit. Additionally, we direct that a formal penalty of *censure* be imposed upon all such officials. Accordingly, the contempt proceedings against the Respondents are closed;

ix. The departmental proceedings initiated against the erring DDA officials, if pending, shall be concluded expeditiously and in any event no later than six months; and

x. Similar contempt petitions or proceedings pending before the Delhi High Court in relation to the same cause of action also stand disposed of.

29. Accordingly, I.A. No. 98622/2024 in W.P. (C) No. 202/1995 stands disposed of in the above terms. All other pending IAs also stand disposed of.

30. In conclusion, we place on record our sincere appreciation for the invaluable assistance rendered by the Committee. The diligence, expertise, and constructive suggestions tendered in their reports have been instrumental in guiding the Court towards a balanced resolution of the complex issues arising in the instant matter.

31. We also deem it appropriate to appreciate the valuable assistance rendered by the Learned *Amicus Curiae* appointed by this Court—

Mr. Guru Krishna Kumar, Ms. Anitha Shenoy, and Mr. A.D.N. Rao,
Learned Senior Counsels.

- 32.** As an epilogue to this chronicle, we must state that the instant matter is yet another classic case of institutional missteps and administrative overreach. The facts before us reveal a troubling pattern: permissions not obtained, court orders ignored, and environmental degradation inflicted with impunity. Such actions certainly raise fundamental concerns about governance and accountability. We truly hope that these proceedings have been conducive to incorporating necessary course corrections by the DDA and other bodies so as to avoid any such lapses in the future.
- 33.** Insofar as this Court has taken a view in the present instance, it must be unequivocally stated that any recurrence of such conduct will not be met with similar indulgence. It is only the overwhelming public interest served by the establishment of CAPFIMS that has, in effect, overshadowed the sheer administrative incompetence and blatant disregard for both established procedures and the orders of this Court. It is the good fortune of the concerned DDA officials that this larger objective has weighed in their favour, without which this Court may have been compelled to adopt a far more stringent approach and deal with an iron fist. Accordingly, we deem it appropriate to also direct the DDA that henceforth, every

notification or order relating to afforestation, road construction, tree felling, or any activity with potential ecological impact must explicitly mention the pendency of relevant proceedings before this Court. This direction is being issued to ensure that, in future, the plea of ignorance is not taken as a defence.

- 34.** Be that as it may, the DDA is directed to file a status report upon completion of the directions put forth in (i).
- 35.** Post the matter after the first compliance reports are filed.
- 36.** Ordered accordingly.

.....**J.**
(SURYA KANT)

.....**J.**
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
DATE: 28.05.2025

3341

ITEM NO.10 (1)

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 202/1995

IN RE : T.N. GODAVARMAN THIRUMULPAD

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR DETAILS PLS SEE PROCEEDINGS IN ITEM NO.10)

Date : 06-08-2025 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K. VINOD CHANDRAN
HON'BLE MR. JUSTICE N.V. ANJARIA

(FOR APPEARANCE PLEASE SEE PROCEEDINGS IN ITEM NO.10)

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

[10] I.A. NOS. 79569, 79576, 159670 AND 159677 OF 2019, I.A. NOS.14261 AND 14262 OF 2021, I.A. NOS. 40599, 40624 AND 220675 OF 2023, I.A. NOS.111336 AND 137276 OF 2025

The present batch of applications are disposed of, in terms of the signed judgment.

(NARENDRA PRASAD)
DEPUTY REGISTRAR

(ANJU KAPOOR)
ASSISTANT REGISTRAR

(Signed "Reportable" judgment is placed on the file)

ITEM NO.10

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 202/1995

IN RE : T.N. GODAVARMAN THIRUMULPAD

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

INTERLOCUTORY APPLICATION FOR 06.08.2025 "ONLY" [1] I.A. NO. 149686 & 149687 OF 2025 [Applications for Directions & Exemption from filing O.T. filed by Ms. Aruna Gupta, Advocate] IN RE: VIKRAM SINGH SHEKHAWAT PARTNER RADHE GOVIND MARBLES AND [2] I. A. NO. 132125 OF 2025 [Application for Impleadment filed by Mr. Vishnu Kant, Advocate] WITH I. A. NO. 132266 OF 2025 [Application for Directions filed by Mr. Vishnu Kant, Advocate] IN WRIT PETITION (C) NO. 171 OF 1996 IN RE : MOHINDER SINGH & ORS. AND [3] I.A. NOS. 167008 & 167010 OF 2025 (Applications for Impleadment and Directions in filed by Ms. Rani Mishra, Advocate) IN RE: SANJAY KUMAR AND [4] I. A. NO. 280902 OF 2024 [Application for Directions filed by Mr. Sabarish Subramanian, Advocate] AND I. A. NO. 91650 & 91651 OF 2025 [Application for bringing on record subsequent events and filing additional documents alongwith application for Exemption from filing O.T. of Ms. Purnima Krishna, Advocate] AND I. A. NO. 152465 OF 2025 [CEC REPORT NO. 30 OF 2025] IN RE : TAMIL NADU WATER SUPPLY DRAINAGE BOARD, THE GOVERNMENT OF TAMIL NADU AND [5] ISSUE REGARDING ORDER DATED 18.03.2025 PASSED IN W.P. (C)NO. 13381 OF 1984 AND I. A. NO. 140084 OF 2025 [Application for Exemption from filing O.T. in Affidavit] AND [6] I.A. NO. 117204 OF 2024 (CEC REPORT NO. 5 OF 2024-Status Report in Delhi Ridge) IN RE : MINISTRY OF FINANCE IN RE : DELHI RIDGE AND [6 (a)] ISSUE REGARDING ORDER DATED 16.04.2025 PASSED IN W.P. (C)NO. 4677 OF 1985 AND [7] I.A. NO. 156703 OF 2024 [Application for Impleadment filed by Mr. Shrey Kapoor, Advocate] AND I.A. NO. 156707 & 156710 OF 2024 [Application for Directions and Exemption from filing O.T. filed by Mr. Shrey Kapoor, Advocate] WITH I.A. NOS. 182429 & 182432 OF 2024 [Application for permission to file Additional documents and Exemption from filing O.T. filed by Mr. Shrey Kapoor, Advocate] AND I.A. NOS. 279970 & 279972 OF 2024 [Application for placing on record Addition Facts and documents and Exemption from filing English translation filed by Mr. Shrey Kapoor, Advocate] AND I.A. NO. 8102 OF 2025 [Application for Directions in I.A. No. 211378, 211725/2024 in I.A. 58031/2024 filed by Ms. Aruna Gupta, Advocate] AND [7 (a)] I.A. NO. 212089 OF 2024 [Application for Impleadment in I.A. Nos. 58031 & 58032 of 2024 filed by Ms. Aruna Gupta, Advocate] AND I.A. NOS. 212084 & 212086

3343

OF 2024 [Application for Directions & Exemption from filing O.T. in I.A. Nos. 58031 & 58032 of 2024 filed by Ms. Aruna Gupta, Advocate] AND [7 (b)] CIVIL APPEAL DIARY NO. 12516 OF 2019 AND [7 (c)] SUO-MOTU WRIT PETITION (C) NO. 1 OF 2023 IN RE : SARISKA TIGER RESERVE IN RE : PAVAN SINGH IN RE : CHAND KANWAR IN RE : ANIL JATAV IN RE : M/S. RADHE GOVIND MARBLE IN RE : STATUS OF FUNDS IN RE : VAISHALI RANA AND [8] I. A. NOS. 79569 AND 79576 OF 2019 [Applications for Intervention and Directions] WITH I. A. NOS. 159670 AND 159677 OF 2019 [Application for Exemption from filing Official Translation] WITH I. A. D. NOS. 14261 AND 14262 OF 2021 [Applications for Urgent Listing of I.A. Nos. 79569 and 79576/2019 and Exemption from filing duly Attested Affidavit] AND I. A. NOS. 40599 AND 40624 OF 2023 [Applications for Intervention and Modification of Court's order dated 12.05.2022] AND I. A. NO. 220675 OF 2023 [Application for Direction in I.A. No. 79576/2019] AND I. A. NO. 111336 OF 2025 [Application permission to file Additional documents in I.A. No. 79569 & 79576/2019 filed by Mr. Aaditya A. Pande, Advocate] AND I. A. NO. 137276 OF 2025 [Application permission to file Additional documents in I.A. No. 40599 & 40624/2021 filed by M/s. Karanjawala & Co., Advocate] IN RE : SHRMIK RICKSHAW CHALAK-MALAK SEVASANSTHA IN RE : E-RICKSHAW IN MATHERAN AND [9] I. A. NOS. 90595 & 90596 OF 2025 [Applications for permission to file Impleadment and application for Impleadment filed by M/s. Hooda & Co., Advocate] IN RE : B.K. SINGH - IFS (RETD.) IN WRIT PETITION (CIVIL) NO. 202/1995 "ONLY" ARE LISTED IN W.P.(C) No. 202/1995 "ONLY" ON 06.08.2025 AND THE NAMES OF "ONLY" THE FOLLOWING ADVOCATES MAY BE TREATED TO HAVE BEEN SHOWN AGAINST THESE I.As. MR. HARISH N. SALVE, SR. ADV. [A.C.], MR. A.D.N. RAO, SR. ADVOCATE [A.C.], MS. APARAJITA SINGH, SR. ADVOCATE [A.C.], MR. SIDDHARTHA CHOWDHURY, ADVOCATE [A.C.] MR. K. PARAMESHWAR, SR. ADVOCATE [A.C.] MR. G.S. MAKKER, ADVOCATE MR. S.N. TERDAL, ADVOCATE DR. N. VISAKAMURTHY, ADVOCATE FOR S. NO. [1] MR. K. PARAMESHWAR (A.C.), MS. ARUNA GUPTA FOR S. NO. [2] (W.P.(C) NO. 171 OF 1996) MR. K. PARAMESHWAR (A.C.), MR. VISHNU KANT FOR S. NO. [3] MR. K. PARAMESHWAR (A.C.), MS. RANI MISHRA FOR S.NO. [4] MR. K. PARAMESHWAR (A.C.), MR. SABARISH SUBRAMANIAN (STATE OF TAMIL NADU), MS. PURNIMA KRISHNA (STATE OF TAMIL NADU) FOR S.NO. [5] MR. K. PARAMESHWAR (A.C.), MR. G.S. MAKKER (MoEF & CC), MS. NIDHI JASWAL (STATE OF RAJASTHAN) FOR S.NO. [6 & 6 (a)] MR. K. PARAMESHWAR (A.C.), MR. NISHIT AGRAWAL (FOR DDA), MR. GUNTUR PRASAD (FOR CPWD), MR. M.K. MARORIA (FOR GNCT IN I.A. NO. 117204/2024) FOR S.NO. [7 (a to c)] MR. K. PARAMESHWAR (A.C.), MR. G.S. MAKKER, MS. RANI MISHRA, MR. K. PARAMESHWAR (A.C.), MS. PARUL SHUKLA, MR. MILIND KUMAR, MR. SHREY KAPOOR, MS. ARUNA GUPTA, MS. NIDHI JASWAL, MR. SHYAM D. NANDAN, ADV. IN C.A.(D)NO. 12516/2016 FOR S.NO. [8] MR. K. PARAMESHWAR (A.C.), MS. MISHA ROHATGI MOHTA, M/S. KARANJAWALA & CO., MR. KRISHNA BALLABH THAKUR, MR. T.R.B. SIVAKUMAR, MR. AADITYA A . PANDE (STATE OF MAHARASHTRA) FOR S.NO. [9] MR. K. PARAMESHWAR (A.C.), MS. SHIBANI GHOSH, MR. SANCHIT GARGA (STATE OF KARNATAKA)

WITH

Diary No(s). 12516/2019 (XVII)

[IA No. 68530/2019 - CONDONATION OF DELAY IN FILING, IA No.

68535/2019 - EX-PARTE STAY, IA No. 68538/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 220462/2024 - INTERVENTION/IMPLEADMENT, IA No. 68527/2019 - PERMISSION TO FILE APPEAL)

SMW(C) No. 1/2023 (PIL-W)

[IA No. 282482/2024 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 169820/2025 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 169812/2025 - CLARIFICATION/DIRECTION, IA No. 128329/2025 - CLARIFICATION /DIRECTION, IA No. 128330/2025 - EXEMPTION FROM FILING O.T., IA No. 285430/2024 - EXEMPTION FROM FILING O.T., IA No. 169815/2025 - EXEMPTION FROM FILING O.T., IA No. 174013/2025 - INTERVENTION /IMPLEADMENT, IA No. 227339/2024 - INTERVENTION /IMPLEADMENT, IA No. 169819/2025 - INTERVENTION/IMPLEADMENT)

W.P.(C) No. 171/1996 (PIL-W)

(IA No. 132266/2025 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 132125/2025 - INTERVENTION/IMPLEADMENT)

Date : 06-08-2025 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K. VINOD CHANDRAN
HON'BLE MR. JUSTICE N.V. ANJARIA

Mr. K. Parameshwar, Sr. Adv. (A.C.)
Mr. M.V. Mukunda, Adv.
Ms. Kanti, Adv.
Mr. Raji Gururaj, Adv.
Mr. Shreenivas Patil, Adv.
Mr. Veda Singh, Adv.
Mr. Prasad Hegde, Adv.

For Petitioner(s) : Ms. Purnima Bhat, AOR

Mr. Shyam D. Nandan, AOR
Ms. Nandana Menon, Adv.

Mr. Chanchal Kumar Ganguli, AOR
M/S. Plr Chambers And Co., AOR
Mr. Syed Mehdi Imam, AOR
Mr. T. Harish Kumar, AOR
M/S. Mitter & Mitter Co., AOR
M/S. Lawyer S Knit & Co, AOR

For Respondent(s)/ : Mr. Gurmeet Singh Makker, AOR
applicant(s) : Mr. Gaichangpou Gangmei, AOR
Mrs. Anil Katiyar, AOR

3345

Mr. Raj Kishor Choudhary, AOR
 Mr. Shakeel Ahmed, Adv.
 Ms. Pratibha Singh, Adv.
 Ms. Shalini Tripathi, Adv.
 Mr. Himanshu Gupta, Adv.
 Mr. Anupam Bhati, Adv.
 Mr. Nakul Chaudhary, Adv.
 Mr. Vikram Patralekh, Adv.

Mr. Shuvodeep Roy, AOR
 Mr. Deepayan Dutta, Adv.
 Mr. Saurabh Tripathi, Adv.

Mr. Colin Gonsalves, Sr. Adv.
 Mr. Vivek Vishal Gautam, Adv.
 Mr. Lalit Mohan, Adv.
 Mr. Paul Kumar Kalai, Adv.

Mr. S. Udaya Kumar Sagar, AOR
 Mr. Ranjan Mukherjee, AOR
 Ms. Pratibha Jain, AOR
 Mr. Rajat Joseph, AOR
 Mr. Gopal Prasad, AOR
 Ms. Jyoti Mendiratta, AOR
 Mr. Raj Kumar Mehta, AOR
 Ms. Madhu Moolchandani, AOR

Ms. Sharmila Upadhyay, AOR

Mr. Tejaswi Kumar Pradhan, AOR
 Mr. Pranab Samantaray, Adv.
 Mr. Manoranjan Paikaray, Adv.

M/S. Arputham Aruna And Co, AOR
 Mrs. Nandini Gore, AOR
 Mr. E. C. Vidya Sagar, AOR
 M/S. M. V. Kini & Associates, AOR
 Mrs. B. Sunita Rao, AOR
 Mr. Rajeev Singh, AOR

Ms. Aishwarya Bhati, ASG
 Ms. Swarupama Chaturvedi, Sr. Adv.
 Mr. Raj Bahadur Yadav, AOR

Mrs. Kanchan Kaur Dhodi, AOR

Mr. Surya Kant, AOR
 Ms. Sujata Kurdukar, AOR
 Mrs. Manik Karanjawala, AOR

Mr. Kamal Mohan Gupta, AOR
 Ms. Mehraj, Adv.

3346
 Mr. Vikalp Gupta, Adv.
 Ms. Urvi Gupta, Adv.

Mr. Prashant Kumar, AOR

Mr. Dharmendra Kumar Sinha, AOR
 Mrs. Vandna Beri, Adv.

Mr. P. Parmeswaran, AOR
 Mr. Shiva Pujan Singh, AOR
 Ms. Charu Mathur, AOR

Mr. Bhavanishankar V.gadnis, Adv.
 Mr. A. Venayagam Balan, AOR
 Mr. Vishwanath Gadnis, Adv.

Mr. Sudarsh Menon, AOR
 Mr. Ramesh Babu M. R., AOR
 Mr. Vikrant Singh Bais, AOR
 Mr. Lakshmi Raman Singh, AOR
 Ms. K. V. Bharathi Upadhyaya, AOR
 Mr. Rajiv Mehta, AOR
 Mr. Ejaz Maqbool, AOR
 Mr. Rajesh, AOR
 M/S. Corporate Law Group, AOR
 Mr. Abhishek Chaudhary, AOR

Mr. Parth Awasthi, Adv.
 Mr. Pashupathi Nath Razdan, AOR
 Ms. Richa Tiwari, Adv.

Mr. B V Deepak, AOR
 Mr. T. N. Singh, AOR

Mr. C. L. Sahu, AOR
 Mr. Rajendra Sahu, Adv.
 Ms. Hema Sahu, Adv.
 Mr. Rishabh Sahu, Adv.
 Mr. Narinder Kumar Verma, Adv.

Ms. Sumita Hazarika, AOR
 Ms. Abha R. Sharma, AOR
 Ms. Asha Gopalan Nair, AOR

Mr. Rajesh Singh, AOR
 Mr. Hitesh Kumar Sharma, Adv.
 Mr. Amit Kumar Chawla, Adv.
 Mr. Akhileshwar Jha, Adv.
 Mr. Chaman Sharma, Adv.
 Mr. Supriya, Adv.
 Mr. Saurabh Kumar Solanki, Adv.
 Mr. Ravinder Pal Singh, Adv.

Mr. Mahi Pal Singh, Adv.
 Mr. Varun Varma, Adv.
 Mr. Ishank Ranjan, Adv.
 Mr. Subham Rajhans, Adv.
 Mr. Prakhar Shukla, Adv.
 Ms. Manisha Chawla, Adv.
 Ms. Niharika Dwivedi, Adv.
 Mr. Jatin Malik, Adv.
 Mr. Javed Raza, Adv.

Mrs. Rekha Pandey, AOR
 Mr. Raghav Pandey, Adv.
 Ms. Gauri Pandey, Adv.

Mr. Gopal Singh, AOR
 Mr. T. V. George, AOR
 Mr. Krishnanand Pandeya, AOR

Mr. Neeraj Shekhar, AOR
 Mr. Rajesh Maurya, Adv.

Mr. Sudhir Kulshreshtha, AOR

Mr. Himanshu Shekhar, AOR
 Mr. Parth Shekhar, Adv.
 Mr. Shubham Singh, Adv.
 Mr. Youkteshwari Prasad, Adv.
 Mr. Mukesh Kumar Verma, Adv.
 Mr. Mata Prasad Pathak, Adv.
 Mr. Vijay Singh, Adv.
 Ms. Ambali Vedasen, Adv.
 Mr. Arvind Kumar Tomar, Adv.
 Mr. Soumyadeep Chatterjee, Adv.
 Mr. Mayur Raj, Adv.
 Mr. Nikhil Kumar, Adv.
 Mr. Tushar Rawal, Adv.
 Ms. Shalini Satyanarayan, Adv.
 Mr. T.v. Surendranath, Adv.
 Mr. Ramendra Nath Makhal, Adv.
 Mr. Kirtikar Sukul, Adv.
 Mr. Richa Shrivastav, Adv.

Ms. Hemantika Wahi, AOR

Mr. Mohd. Irshad Hanif, AOR
 Ms. Rifat Ara Butt, Adv.

Mr. Punit Dutt Tyagi, AOR
 Mr. Rathin Das, AOR
 Mr. Ratan Kumar Choudhuri, AOR
 Mr. G. Prakash, AOR
 Mr. E. M. S. Anam, AOR

3348

Ms. Sushma Suri, AOR
 Mr. Sudhir Kumar Gupta, AOR
 Mr. A. N. Arora, AOR
 Mr. Irshad Ahmad, AOR
 Ms. C. K. Sucharita, AOR
 Ms. Binu Tamta, AOR
 Mrs. Bina Gupta, AOR
 Mr. P. V. Yogeswaran, AOR
 Mr. Jitendra Mohan Sharma, AOR
 Ms. Malini Poduval, AOR
 Mr. Jai Prakash Pandey, AOR
 Mrs. Anjani Aiyagari, AOR
 Mr. Shibashish Misra, AOR
 Mr. K. L. Janjani, AOR
 Mr. Naresh K. Sharma, AOR
 Ms. A. Sumathi, AOR
 Mr. Radha Shyam Jena, AOR
 Mr. Ajit Pudussery, AOR
 Mr. K. V. Vijayakumar, AOR
 Mrs. Rani Chhabra, AOR
 Ms. Divya Roy, AOR
 Mr. Tarun Johri, AOR
 Mr. S. C. Birla, AOR
 Mr. Ram Swarup Sharma, AOR
 Mr. Ashok Mathur, AOR
 M/S. Parekh & Co., AOR

M/S. K J John And Co, AOR
 Mr. Amarjit Singh Bedi, Adv.
 Ms. Surekha Raman, Adv.
 Mr. Shreyash Kumar, Adv.
 Mr. Harshit Singh, Adv.
 Mr. Yashwant Sanjenbam, Adv.
 Mr. Sidharth Nair, Adv.

Mr. V. Balachandran, AOR
 Ms. Baby Krishnan, AOR
 Mr. P. R. Ramasesh, AOR
 Mr. T. Mahipal, AOR
 Mr. Umesh Bhagwat, AOR
 Mrs. M. Qamaruddin, AOR
 Mr. H. S. Parihar, AOR
 Mr. Kuldip Singh, AOR
 Ms. Bina Madhavan, AOR
 Mr. Rakesh K. Sharma, AOR
 Mr. P. N. Gupta, AOR
 Mr. Sarad Kumar Singhanian, AOR
 Mr. E. C. Agrawala, AOR
 Mr. M. Yogesh Kanna, AOR

Ms. Aishwarya Bhati, A.S.G.
 Mrs. Aishwarya Bhati, A.S.G.
 Mr. Shiv Mangal Sharma, A.A.G.

3349

Ms. Abhinandini Sharma, Adv.
 Mr. Saurabh Rajpal, Adv.
 Mr. Amogh Bansal, Adv.
 Ms. Nidhi Jaswal, AOR

Mr. K. R. Sasiprabhu, AOR

Mr. Anupam Raina, Adv.
 Mr. Deepak Goel, AOR

Mr. Vikash Singh, AOR
 Mr. Nishanth Patil, AOR
 M/S. Venkat Palwai Law Associates, AOR
 Mr. Ajay Marwah, AOR
 Mr. Ravindra S. Garia, AOR

Mr. Karan Sharma, AOR

Ms. Sugandha Anand , AOR

Mr. Avijit Mani Tripathi, AOR
 Mr. T.k. Nayak, Adv.
 Ms. Marbiang Khongwir, Adv.
 Mr. Vikas Bansal, Adv.

Mr. Deeptakirti Verma, AOR
 Ms. Usha Nandini V., AOR

Mr. Avneesh Arputham, AOR
 Mr. Ankit Sharma, Adv.

Ms. Vanshaja Shukla, AOR

Mr. Chirag M. Shroff, AOR

Ms. Mayuri Raghuvanshi, AOR
 Mr. Vivek Jain, AOR

Ms. Garima Prashad, Sr. A.A.G.
 Mr. Sudeep Kumar, AOR
 Ms. Manisha, Adv.
 Ms. Rupali, Adv.

Mr. Gaurav Kumar Bansal, Adv.
 Mr. Vishnu Kumar Gupta, Adv.
 Ms. Nandita Bansal, Adv.
 Ms. Chandrika Upadhaya, Adv.
 Mr. Aathrva Upadhaya, Adv.
 Ms. Rani Mishra, AOR

Mr. Pukhrambam Ramesh Kumar, AOR
 Mr. Karun Sharma, Adv.

3350

Ms. Anupama Nyangom, Adv.
 Ms. Rajkumari Divyasana, Adv.

Mr. Venkata Raghuvamsy D. , AOR
 Ms. Swathi H. Prasad, AOR

Mr. Adeel Ahmed, AOR
 Mr. Abul Kibriya, Adv.
 Mr. Aamir Hussain, Adv.
 Mr. Saalik Islam, Adv.
 Ms. Shreemoyee Bhattacharjee, Adv.

Mr. Ajay Agarwal, A.A.G.
 Mr. Rajeev Kumar Dubey, Adv.
 Mr. Ashiwan Mishra, Adv.
 Ms. Aditi Mishra, Adv.
 Mr. Kamendra Mishra, AOR

Mr. Somesh Chandra Jha, AOR
 Ms. Ruchira Goel, AOR

Mr. Siddharth Dharmadhikari, Adv.
 Mr. Aaditya Aniruddha Pande, AOR
 Mr. Shrirang B. Varma, Adv.
 Mr. Bharat Bagla, Adv.
 Mr. Sourav Singh, Adv.
 Mr. Aditya Krishna, Adv.
 Mr. Adarsh Dubey, Adv.
 Ms. Chitransha Singh Sikarwar, Adv.
 Mr. Vijay S. Khamkar, Adv.

Mr. Parth Awasthi, Adv.
 Mr. Pashupathi Nath Razdan, AOR
 Ms. Richa Tiwari, Adv.

Mr. Tarun Gupta, AOR

Mr. Sameer Abhyankar, AOR
 Ms. Ripul Swati Kumari, Adv.
 Mr. Krishna Rastogi, Adv.

Ms. Ranjeeta Rohatgi, AOR
 Mr. Shubham Upadhyay, AOR
 Mr. Vivek Gupta, AOR
 Mr. P. S. Sudheer, AOR
 Mr. Sunny Choudhary, AOR
 Mr. Siddhartha Jha, AOR

Dr. Amandeep Gaur, Adv.
 Mr. S Ramamoorthy, Adv.

3351

Mr. S. Senthil Prangovan, Adv.
M/s V. Maheshwari & Co., AOR

Mr. Mayank Aggarwal, AOR
Mr. Sanjeev Kumar, AOR

Mr. Shovan Mishra, AOR
Ms. Bipasa Tripathy, Adv.
Mr. Shlok Luthra, Adv.

Mr. Ashutosh Kumar Sharma, AOR
Ms. Suman Kukrety, AOR

Mrs. Aishwarya Bhati, A.S.G.
Ms. Ruchi Kohli, Adv.
Ms. Suhashini Sen, Adv.
Mr. Shyam Gopal, Adv.
Mr. Raghav Sharma, Adv.
Mr. Raman Yadav, Adv.
Dr. N. Visakamurthy, AOR

Mr. Naveen Kumar, AOR
Mr. P. K. Manohar, AOR
Mr. Vinod Sharma, AOR
Ms. Surbhi Mehta, AOR
Mr. Rajeev Singh, AOR

Mr. P.B. Suresh, Sr. Adv.
Mr. Shoeb Alam, Sr. Adv.
Ms. Parul Shukla, AOR
Mr. Saday Mondol, Adv.
Ms. Shubhangi Pandey, Adv.
Ms. Debatmaja Ghosh, Adv.

Mr. Abhishek Pandey, Adv.
Mr. Prashant Kumar Umrao, AOR

Mr. Arun K. Sinha, AOR
Ms. Sakshi Kakkar, AOR

Mr. Aman Pawar, A.A.G.
Mr. Sanchit Garga, AOR

Ms. Shilpa Singh, AOR
Mr. B. K. Pal, AOR
Mr. James P. Thomas, AOR
Mr. S. Gowthaman, AOR
Mr. A. Karthik, AOR
Mr. Rajiv Kumar Choudhry, AOR

Mr. Anurag Tandon, AOR
Mr. Aastik Dhingra, Adv.

3352
Mr. Umesh Kumar, Adv.

Ms. Dr. Monika Gusain, Sr. Adv.
Mr. B.k. Satija, A.A.G.
Mr. Akshay Amritanshu, AOR
Mr. Hariom Yaduvanshi, Adv.
Mr. Arjun Yaduvanshi, Adv.
Ms. S. Harini, Adv.
Mr. Avi Dhankhar, Adv.
Mr. Vansmani Tripathi, Adv.
Ms. Aahana Jaiswal, Adv.
Ms. Drishti Rawal, Adv.
Ms. Drishti Saraf, Adv.
Ms. Tanya Gupta, Adv.
Mr. Sarthak Shrivastava, Adv.
Mr. Mayur Goyal, Adv.

Mr. Omanakuttan K. K., AOR
Mr. Ajit Sharma, AOR
Mr. Avijit Roy, AOR

Mr. Vishnu Kant, AOR
Mr. Irasis Acharya, Adv.
Ms. Rajnandini, Adv.

Ms. Shalini Kaul, AOR
Mr. Sunil Kumar Sharma, AOR

Ms. Swati Ghildiyal, AOR
Ms. Neha Singh, Adv.

Mr. Siddharth Sharma, AOR

Mrs. Aishwrya Bhati, A.S.G.
Mr. Raghav Sharma, Adv.
Ms. Ruchi Kohli, Adv.
Ms. Suhasini Sen, Adv.
Mr. Gaurang Bhushan, Adv.
Mr. Baijnath Patel, Adv.
Mr. Raj Bahadur Yadav, AOR

Mr. Samir Ali Khan, AOR
Mr. Pranjal Sharma, Adv.
Ms. Eksha Sharma, Adv.

Mr. Sachin Patil, AOR

Mr. Nishant Awana, AOR
Mrs. Rini Badoni Awana, Adv.
Ms. Rebecca Mishra, Adv.
Mr. Suraj Kundu, Adv.

3353

Mr. Shubhanshu Padhi, AOR

Mr. Nishe Rajen Shonker, AOR

Mrs. Anu K Joy, Adv.

Mr. Alim Anvar, Adv.

Mr. Santhosh K, Adv.

Mrs. Devika A.l., Adv.

Mrs. Garima Prashad, Sr. Adv.

Mr. Nishit Agrawal, AOR

Ms. Kanishka Mittal, Adv.

Mr. Krishna Ballabh Thakur, AOR

Mrs. Meenakshi Arora, Sr. Adv.

Mr. Gaurav Sharma, Adv.

Ms. Aruna Gupta, AOR

Mr. Ramesh Allanki, Adv.

Mr. Syed Ahmad Naqvi, Adv.

Ms. K. Enatoli Sema, AOR

Mr. Amit Kumar Singh, Adv.

Ms. Chubalemla Chang, Adv.

Mr. Prang Newmai, Adv.

Mr. Shishir Deshpande, AOR

Mr. Yusuf, AOR

Mr. Agam Sharma , AOR

Mrs. Pragya Baghel, AOR

Ms. Deepanwita Priyanka, AOR

Mr. Satyalipsu Ray, Adv.

Mr. Deepak Singh, Adv.

Mr. Anuj Chaudhary, Adv.

Ms. Priyal Sheth, Adv.

Mr. Raghvendra Kumar, AOR

Mr. Sravan Kumar Karanam, AOR

Mr. P. Venkatraju, Adv.

Applicant-in-person, AOR

Mr. Anant Mann, AOR

Mr. Lakshmeesh S. Kamath, AOR

Mrs. Samriti Ahuja, Adv.

Ms. Aditi Prakash, Adv.

Mr. Vikas Kumar, AOR

Mr. Gopal Balwant Sathe, AOR

3354

Mr. Sarvan Kumar Khare, AOR
 Mr. Kushagra Sharma, Adv.
 Mr. Anuj Agarwal, Adv.
 Mr. Akarsh Khare, Adv.

Mr. K. M. Nataraj, A.S.G.
 Mr. Harish Pandey, Adv.
 Ms. Indira Bhakar, Adv.
 Mr. Anuj Srinivas Udupa, Adv.
 Mr. Krishna Kant Dubey, Adv.
 Mr. Piyush Beriwal, Adv.
 Mr. Neeraj Kumar Sharma, Adv.
 Ms. Mrinal Elker Mazumdar, Adv.
 Mr. Shashwat Parihar, Adv.
 Mr. Mukesh K Verma, Adv.
 Mr. Vinayak Sharma, Adv.
 Mr. Shreekant Neelappa Terdal, AOR

Ms. Sunieta Ojha, AOR
 Mr. Dinesh Chandra Pandey, AOR
 Mr. Saurabh Rajpal, AOR
 Mr. Himinder Lal, AOR
 Ms. Shruti Jose, AOR
 Mr. Durgesh Ramchandra Gupta, AOR
 Mr. Kaushik Choudhury, AOR

Mr. Aravindh S., AOR
 Mr. Aman Gautam, Adv.

Mrs. Kirti Renu Mishra, AOR
 Mr. Atul Sharma, AOR

Mr. Anirudh Sanganerla, AOR
 Mr. Chinmay Deshpande, Adv.

Mr. Shrey Kapoor , AOR
 Ms. Anne Mathew, AOR
 Mr. Yash S. Vijay, AOR

Mr. Sarvan Kumar, Adv.
 Mr. Adarsh Kumar Tiwari, AOR
 Ms. Vartika Maurya, Adv.

Mr. Prashant Bhushan, Sr. Adv.
 Ms. Srishti Agnihotri, AOR
 Ms. Alice Raj, Adv.
 Ms. Sanjana Grace Thomas, Adv.
 Ms. Tara Elizabeth Kurien, Adv.
 Mr. D.p.singh, Adv.
 Ms. Anchal Kanthad, Adv.

Mr. Abhishek Atrey, AOR

3355

Dr. Abhishek Arora, Adv.
Ms. Vidyottma Jha, Adv.

Ms. Mrinal Gopal Elker, AOR
Mr. Rajan K. Chaurasia, Adv.
Mr. Chinmoy Chaitanya, Adv.
Ms. Chhavi Khandelwal, Adv.

Mr. Dhaval Mehrotra, AOR

Mr. Ravindra Kumar, Sr. Adv.
Mr. Binay Kumar Das, AOR
Ms. Priyanka Das, Adv.
Ms. Neha Das, Adv.
Mr. Shivam Saxena, Adv.
Mr. Vikas Bharti, Adv.

Ms. Lakshmi N. Kaimal, AOR
Mr. Subhasish Mohanty, AOR
Mr. Rahul Jain, AOR
Mr. Sabarish Subramanian, AOR

Mr. Shyam Divan, Sr. Adv.
Ms. Nina Nariman, Adv.
Ms. Tahira Karanjawala, Adv.
Mr. Arjun Sharma, Adv.
Ms. Sarah Ayreen Mir, Adv.
Ms. Sharanya Ghosh, Adv.
Mr. Samarth Suri, Adv.
M/S. Karanjawala & Co., AOR

Mr. Gopal Shankaranarayanan, Sr. Adv.
Ms. Anindita Mitra, AOR
Mr. Vishal Sinha, Adv.

Mr. Naveen Kumar, AOR
Mr. V. N. Raghupathy, AOR
M/S. D.S.K. Legal, AOR

Ms. Shibani Ghosh, AOR
Mr. Rishad A Chowdhury, Adv.
Ms. Sohini Sanyal, Adv.

Mr. Chandra Bhushan Prasad, AOR

Ms. Aishwarya Bhati, A.S.G.
Mrs. Aishwarya Bhati, A.S.G.
Mr. Shiv Mangal Sharma, A.A.G.
Ms. Abhinandini Sharma, Adv.
Mr. Saurabh Rajpal, Adv.
Mr. Amogh Bansal, Adv.
Ms. Nidhi Jaswal, AOR

3356

Ms. Pallavi Langar, AOR

Mr. Pankaj Sharma, Adv.
 Mr. Yatinder Choudhary, Adv.
 Mr. Saurabh Singh Chauhan, Adv.
 Ms. Vidushi Pandey, Adv.
 Mr. Subham Bahuguna, Adv.
 Mr. Eshan Kumar Saxena, Adv.
 Mr. Himanshu Kumar, Adv.
 Mr. Rajeev Kumar Dubey, AOR

Mr. Rajeev Maheshwaranand Roy, AOR

Ms. Ila Shikhar Sheel, AOR

M/S. Cyril Amarchand Mangaldas, AOR
 Mr. Sandeep Kumar Jha, AOR
 Mr. Milind Kumar, AOR
 Mr. Mohit Paul, AOR
 Ms. Rashmi Nandakumar, AOR
 Ms. Manika Tripathy, AOR

Ms. Ankita Sharma, AOR
 Mr. Arjun D Singh, Adv.
 Ms. Ishika Neogi, Adv.

Ms. Supreeta Sharanagouda, AOR
 Mr. Sharanagouda Patil, Adv.
 Mr. Jyotish Pandey, Adv.
 Mr. Yash S Tiwari, Adv.
 Mr. Vinod Kumar Srivastava, Adv.

Ms. Ranu Purohit , AOR

Mr. Ashok Gaur, Adv.
 Ms. Megha Karnwal, AOR
 Ms. Sakshi Singh, Adv.
 Mr. Aditya Thayrat, Adv.
 Mr. Avishala Singh, Adv.

Ms. Adarsh Nain, AOR
 Mr. Guntur Pramod Kumar, AOR
 Mr. Amrish Kumar, AOR

Mr. Amit Anand Tiwari, Sr. Adv, AAG

Ms. Purnima Krishna, AOR
 Mr. M.F. Philip, Adv.
 Mr. Karamveer Singh Yadav, Adv.
 Mr. Togin M. Babichen, Adv.

3357

Ms. Aishwarya Bhati, A.S.G.
 Mrs. Ruchi Kohli, Sr. Adv.
 Mr. Mukesh Kumar Maroria, AOR
 Mr. Raghav Sharma, Adv.
 Mr. Jagdish Chandra Solanki, Adv.
 Mr. Suhasini Sen, Adv.
 Mr. Gaurang Bhushan, Adv.

Dr. Surender Singh Hooda, AOR
 Mr. Sunil Kumar Verma, AOR
 Mr. Prakash Kumar Singh, AOR
 Ms. Tanya Srivastava, AOR
 Ms. Seita Vaidyalingam, AOR
 Mr. Anando Mukherjee, AOR

Ms. Anzu. K. Varkey, AOR

Ms. Astha Sharma, AOR
 Mr. T. R. B. Sivakumar, AOR
 Mr. Sujit Kumar Mishra, AOR
 Mr. Aldanish Rein, AOR

Mr. Kunal Vajani, Adv.
 Mr. Kunal Mimani, AOR
 Ms. Shraddha Chirania, Adv.

Mr. Shantanu Kumar, AOR
 Mr. Ashish Batra, Adv.

Mr. Manan Verma, AOR

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

[1] I.A. NOS. 149686 & 149687 OF 2025

1. The limited grievance in the present applications is that though the matter is pending before the State Environment Impact Assessment Authority (for short "SEIAA") for permitting the mining activities, the SEIAA is not considering the same.
2. We dispose of the present applications with the direction to the SEIAA to consider the applications of the present applicant(s) for the grant of environment clearance strictly

3358
in accordance with law and as per the orders passed by this Court on earlier occasions.

3. We expect the SEIAA to take a decision either way as expeditiously as possible and preferably within three months from today.

[2] A. NO. 132125 OF 2025 WITH I. A. NO. 132266 OF 2025 IN WRIT PETITION (C) NO. 171 OF 1996

List on 08.08.2025.

[3] I.A. NOS. 167008 & 167010 OF 2025

1. These applications have been filed seeking the following prayers:

a) *Quash the impugned RFP dated 05.06.2025 floated by OTDC for the Rs.91 crore tourism project within and around Debrigarh Wildlife Sanctuary and its Eco-Sensitive Zone, as being illegal and in violation of the Wildlife (Protection) Act 1972, the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986, and the MoEF&CC Guidelines on Sustainable Ecotourism, 2021;*

b) *Restrain the Respondent State from proceeding with any activity under the said RFP or related project, pending full compliance with the Wildlife (Protection) Act, 1972, Forest (Conservation) Act, 1980, ESZ Notification dated 07.06.2017, and the Eco-tourism Guidelines, 2021;*

c) *Direct the Respondents to place on record all statutory approvals, if any, obtained for the said project, and disclose the status of the Zonal Master Plan and Forest/Wildlife clearances;*

d) *Direct the Central Empowered Committee (CEC) to independently examine the legality and ecological impact of the tourism infrastructure and development activities proposed or undertaken within and around the Debrigarh Wildlife Sanctuary, including the role of the Odisha Tourism Development Corporation and other concerned authorities*

3359

2. The perusal of the application would reveal that the process is only at the stage of request for proposal for appointing an architectural consultant.

3. This Court has, time and again, prescribed as to what activities are permitted in the Wildlife Sanctuary as well as the Eco-Sensitive Zone (ESZ). The authorities ought to be aware of the orders passed by this Court.

4. At the cost of repetition, we direct that the State Government, while finalizing the proposal for carrying out any activities either within the Debrigarh Wildlife Sanctuary or in its ESZ, should take into consideration the earlier orders passed by this Court.

5. With the aforesaid observations, these applications are disposed of.

[4] I.A. NOS. 167477 & 167479 OF 2025

1. Issue notice, returnable on 12.8.2025.

2. In addition to the usual mode, liberty is granted to the petitioner to serve notice through the Standing Counsel for the respondent/State.

[5] I.A. NO.280902/2024 WITH I.A. NOS. 91650 & 91651 OF 2025 WITH I.A. NO. 152465 OF 2025 (CEC REPORT NO. 30/2025)

1. IA No. 280902 of 2024 has been filed seeking following prayer:

3360

- a) *Issue appropriate orders/directions and permit the Applicant for the grant of permission/Directions for Diversion of 21.92 ha of Forest land in Bevanurmalai Reserved Forest of Pennagaram Range of Dharmapuri Forest Division for Raw Water Pumping main, booster Pumping Station 110/33 kv Substation and 110 kv Transmission line under Hogenakkal combined water supply Scheme Phase - II in Dharmapuri District.*

2. This Court vide order dated 16.04.2025 had requested the Central Empowered Committee (CEC) to examine the issue and to submit its report before the next date of hearing. Accordingly, the CEC had submitted its report on 02.07.2025.

4. The CEC, vide its report, has recommended granting permission for the felling of 4021 trees of spontaneous growth standing within an area of 19.05 hectares of forest land in Bevanurmalai Reserved Forest, Pennagaram Range, Dharmapuri Forest Division, subject to the following conditions:

- i. The Applicant shall obtain prior approval of the Central Government for diversion of the identified forest land admeasuring 19.05 hectares in Bevanurmalai Reserved Forest, Pennagaram Range, Dharmapuri Forest Division, under the provisions of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980.
- ii. The land identified for compensatory plantation shall be transferred to the Forest Department and duly notified as a Protected Forest under the provisions of the Indian Forest Act, 1927, prior to the commencement of any construction or project-related activity at the site.
- iii. The Forest Department shall implement the approved Compensatory Afforestation scheme in accordance with the norms laid down under the Compensatory Afforestation Fund Act, 2016, and maintain the plantation for a period of ten years, including the erection of chain-link fencing to protect the site.
- iv. The Applicant shall ensure that excavated material is spread only within the forest area diverted for the project. Further, tree felling shall be carried out in a staggered manner rather than all at once,

and all trenches shall be properly covered by the Applicant upon completion of the work.

- v. After completion of the work, the Applicant shall secure the trench by covering it with the excavated material. The Forest Department shall thereafter undertake the plantation of suitable saplings at the site. The full cost of the plantation, including maintenance, shall be recovered from the Applicant in advance, and tree felling shall be permitted only after such cost has been deposited. This will be in addition to the compensatory afforestation to be done in lieu of the diversion of forest land.
- vi. The Applicant will seek prior approval of the National Board of Wildlife for execution of this project as it falls within the 10 km default Eco-Sensitive Zone of the Cauvery South Wildlife Sanctuary (Hosur & Dharmapuri Divisions), Tamil Nadu.
- vii. Wildlife mitigation measures, including the erection of the steel wire rope fence over 23.5 km along the boundary of Bevanurmala and Masakkal Reserved Forests, as approved by the Chief Wildlife Warden, shall be implemented in full prior to the commencement of work.
- viii. The user agency shall ensure that construction and operational activities are carried out in a manner that causes minimal disturbance to wildlife and does not obstruct the natural movement of animals within the Eco-Sensitive Zone of Cauvery South Wildlife Sanctuary.
- ix. Compliance with all mitigation measures and safeguards recommended by the Forest Department, State Board for Wildlife, and other statutory authorities shall be strictly adhered to during the execution and maintenance of the project.
- x. The felling of trees shall be carried out under the supervision and direction of the Forest Department, and limited strictly to the number approved. Wherever technically feasible, transplantation shall be undertaken in lieu of felling.
- xi. In case of damage to any tree not permitted for felling, a penalty of Rs.50,000 per violation shall be imposed on the Applicant in addition to any other penalty that may be imposed by the Forest Department under any local act rule.

5. We are inclined to allow the application(s) for diversion of forest land, so also for the felling of the trees, subject to the strict compliance with the conditions as imposed by the

CEC.

3362

6. We ,therefore, allow these applications in terms of the prayer clause (a), subject to the condition that the State scrupulously complies with the conditions as imposed by the CEC.

[6] I.A. NOS. 28216 & 28217 OF 2025 IN I.A. NOS. 3864-3866 OF 2015

List these applications on 12.08.2025.

[7] ISSUE REGARDING ORDER DATED 18.03.2025 PASSED IN W.P.(C)NO. 13381 OF 1984 WITH I.A. NO. 140084 OF 2025

List on 12.08.2025.

[8] I.A. NO. 117204 OF 2024 (CEC REPORT NO. 5 OF 2024-Status Report in Delhi Ridge) and [8] (a) ISSUE REGARDING ORDER DATED 16.04.2025 PASSED IN W.P.(C)NO. 4677 OF 1985

1. We find that insofar as the issues concerning the Delhi Ridge are concerned, several committees are currently monitoring the issues. The authorities are required to seek permission from several committees/Bodies for land diversion, which, at times, results in conflicting orders.

2. We, therefore, direct the Ministry of Environment, Forest and Climate Change (MoEF&CC) to take all the stake holders on

3363

board, including the Government of NCT of Delhi, the CEC and the various Committees/Bodies appointed by this Court or the High Court of Delhi and to come out with a proposal wherein one uniform body can be entrusted with monitoring the issues relating to the Delhi Ridge.

3. We grant time till 08.10.2025 so that the MoEF&CC can come with a concrete proposal in this regard.

4. We direct all the stake holders, including the Government of NCT of Delhi and the members of the committees, so also the CEC, to cooperate with the MoEF&CC to expedite the finalization of the proposal.

5. We further clarify that no further time would be granted to the MoEF&CC for submitting the proposal.

6. List on 08.10.2025.

[9] I.A. NO. 156703 OF 2024 AND I.A. NO. 156707 & 156710 OF 2024 WITH I.A. NO. 182429 & 182432 OF 2024 AND I.A. NO. 279970 & 279972 OF 2024 AND I.A. NO. 8102 OF 2025, [9](a) I.A. NOS. 212089, 212084, [9](b) C.A. D. NO. 12516 OF 2019 and [9](c) SMW(C) NO. 01 OF 2023 alongwith IA D. NOS. 174013 & 185646 OF 2025, IA NOS. 169812 & 185511 OF 2025

1. The applications (IA D. Nos. 174013 & 185646 of 2025, IA No. 185511 OF 2025 in SMW(C) No. 01 of 2023) for intervention are allowed.

2. List these applications/matters on 12.08.2025.

[11] IA Nos. 90595 & 90596 of 2025

3364

List these applications on 12.08.2025.

(DEEPAK SINGH)
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)
ASSISTANT REGISTRAR



**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

IN RE : DELHI RIDGE

**I.A. NO. 117204 OF 2024
(CEC REPORT No. 5 of 2024)**

in

WRIT PETITION (C) NO. 202 OF 1995

and

**Issue regarding order dated 16th April 2025
passed in Writ Petition (c) No. 4677 of 1985**

T. N. Godavarman Thirumulpad

... Petitioner

versus

Union of India & Others

... Respondents

Table of Contents

INTRODUCTION	2
History of the Delhi Ridge	3
Importance of the Ridge	6
Morphological Ridge	7
History of DRMB	12
Working of the DRMB	14
Multiple Authorities Supervising Ridge	16

DISCUSSION AND ANALYSIS	21
Status of Final Notification under Section 20	22
Removal of Encroachments.....	23
Identification of the Morphological Ridge.....	23
Reconstitution of the DRMB.....	24
Statutory Backing of DRMB	25
Representative of CEC in DRMB	30
Standing Committee for DRMB	31
Functions of the DRMB	33
CONCLUSION AND DIRECTIONS	35

J U D G M E N T

B.R. GAVAI, CJI

INTRODUCTION

1. In the present matter, we are called upon to adjudicate on the issue concerning the various bodies/authorities monitoring, regulating and permitting construction activities in the Delhi Ridge which is an area of vital ecological and geographical significance in the National Capital Territory¹. The Delhi Ridge which is at the tail end of the Aravali Ranges, contains a variety of flora and fauna and is widely known as the “Green Lungs” of the city.

¹ For short, “the NCT”.

History of the Delhi Ridge

2. The Aravali Range in the NCT of Delhi comprises of the rocky outcrop stretching from the Delhi University in the North to the NCT Border in the South and beyond, with sizable areas of the same having been designated as the Ridge. However, the Ridge, as it stands today, is not a continuum as various intervening stretches have been urbanized with the passage of time. For example, the Central Ridge area was planned as an integral part of capital city of New Delhi in the early part of the twentieth century.

3. The *Master Plan for Delhi, 2001* notified on 1st August 1990 identifies the Delhi Ridge as an area admeasuring 7,777 hectares of land, which is divided in four zones, *i.e.*, Northern, Central, South Central (Mehrauli) and Southern. Over the time, due to deterioration in the Ridge area, the Lieutenant Governor of Delhi constituted a 10-member committee known as the “Lovraj Committee” for preparing a management plan of the Ridge. The said committee *inter alia* suggested the creation of a Ridge Management Supervisory Committee chaired by the Chief Secretary of Delhi to address land-related legal matters. It was

suggested that the entire Ridge area be notified as “Reserved Forest” under the *Indian Forest Act, 1927*²

4. Pursuant to the Lovraj Committee’s Report, a preliminary notification under Section 4 of the Forest Act was issued on 24th May 1994 thereby declaring 7,777 hectares of land as Reserved Forests. The Additional District Magistrate (Revenue)³ was appointed to be the Forest Settlement Officer under the said notification. Though a period of more than three decades has passed, no further proclamation under Section 6 of the Forest Act has been issued thus far. Since then, only an area to the extent of 103.48 hectares has been notified as Reserved Forests under Section 20 of the Forest Act.

5. One more notification under Section 4 of the Forest Act was also issued on 19th March 1996 for an extent of 7 hectares in Nanakpura Ridge. A notification dated 2nd April 1996, under Section 154 of the *Delhi Land Reforms Act, 1954*⁴ was issued in compliance with the orders dated 25th January 1996 and 13th March, 1996 passed by this court in IA No. 18 and 22 in the case

² Hereinafter referred to as, “the Forest Act”.

³ For short, “ADM (Revenue)”.

⁴ Hereinafter referred to as, “the Land Reforms Act”.

of **MC Mehta v. Union of India**⁵. The *proviso* to Section 154 of the Land Reforms Act concerns uncultivable areas in the Gaon Sabha which may be excluded from vesting in the Gaon Sabha. In compliance with the orders of this court, the excess land measuring 4206.68 hectares from 14 different villages was placed at the disposal of the Forest Department. This area had already been identified in the Master Plan which was notified on 1st August 1990.

6. The entire identified portions of the Delhi Ridge are as under:

Southern Ridge	6,200 hectares
Northern Ridge	87 hectares
South Central Ridge (Mehrauli)	626 hectares
Central Ridge	864 hectares
Nanakpura Ridge	7 hectares
Total	7,784 hectares

7. As already stated hereinabove, though the total identified area was 7,784 hectares, the final notification under Section 20 of the Forest Act has been issued only in respect of 103.48 hectares of land.

⁵ Writ Petition (C) No. 4677 of 1985.

8. The Central Empowered Committee⁶ submitted a Report on 8th May 2024 stating therein that 5% of the Ridge area is under encroachment, 4% has been diverted and only 1.33% has been notified under Section 20. The CEC thus recommended that *“it is crucial to comprehensively address all relevant issues by thoroughly considering every aspect that directly or indirectly impacts the Ridge.”*

Importance of the Ridge

9. This court has continuously been reiterating the importance of Delhi Ridge. The Master Plan notified on 1st August 1990 also stressed on the protection of the Ridge, while this court by order dated 9th May 1996 in ***M.C.Mehta***⁵ noted that the Ridge is required to be protected in all its pristine glory.

10. It will be relevant to refer to the following observations made by this court *vide* aforesaid order dated 9th May 1996:

“The provisions of the Master Plan makes it mandatory that the Ridge is to be kept free from encroachers and its pristine glory must be maintained for all times. It is a pity that neither the Central Government nor the NCT Delhi Administration has ever applied its mind towards maintain the Ridge and River Yamuna which is necessary to maintain the ecological balance of the city.”

⁶ For short ‘the CEC’

Morphological Ridge

11. Through the years, it has also been noticed that though some parts of the NCT of Delhi have all the features of the Ridge, they were not identified as the “*Ridge*”. In this respect, it will be relevant to note that when the geological and geomorphological mapping of 1,482 sq. km area of the NCT of Delhi was carried out by the Geological Survey of India⁷, it was found that a large area ought to be included as “residual hills/ridges”. These landforms were found to have rocky surface and characteristics similar to the Ridge. It will also be relevant to note that even though these areas are now identified to be ridge-like, they do not form part of the Ridge areas under the Master Plan, 2001 or Master Plan, 2021. This area is now known as the “*Morphological Ridge*”.

12. It is relevant to note that the High Court of Delhi *vide* an order dated 30th November 2011 passed in ***Ashok Kumar Tanwar v. Union of India and others***⁸, for the first time held that areas having characteristics of a “Geological Ridge” though falling outside the Notified Forest Ridge Land also require protection. The Delhi High Court in the said case was dealing with

⁷ For short, “the GSI”.

⁸ 2011 SCC OnLine Del 5733

a writ petition against the construction by the Border Roads Organization in the Morphological Ridge. The High Court noted that permission of the Delhi Ridge Management Board⁹ or this court, through the CEC, was required for such a construction. It will be relevant to refer to the following observations made by the Delhi High Court in **Ashok Kumar** (supra)⁸:

“4. It is clear from the aforesaid that the area in question is given the character of a “Geological Ridge” though falling outside the Notified Forest Ridge Land. Even in respect of such a land, clearance from the Ridge Management Board or the Hon'ble Supreme Court through the Central Empowered Committee is to be obtained before carrying out any construction. Such permission is a pre-requisite prerequisite in view of the directions of the Supreme Court. It is also mentioned that for laying of Metro Lines and NHAI for upgradation of NH-236 in the said area, DMRC and NHAI had taken permission of the Ridge Management Board in the non-forest land having morphological features of the Ridge. Admittedly, no such permission is sought by the BRO.

xxxx xxxx xxxx

7. In these circumstances, we restrain the BRO from carrying out any further construction works on the land aforesaid till it obtains necessary clearance from the Ridge Management Board or the Hon'ble Supreme Court through the Central Empowered Committee.”

⁹ Hereinafter referred to as “the DRMB” or alternatively as “the Board”.

13. This court also had an occasion to consider the validity of the above order passed by the Delhi High Court in the case of ***Delhi Development Authority v. Kenneth Builders & Developers (P) Ltd***¹⁰. This court in the said case directed the CEC to investigate the matter of allotment of lands by the Delhi Development Authority¹¹ in the Morphological Ridge areas. The CEC submitted its Report dated 18th November 2015 to this court thereby recommending that construction on the Morphological Ridge area must be undertaken only after obtaining the clearance from the DRMB and after obtaining the permission of this court. It will be relevant to refer to the following observations of this court:

“22. However, a decision was rendered by the Delhi High Court in a case filed by Ashok Kumar Tanwar [WP (C) No. 3339 of 2011 decided on 30-11-2011 [Ashok Kumar Tanwar v. Union of India, WP (C) No. 3339 of 2011, decided on 30-11-2011 (Del)]] to the effect that a development project on land outside the notified Ridge area but having morphological features conforming to the Ridge would also require clearance from the Ridge Management Board and this Court. Therefore, as far as the present case is concerned though the project land falls outside the Ridge but has morphological features conforming to the Ridge bringing it within the extended

¹⁰ (2016) 13 SCC 561

¹¹ For short, “DDA”.

Ridge, the project of DDA involving non-forestry use of the land could be permitted only after obtaining clearance from the Ridge Management Board and after obtaining the permission of this Court.....”

14. Thereafter, this court has on various occasions considered the issue with regard to definition and legal sanctity of the “Morphological Ridge”. When the Directorate of Revenue Intelligence¹² was allotted land in the Morphological Ridge, this court directed the CEC to examine the issue. The CEC submitted its Report dated 1st December 2022 thereby recommending that the project be undertaken only after 5% of the project cost is deposited in the DRMB Fund. The DDA submitted its reply dated 6th February 2023 stating that the “Morphological Ridge” is without sanction of law and that the DDA cannot be made liable to pay. It was further the contention of the DDA that since the Forest Department has *never* defined the “Morphological Ridge” nor has quantified it, there cannot be any legal impediment against the DDA allotting lands in these areas. This court by an order dated 8th February 2023 passed in ***T.N.Godavarman Thirumulpad v. Union of India and others***¹³ allowed the

¹² For short, “DRI”.

¹³ 2023 SCC OnLine SC 1951

construction by the DRI subject to the terms and conditions as set out by the CEC in its report. Pertinently, this court found that the “Morphological Ridge” needs to be identified and, in that respect appointed a committee for the said purpose. It will be relevant to note the following observations of this court in the order dated 8th February 2023:

“**13.** The High Court of Delhi vide order dated 30.11.2011 in Writ Petition No. 3339/2011 (*Ashok Kumar Tanwar v. Union of India*¹), and this Court in *DDA v. Kenneth Builders & Developers (P) Ltd.*² [(2016) 13 SCC 561] has held that land falling outside the demarcation of notified ridge but having similar ‘morphological features’ of ridge should be given same protection as is given to the notified areas and no construction should be permitted thereon. It cannot be doubted that the ridge in Delhi acts as a lung, which supplies oxygen to the citizens of Delhi. The necessity to protect the ridge, therefore, cannot be undermined.

14. It appears that there has been some difficulty in identifying the areas of ridge, which are not notified but also have the same features.

15. We, therefore, find it appropriate that the Ministry of Environment, Forest and Climate Change (MoEFCC), appoints a Committee consisting of the following officials/officers, to work out the modalities for identifying the said area which has similar ‘morphological features’ as that of a notified ridge and which needs to be protected as a notified ridge...”

History of DRMB

15. The DRMB was constituted pursuant to an order dated 29th September 1995 passed by this court in the case of ***M.C. Mehta v. Union of India and Others***¹⁴ making it the primary authority for the conservation, protection and preservation of the Ridge.

16. It will be relevant to refer to the following observations made by this court in the order dated 29th September 1995:

“Pursuant to this Court’s order dated September 1, 1995, affidavits have been filed by Mr. DS Negi, Secretary Environment, Government of Delhi; Mr. DN Sapolia, Deputy Commissioner, Govt of Delhi, Mr. BM Nimesh, L&DO, Ministry of Urban Development and Mr. DP Singh, Director (Horticulture), MCD. The contents of these affidavits have been discussed with the learned counsel for the parties. Mr. Altaf Ahmad, learned Addl. Solicitor General stated before us on September 1, 1995 that the Lt. Governor had already taken a decision to constitute a Ridge Management Board. Mr Altaf Ahmad states that the orders in this respect are likely to be issued by the Lt. Governor shortly. Mr. Altaf Ahmad may place a copy of the order constituting the Board before this Court on the next date of hearing. The name of the conservators as members of the said Board may also be indicated.”

¹⁴ Writ Petition (C) No. 4677 of 1985

17. By a Government Order dated 6th October 1995, the Lieutenant Governor of Delhi constituted the DRMB, with the following members:

- i. Chief Secretary, Delhi
- ii. Vice Chairman, DDA
- iii. Secretary, Env. & Forests, Delhi
- iv. Finance Secretary, Delhi
- v. Representative of Indian Society of Environmental Management (NGO)
- vi. Representative of Prakarti – Centre for Environmental Protection & Development (NGO)
- vii. Conservator of Forests, Delhi (Member and Chief Executive)
- viii. Dy Conservator of Forests, Delhi

18. The membership and functions of the DRMB were amended from time to time. *Vide* Notifications dated 06th October 1995, 30th April 2013, 3rd July 2017 and 1st March 2021 the Board was reconstituted time and again.

19. The functions of the DRMB, at present, are as under:

- i. Execution of the management scheme for the Ridge Forests as the green lungs of Delhi;
- ii. Protection of the boundary and boundary fences of the Ridge;
- iii. Preparation and execution of detailed plans for upgradation of the Ridge in accordance with sound silvicultural practices applicable to city forests and natural resources;
- iv. Control of usage by the public of such areas of the Ridge Forests as may be declared as “open” by the Board;

- v. Ensuring that there are no encroachments in excess of the areas allotted to the lawful allottees till they are shifted from the Ridge Forests under appropriate orders;
- vi. Any other functions ancillary to the above purposes.
- vii. The Board may coopt for any of its meetings not more than two persons having special knowledge of forestry, regional ecology, nature conservation and related subjects.

20. It is pertinent to note that though there have been a number of notifications for the constitution of the DRMB, none of them trace their authority to the *Environment (Protection) Act, 1986*¹⁵ or any other statute. As such, the constitution of the DRMB is only pursuant to the orders passed by this court and without any statutory backing.

Working of the DRMB

21. In view of the order dated 7th September 2007 passed by this court in ***T.N.Godavarman v. Union of India and others***¹⁶, all diversion of forest land is to be preceded by the permission of the DRMB and also of this court. Such permissions have been granted subject to deposit of 5% of the estimated project cost with the DRMB.

¹⁵ Hereinafter referred to as, "the EP Act".

¹⁶ (2013) 8 SCC 200

22. This court has passed orders from time to time thereby permitting certain activities in the Ridge Areas/Extended Ridge Areas. A gist of the orders is as follows:

- a) 7th September 2007- For construction of bridge over the Neela Hauz water body;
- b) 7th December 2007- For construction of Express Metro Link to the Airport;
- c) 17th October 2008-For renovation, upgradation and new construction of Dr.Karni Singh Shooting Range, Tughlakabad, Delhi;
- d) 18th November 2011- Permission to DMRC;
- e) 2nd November 2012- For the construction of transit, training and other infrastructure facilities for the personnel of Border Road Organization;
- f) 21st October 2013- For underground tunnelling activity for construction of line 7 corridor in Phase-III of Mass Rapid Transport System project;
- g) 10th May 2016- For construction of staff quarters near Naraina Village;
- h) 10th November 2016- For construction of a project to Jawaharlal Nehru University;
- i) 05th February 2018- For engineered landfill at Tehkhand Okhla on 47.346 acres of land. However, the Court made it clear that for future landfill sites the concerned agencies shall not be allowed to be located in Delhi Ridge area/Ridge Forest/Morphological Ridge area;
- j) 22nd March 2018- Permission to NHAI for widening of National Highway and improvement of T-Junction near Dhaula Kuan Metro Station;

- k) 10th April 2018- Permission to Delhi Jal Board for laying of water pipeline;
- l) 29th August 2018- For construction of CBI Housing Complex;
- m) 26th September 2018- Permission for construction of Flyover and Underpass between Mahipalpur Bypass Road and Airport Road;
- n) 8th April 2019- For Referral and Research Army Hospital, Ministry of Defence;
- o) 4th November 2019- Permission to BSES Rajdhani Power Ltd. for laying the underground cables; and
- p) 29th November 2021- Phase IV of Mass Rapid Transportation Systems Project.

Multiple Authorities Supervising the Ridge

23. Apart from the DRMB, several other authorities have also been examining the issues pertaining to the Ridge. For instance, one *Sonya Ghosh* approached the National Green Tribunal¹⁷ by way of an OA bearing No. 58/2013 (***Sonya Ghosh v. Government of NCT of Delhi and others***¹⁸) seeking notification of the Ridge under Section 20 of the Forest Act. The learned NGT by order dated 15th January 2021 directed the Chief Secretary to notify the undisputed area within a period of three months and stated that there should be an action plan for removal of encroachments. The

¹⁷ Hereinafter referred to as, “the NGT”.

¹⁸ 2021 SCC OnLine NGT 608

learned NGT also appointed an Oversight Committee to be headed by the Director General, Forests, Ministry of Environment, Forest and Climate Change¹⁹ with other members, to oversee progress with regard to removal of encroachments from the Ridge.

24. It will be relevant to refer to the following observations of the learned NGT in ***Sonya Ghosh*** (*supra*)¹⁸:

“**17.** We direct constitution of an Oversight Committee (OC) to be headed by DG Forest, MoEF&CC, Government of India with the Secretaries Revenue and Forest, Delhi Govt., the PCCF, Delhi, the concerned Deputy Commissioners, Delhi and the nominees of Police Commissioner, Delhi and the Forest Survey of India, Dehradun as members. Main function of the OC will be to oversee progress with regard to the removal of encroachments from the Ridge, its protection by way of fencing/boundary wall and preparation of management plan for its restitution. The Committee will be free to co-opt any other authorities/Experts. The Nodal agency will be the PCCF, Delhi for coordination and compliance. First meeting of the Committee may be held within one month and thereafter review may be undertaken periodically preferably at least once in a month till the action plan is executed.”

25. It was noticed by this Court *vide* an order dated 6th August 2025 passed in the present proceedings that apart from the

¹⁹ Hereinafter referred to, as “MoEF&CC”.

DRMB, numerous other bodies were also constituted by the orders passed by this court, the High Court of Delhi and the learned NGT which were also entrusted with the task of monitoring the issue with regard to Ridge areas.

26. This Court by the said order was referring to the following different bodies/committees/authorities:

- i. Oversight Committee constituted *vide* order dated 15th January 2021 passed by the learned NGT in **Sonya Ghosh** (*supra*)¹⁸;
- ii. Centrally Empowered Committee constituted *vide* Judgment dated 30th November 2021 passed by the High Court of Delhi in **Ashok Kumar** (*supra*)⁸;
- iii. High-Powered Committee under order dated 8th February 2023 passed by this court in **T.N.Godavarman** (*supra*)¹³.
- iv. Committee under order dated 8th February 2023 passed by this court in **T.N.Godavarman** (*supra*)¹³ to identify the Morphological Ridge.

27. Noticing that a number of committees were monitoring the issue with regard to the Delhi Ridge area resulting in duplication of work, overlap of jurisdiction and even conflicting outcomes, this

court passed the aforesaid order on 6th August 2025. It will be appropriate to refer to the following paragraphs of the said order:

“1. We find that insofar as the issues concerning the Delhi Ridge are concerned, several committees are currently monitoring the issues. The authorities are required to seek permission from several committees/Bodies for land diversion, which, at times, results in conflicting orders.

2. We, therefore, direct the Ministry of Environment, Forest and Climate Change (MoEF&CC) to take all the stake holders on board, including the Government of NCT of Delhi, the CEC and the various Committees/Bodies appointed by this Court or the High Court of Delhi and to come out with a proposal wherein one uniform body can be entrusted with monitoring the issues relating to the Delhi Ridge.”

28. It is further relevant to note that the High Court of Delhi in the case of ***Devinder v. Lt. Governor and Others***²⁰ was considering the same issue. The High Court by judgment dated 8th November 2023 found the Chief Secretary to be *prima facie* in contempt of the order dated 15th January 2021 passed by the learned NGT. In its order dated 15th December 2023, the High Court observed thus:

²⁰ Writ Petition (C) No. 9965 of 2016

“3. The affidavit only seems to suggest that action will be taken in the near future but is totally silent as to what action has been taken till day from 08.11.2023, what is the time frame within which the notification will be issued and the time frame within which the encroachment will be removed from the Ridge land.”

29. It appears from the proceedings before the High Court that when the matter was heard on 8th January 2024, the Government of NCT of Delhi²¹ undertook to issue the Notification under Section 20 within four weeks. It will be relevant to refer to the undertaking recorded by the High Court in its order dated 8th January 2024:

“3. On the other hand, Mr. Satyakam, learned ASC, GNCT of Delhi submits that the steps for such process of issuance of notification has already been initiated, however it is taking some time to complete the same.

4. He seeks and is granted four weeks’ time to ensure that the notification under Section 20 of IFA, 1927 is issued within the same frame of time.”

30. It will also be relevant to note that this court itself was parallelly hearing the same issue in two separate proceedings *i.e.*, the present proceedings and ***MC Mehta v. Union of India*** (supra). Noticing all this, this court passed an order dated 24th July 2024

²¹ Hereinafter referred to as, “GNCTD”.

directing the Registrar (Judl.) to place the matter before Hon'ble the Chief Justice of India for constitution of a Special Bench.

Paragraphs 10 and 11 of the said order reads thus:

“10. We are of the considered view that, in order to avoid the possibility of conflicting order(s) being passed by two different Benches, it will be appropriate that all the matters pertaining to the Delhi Ridge Area are heard by one Bench.

11. The Registrar(Judl.) is, therefore, directed to place the matter before Hon'ble the Chief Justice of India seeking appropriate order.”

31. That is how the issue with regard to Delhi Ridge is before us in the present proceedings.

DISCUSSION AND ANALYSIS

32. We have heard Shri K. Parameshwar, learned Senior Counsel who is assisting this court as an Amicus Curiae and Ms. Aishwarya Bhati, learned Additional Solicitor General of India at length.

33. Three issues that fall for consideration before this court in the present proceedings are as under:

- i. Issuance of final notification of the Delhi Ridge under Section 20 of the Forest Act;

- ii. Removal of encroachments from the Delhi Ridge and the Morphological Ridge from at least 9th May 1996; and
- iii. The identification of Morphological Ridge.

Status of Final Notification under Section 20

34. The learned NGT *vide* an order dated 15th January 2021 in ***Sonya Ghosh*** (supra) and the High Court of Delhi by an order dated 8th January 2024 in ***Devinder*** (supra)²⁰ have directed the GNCTD to issue final notification under Section 20 of the Forest Act. However, the final notification has not been published yet. In the Status Report dated 8th August 2024, the GNCTD has stated that they are still in the process of settlement of rights and that the joint demarcation of the ridge areas is still underway.

35. It cannot be gainsaid that the effect of non-notification of Ridge as Reserve Forest deprives the said area of any protection. We are, therefore, of the view that without proper statutory protection, it would not be possible to properly preserve the integrity of the Ridge. We find that the GNCTD has not acted with swiftness in protecting the Ridge. Though this court observed as early as in May, 1996 that the Government has not taken proper

steps for conservation of the Ridge, not much has been done even after a lapse of almost three decades therefrom.

Removal of Encroachments

36. The CEC and various other authorities have found that the Ridge Areas are now being rampantly encroached. The entire purpose of the ecological conservation of the Ridge is futile if illegal constructions are coming up throughout the area and the very purpose of the order dated 29th September 1995 passed by this court in **M.C.Mehta** (supra)¹⁴ regarding creation of the DRMB would be frustrated if no steps are taken to contain such rampant encroachments. However, there does not appear to be any active steps taken by GNCTD towards securing the Ridge to preserve its sanctity.

Identification of the Morphological Ridge

37. As observed hereinabove, the Morphological Ridge is an equally important portion which requires preservation. The stand taken by the DDA in the DRI matter that the Morphological Ridge has no legal backing, requires to be seriously addressed by the Committee appointed by this court by order dated 8th February

2023 in **T.N.Godavarman** (supra)¹³. Though a preliminary report was submitted, the Committee is yet to submit its final report.

38. We are, however, of the view that without proper identification or preservation of the Ridge, the integrity of the entire ecology would be compromised. The Ridge acts as the green lungs of the city, especially in the present conditions of increased pollution. We, therefore, find that the DRMB needs to actively work towards protecting and preserving the Delhi Ridge after its due identification.

Reconstitution of the DRMB

39. It will be relevant to note that CEC in its Report dated 8th May 2024 (5th Report of 2024) also found that “*the management of Ridge Land does not seem to be up to the mark.*” The said Report was placed before this court and this court *vide* order dated 6th August, 2025 directed the MoEF&CC to take all stakeholders on board including the GNCTD, the CEC and the various committees/bodies appointed by this court or the High Court of Delhi or the learned NGT and to come out with a proposal wherein one uniform body can be entrusted with monitoring the issues relating to the Delhi Ridge.

40. The MoEF&CC has filed its compliance affidavit dated 7th October 2025 stating that a Ridge Management Board will be constituted under the Chairmanship of Chief Secretary, GNCTD with a total of 12 members. However, it is to be noted that the proposal does not mention the statutory basis for the DRMB, *i.e.*, under what provisions, the DRMB has been constituted.

Statutory Backing of the DRMB

41. As has been observed by us hereinabove, the DRMB has been acting without any statutory authority. The Original Notification dated 6th October 1995 was issued only pursuant to this court's order dated 29th September 1995 in ***M.C.Mehta*** (supra)¹⁴ and that too without any statutory backing for the Board. We are, however, of the considered view that without a statutory backing, it will not be possible for the Board to function effectively.

42. A statutory backing will firstly ensure that the fundamental principles of administration would directly apply to the Board. Secondly, a statutory authority working under Section 3(3) of the EP Act would be subject to the jurisdiction of the NGT under Section 14 of the *NGT Act, 2010*. Thirdly, the accountability and

transparency required of a statutory body, such as publication of reports on websites, being subject to the *RTI Act*²² etc., would be ensured by the Board being an Authority under Section 3(3) of the EP Act.

43. We may also note that the CEC was also working as an *ad-hoc* body without having any statutory backing until the MoEF&CC *vide* Notification dated 5th September 2023 granted statutory recognition to it upon a judgment passed by this court thereby deprecating the practice of *ad-hoc* institutions and requesting the learned Solicitor General of India to institutionalize it as an authority under the EP Act. This court *vide* judgment and order dated 31st January 2024 passed in ***T.N. Godavarman Thirumulpad v. Union of India and Others***²³ observed thus:

“**20.** We find that by virtue of the Notification dated 05.09.2023, our concerns regarding the functioning of the CEC as an *ad hoc* body and that hereinafter it should be institutionalised as a permanent body have been taken care of. The said Notification provides for the constitution of the CEC, its powers, functions, mandate, members, method of

²² short for ‘Right to Information Act, 2005’

²³ (2024) SCC OnLine SC 86

appointment, terms of service, and monitoring of its functioning.”

44. It will be relevant to note that this court in the case of ***Madhya Pradesh High Court Advocates Bar Association and Another v. Union of India and Another***²⁴ has held that the learned NGT under Sections 14 and 22 of the NGT Act does not oust the High Court’s jurisdiction under Articles 226 and 227 as the same is part of basic structure of the Constitution. It is further held that the appeal to this court under Section 22 of the NGT Act is *intra vires* the Constitution of India. In the said case, the court held thus:

“**45.** In consequence of the above analysis, our conclusions are:

A. The National Green Tribunal under Section 14 & 22 of the NGT Act does not oust the High Court's jurisdiction under Article 226 & 227 as the same is a part of the basic structure of the Constitution.

B. The remedy of direct appeal to the Supreme Court under Section 22 of the NGT Act is *intra vires* the Constitution of India.”

45. It can thus be seen that if the DRMB is given statutory status, its orders can be judicially scrutinized either by the learned NGT under Section 14 of the NGT Act and by this court

²⁴ (2022) SCC OnLine SC 639

by way of appeal under Section 22 of the said act or by the High Court under Articles 226 and 227 of the Constitution of India.

46. In the judgment of this court dated 31st January 2024 in ***T.N.Godavarman*** (supra)²³, this court held that *environmental rule of law* fosters open, accountable, and transparent decision-making and participatory governance. It has been held that the renewed role of constitutional courts will be to undertake judicial review to ensure that institutions and regulatory bodies comply with the principles of environmental rule of law. It will be relevant to note the following observations made by this court in the said case:

“32. In furtherance of the principles of environmental rule of law, the bodies, authorities, regulators, and executive offices entrusted with environmental duties must function with the following institutional features:

- i. The composition, qualifications, tenure, method of appointment and removal of the members of these authorities must be clearly laid down. Further, the appointments must be regularly made to ensure continuity and these bodies must be staffed with persons who have the requisite knowledge, technical expertise, and specialisation to ensure their efficient functioning.

- ii. The authorities and bodies must receive adequate funding and their finances must be certain and clear.
- iii. The mandate and role of each authority and body must be clearly demarcated so as to avoid overlap and duplication of work and the method for constructive coordination between institutions must be prescribed.
- iv. The authorities and bodies must notify and make available the rules, regulations, and other guidelines and make them accessible by providing them on the website, including in regional languages, to the extent possible. If the authority or body does not have the power to frame rules or regulations, it may issue comprehensive guidelines in a standardised form and notify them rather than office memoranda.
- v. These bodies must clearly lay down the applicable rules and regulations in detail and the procedure for application, consideration, and grant of permissions, consent, and approvals.
- vi. The authorities and bodies must notify norms for public hearing, the process of decision-making, prescription of right to appeal, and timelines.
- vii. These bodies must prescribe the method of accountability by clearly indicating the allocation of duties and responsibilities of their officers.
- viii. There must be regular and systematic audit of the functioning of these authorities.”

47. The MoEF&CC has opposed giving statutory status to the DRMB. It has expressed apprehension that if the Central Government issues a notification, there will be an overlap of other authorities. However, we do not find any substance in the said submission of MoEF&CC. The very purpose of the earlier orders passed by this court and the present judgment is to avoid having multiple authorities considering the issue with regard to the Delhi Ridge. We, therefore, propose to direct the DRMB to be a single-window authority insofar as issues concerning Delhi Ridge are concerned. Like the CEC, if the DRMB is also given a statutory status, it will be in a position to function effectively and also be accountable and answerable.

Representative of the CEC in the DRMB

48. We further find that rather than the DRMB reporting to the CEC every now and then and having two levels of scrutiny, it will be appropriate that a representative of CEC is made a member of the DRMB. It is only pursuant to the Report of the CEC that the present litigation has commenced. The CEC has also been integral to the protection of the Ridge insofar as it has submitted

numerous reports to this court regarding encroachments and permissions for construction in the Ridge areas.

49. The MoEF&CC has submitted that a member of the CEC may be co-opted as and when the DRMB requires. However, it is to be noted that the CEC is a nodal body appointed by this court to look after the environmental issues in the country. The CEC has done yeomen service for the last 3 decades in preserving the environment by bringing to the notice of this court the environmental issues which are plaguing the nation. Since the CEC is continuously assisting this court as far as environmental matters are concerned, the presence of its representative would only add to the strength of the DRMB.

Standing Committee for DRMB

50. We are also of the considered view that taking into consideration the constitution of the DRMB, it would not be possible for it to regularly function on a day-to-day basis. It will, therefore, be appropriate that the DRMB constitutes a Standing Committee which can look after the day-to-day affairs of the Board. We may also take note that for the National Board for Wildlife, constituted under Section 5A of the *Wildlife Protection Act*,

1972²⁵, the Hon'ble Prime Minister is the Chairperson. However, the day-to-day functioning of the National Board for Wildlife is executed through its Standing Committee which is constituted under Section 5B of the WP Act.

51. We, however, find that the Standing Committee must consist of experts and technicians who have worked in the field of conservation. We further find that for the purpose of preservation and protection of Delhi Ridge, it is necessary that the Standing Committee should meet regularly.

52. The MoEF&CC has opposed the proposal for constitution of a Standing Committee on the ground that under the Chairmanship of the Chief Secretary, DRMB would be able to ensure the active engagement of all the members. However, it is to be taken note of that the proposed DRMB consists of senior officers from various departments and as such, it would not be practical for the DRMB to meet on a day-to-day basis thereby necessitating the constitution of a Standing Committee.

²⁵Hereinafter known as, "the WP Act".

Functions of the DRMB

53. Having considered the issues with regard to constitution of the DRMB and the Standing Committee, it is now necessary to consider as to what will be the functions of the DRMB.

54. The core functions of the DRMB must be directed towards conservation of the existing Ridge Forests and removal of existing encroachments from the Ridge. The very purpose of the DRMB is to preserve the integrity of the Ridge, as a morphological and ecological feature. Therefore, the DRMB should focus on preservation of existing Ridge forests and further improving the areas through scientific conservation measures. The DRMB should also ensure that fragmentation of Ridge Forests is prevented.

55. This court recently in judgment dated 6th March 2024 pronounced in ***T.N. Godavarman Thirumulpad v. Union of India (In Re: Gaurav Kumar Bansal)***²⁶ has observed thus:

“173. It could thus be seen that, worldwide as well as in our jurisprudence, the law has developed and evolved emphasizing on the restoration of the damaged ecological system. A reversal of environmental damage in

²⁶ (2025) 2 SCC 641

conformity with the principle under Article 8(f) of the CBD is what is required.

At times, the compensatory afforestation permits forestation at some other site. However, the principle of restoration of damaged ecosystem would require the States to promote the recovery of threatened species. We are of the considered view that the States would be required to take steps for the identification and effective implementation of active restoration measures that are localized to the particular ecosystem that was damaged. The focus has to be on restoration of the ecosystem as close and similar as possible to the specific one that was damaged.

XXXX XXXX XXXX

175. We find that, bringing the culprits to face the proceedings is a different matter and restoration of the damage already done is a different matter. We are of the considered view that the State cannot run away from its responsibilities to restore the damage done to the forest. The State, apart from preventing such acts in the future, should take immediate steps for restoration of the damage already done; undertake an exercise for determining the valuation of the damage done and recover it from the persons found responsible for causing such a damage.”

(emphasis supplied)

56. We are of the considered view that in tune with aforesaid, the DRMB must work with the sole purpose of preservation and restoration of the Delhi Ridge area.

CONCLUSION AND DIRECTIONS

57. We, therefore, pass the following order:

i. We direct the MoEF&CC to constitute the DRMB by issuing notification under Section 3(3) of the EP Act with the membership as under:

1. Chief Secretary, GNCT of Delhi, Chairman
2. Vice-Chairman, Delhi Development Authority, Member
3. Representative of the Director General of Forests & Special Secretary, MoEF&CC, Government of India, not below the rank of Inspector General of Forests, Member
4. Representative of the Ministry of Housing and Urban Affairs, GoI (not below the rank of JS), Member
5. Commissioner, Municipal Corporation of Delhi, Member
6. Chairman, New Delhi Municipal Council, Member
7. Director General, Central Public Works Department, Government of India, Member
8. Representative of the Commissioner of Police, Delhi (not below the rank of Joint Commissioner), Member

9. Principal Secretary/Secretary (Environment & Forests), GNCTD, Member
 10. Principal Secretary/Secretary (Land Revenue), GNCTD, Member
 11. Two representatives from NGOs and Civil Societies (to be nominated by GNCT of Delhi), Member
 12. Principal Chief Conservator of Forests, GNCTD, Member-Secretary
 13. Representative of Central Empowered Committee (CEC), Member
- ii. The DRMB on its constitution would constitute a Standing Committee as under:
1. Member of the CEC, Chairperson;
 2. Principal Chief Conservator of Forests, GNCTD;
 3. Two Representatives from NGOs and Civil Societies who are already part of the DRMB;
 4. Nominee of the Chief Secretary, GNCTD; and
 5. Nominee of the Delhi Development Authority.

The nominees to be appointed by the Chief Secretary, GNCTD and DDA must be experts in the field of conservation.

iii. The functioning of the DRMB would be as under:

- a) The Board shall act as a single-window authority insofar as the Delhi Ridge and the Morphological Ridge is concerned;
- b) The Board must ensure the preservation of the Delhi Ridge and Morphological Ridge in its pristine glory by removing all encroachments and taking all necessary steps to improve the Ridge;
- c) The Board must remove all encroachments in the Delhi Ridge as well as the Morphological Ridge;
- d) The Board must duly ensure that the identification process of the Morphological Ridge is complete as per order dated 8th February, 2023 in ***T.N. Godavarman*** (supra)¹³ and report its compliance, along with comments, if any, to this court;
- e) The Board must ensure the protection, scientific management, ecological restoration of the Ridge and the Morphological Ridge including afforestation and habitat conservation;

- f) The Board must submit periodic Reports every six months to this court regarding the status of the Ridge and the Morphological Ridge and the compliance of the directions of this court;
 - g) The Board must act fairly and transparently in discharge of its functions – this would include having a website, provide public notices for hearings in advance, public consultation, and uploading of reports on the website as soon as they are placed before this court or any other Authority; and
 - h) All authorities in the territory of the NCT of Delhi must act in aid of the discharge of duties of the Board.
- iv. The Member of the CEC who will officially act as the representative to the DRMB is directed to report to this court every three months on proper functioning of the DRMB and the Standing Committee.

58. Before we part with this judgment, we place on record our appreciation for the valuable assistance provided by Ms. Aishwarya Bhati, learned ASG and Mr. K. Parameshwar,

learned Amicus Curiae ably assisted by Mr. Mukunda, Ms. Kanti,
Mr. Shreenivas Patil and Ms. Raji Gururaj.

.....CJI
(B.R. GAVAI)

.....J
(K. VINOD CHANDRAN)

**NEW DELHI;
NOVEMBER 11, 2025.**

3404

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
14.12.2018	080419

Dated : 08.04.2019

Coram

The Hon'ble Mr. Justice **T.S. SIVAGNANAM**

and

The Hon'ble Mrs. Justice **V.BHAVANI SUBBAROYAN**

Writ Petition Nos.16630, 16146, 16961, 19063, 19385, 20014, 20194, 20625 to 20627, 20647, 20764, 20969, 21242, 22334 & 22371 of 2018 & CrI.O.P.No.22714 of 2018 and W.M.P.Nos.19202, 19829, 19830, 20201, 20202, 22786, 23432, 23433, 24238 to 24246, 24268, 24619, 24907, 24908, 26170, 26203, 27143, 38839 & 38842 to 38844 of 2018

W.P.No.16630 of 2018:-

P.V.Krishnamoorthy

.. Petitioner

-VS-

- 1.The Government of India,
Rep., by the Secretary,
Ministry of Road Transport and Highways,
Transport Bhawan,
No.1, Parliament Street,
New Delhi -110001.
- 2.The Government of India,
Rep., by its Director,
Impact Assessment Division,
Ministry of Environment, Forest and Climate Change,
Indira Parayavaran Bhawan,
3rd Floor, Vayu Wing, Jor Bagh Road,
Aliganj, New Delhi - 110003.

3.The District Revenue Officer,
Dharmapuri District.

4.The Project Director,
Project Implementation Unit,
SRI Towers, 3rd Floor,
DP-34(SP) Industrial Estate,
Guindy, Chennai – 600 032.

.. Respondents

Prayer:- PETITION under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the 1st respondent's S.O.2063(E) dated 23rd May, 2018 under sub-section (1) of Section 3A of the National Highways Act, 1956 (48 of 1956) published in the Gazette of India Extraordinary No.1868, dated 24th May, 2018 and 3rd respondent's consequent notification in Na.Ka.No.4136/2018-u, dated 29.05.2018 in Daily Thanthi dated 31.05.2018 and quash the same.

For Petitioners

(i) In W.P.Nos.16146, 19063 and 20194 of 2018:-
Mr.M.L.Ravi,
For Mr.Santhosh Nagarajan
and Mr.T.Sivagnanasambandan

(ii) In W.P.Nos.22371, 20647 and 22334 of 2018:-
Mr.T.Mohan
For Mr.K.Balu,
Mr.M.R.Jothimanian
and Mr.M.R.Elavarasan

(iii) In W.P.No.20014 of 2018:-

Mr.N.L.Raja, Senior Counsel
assisted by Mr.K.Balu,
Mr.M.R.Jothimanian
and Mr.M.R.Elavarasan

(iv) In W.P.Nos.20625 to 20627 of 2018:-

M/s.D.Nagasaila assisted by Ms.S.Tanvi

(v) In W.P.No.16630 of 2018:-

Mr.K.Sakthivel

(vi) In W.P.No.16961 of 2018:-

Mr.V.Balu

(vii) In W.P.No.19385 of 2018:-

Mr.R.Thiyagarajan, Senior Counsel
assisted by Mr.P.Gurusamy

(viii) In W.P.No.20674 of 2018:-

Mr.A.Nagarathinam

(ix) In W.P.No.20969 of 2018:-

Mr.C.Kanagaraj

(x) In W.P.No.21242 of 2018:-

Mr.P.Raja
and Mr.Kabilan Manoharan

(xi) In W.P.No.22714 of 2018:-

M/s.A.Rajeswari Karthikeyan

For Respondents:

(i) For RR 1 to 3 and 5 in W.P.Nos.22371 and 20647 of 2018
R4 in W.P.No.16630, 19063 and 16961 of 2018

For R2 in W.P.No.20194 of 2018

For R1 in W.P.Nos.20625 to 20627 of 2018

For RR1, 2 and 5 in W.P.No.24764 of 2018

For RR1, 2 and 4 in W.P.No.20969 of 2018

For RR1, 2 and 3 in W.P.No.21242 of 2018

For RR1 to 3 and 5 in W.P.No.22334 of 2018:-

Mr.G.Rajagopalan, Additional Solicitor General of India
 assisted by Mr.G.Karthikeyan, Asst. Solicitor General of India

(ii) For R4 in W.P.Nos.20625 to 20627 of 2018
and for R7 in W.P.No.21242 of 2018

Mr.T.V.Ramanujam, Senior Counsel
 assisted by Mr.S.Akshay Ringe,
 Mr.M.Vivekanandan
 and Mr.R.Murali

(iii) For R3 in W.P.No.16146 of 2018
For RR4 and 7 in W.P.No.22371 of 2018
For R3 in W.P.No.16630 of 2018
For RR 5 to 9 in W.P.No.16961 of 2018
For RR1 to 3 and 5 to 9 in W.P.No.19063 of 2018
For R8 in W.P.No.19385 of 2018
For R1 in W.P.No.20194 of 2018
For RR2 to 4 in W.P.Nos.20625 to 20627 of 2018
For RR4 and 7 in W.P.No.20647 of 2018

For RR3, 4, 6 to 15 in W.P.No.20969 of 2018

For RR4 to 6 in W.P.No.21242 of 2018

For RR4 and 7 in W.P.No.22334 of 2018

Mr.Vijay Narayan, Advocate General
 assisted by Mr.V.Jaya Prakash Narayanan, Govt. Pleader,
 and Mr.C.Thirumaran, Special Govt. Pleader

(iv) For R6 in W.P.Nos.22371, 22334 and 20647 of 2018
R8 in W.P.No.20014 of 2018
M/s.G.Hema, Spl. PP

(v) For R3 in W.P.No.20969 of 2018:-
M/s.R.Maheswari
and Mr.N.Vijayakumar

(vi) In W.P.No.22714 of 2018:-
M/s.Krithika Kamal, Government Advocate (Crl. Side)

(vii) For RR1 and 2 in W.P.No.16630 of 2018:-
Mr.Venkata Swamy Babu, Senior Panel Counsel

COMMON ORDER

T.S.SIVAGNANAM,J.

In this batch of Writ Petitions, the challenge is to the notification issued under the provisions of the National Highways Act, 1956, (hereinafter referred to as the 'Act'), proposing to acquire lands for the Salem-Chennai Eight Lane Highway Green Field Project. The project is part of the 'Bharatmala Pariyojana', a project conceived by the Central Government. The project is termed as "Green Field Project", as it is a new road to be formed, while widening of existing highway is termed as 'Brown Field Project'.

2. The petitioners before us can be categorised into two, namely, those whose lands are sought to be acquired for the proposed project and public interest litigants who are opposing the land acquisition proceedings. The authorised officer for the project is the District Revenue Officer of the concerned District through which the proposed project is to be implemented. The authorised officer/s issued notification under Section 3A(1) of the Act stating that the Central Government is satisfied that for a public purpose the lands owned by the petitioners are required for development of a Green Field Highway Project and accordingly, declared its intention to acquire the lands of the petitioners/land owners.

3. This notification has been challenged by the petitioners, whose lands are sought to be acquired as well as the public interest litigants. The objections raised by the persons, whose lands are sought to be acquired could be summarised as follows:-

It is submitted that the Government of India has proposed the subject project at an estimated cost of about Rs.10,000 crores to develop a 276kms highway connecting Chennai and Salem. There are three highways between Chennai and Salem i.e., NH48 and NE2 passing through Chennai, Kancheepuram, Vellore, Krishnagiri,

Dharmapuri and Salem with the length of 352.70kms with 4/6 Lane configuration. The second route being NH48 and SH18 (New NH179A) passing through the same districts with the length of 331.89kms with 2/4 Lane configuration and the third route NH32, NH132, NH38, NH79 and NE-2 passing through Chennai, Villupuram and Salem Districts with the length of 334.28kms with 2/4Lane configuration. The petitioners would contend that the bottleneck lies between Chennai to Vandalur and Chennai to Kancheepuram in these three routes and if the said Section is widened, the same shall reduce the travelling time not only between Chennai and Salem, but also Chennai to other important cities and towns in Tamil Nadu and the neighbouring States. The petitioners would contend that the proposed project is in noway going to ease the congestion as the travel from Chennai outer ring road to end of Salem bye-pass by all the existing roads would take the same travel time and the newly proposed project highway will reduce the distance only by 40kms without taking into account distance from Chennai to Vandalur bye-pass and Salem town to Salem bye-pass and if these stretches are included, the distance is more or less as that of the other roads. It is further contended that the proposed route of the project highway passes through Forest land, hilly areas, fertile agriculture lands and

residential areas and therefore, the land owners and the public of the respective areas and the environmental activist have raised strong objections to the proposed project highway.

4. The petitioners would state that the Project Director of the National Highways Authority of India (NHAI) submitted terms of reference to the Ministry of Environment and Forest and Climate Change (MoEF) on 19.04.2018, the Expert Appraisal Committee for project of MoEF in its 189th meeting held on 07.03.2018, considered the terms of reference relating to the proposed project and recommended the Environmental Impact Assessment with project specific and the general terms of reference. While environmental clearance was pending, the Central Government authorised the competent authorities who are the District Revenue Officers of the Districts to initiate action under the provisions of the Act for acquiring the lands and accordingly notification under Section 3A(1) of the Act was published in the Gazette of India as well as in the dailies notifying the lands owned by the petitioners are proposed to be acquired for the subject project. The landowners filed their objection on 04.06.2018 in response to the paper publication, dated 31.05.2018 and they would state that the Police personnel did not

allow the petitioners in W.P.No.16630 of 2018 and other landowners/objectors to enter Dharmapuri town and the competent authority did not conduct any enquiry on 19.06.2018. Subsequently, the MoEF vide letter dated 08.06.2018, issued the terms of reference, which clearly shows that it does not mean to grant environmental clearance for the proposed project. Subsequently, the MoEF issued a revised notification thereby the length of the project stood reduced. Thus, the petitioners' contention is that without prior environmental clearance no activity can take place including land acquisition and if done, it will be against public interest. The petitioners would state that until the Central Government obtains the environmental clearance for the proposed project, the question of being satisfied that the lands are required for the public purpose would not arise and the same is contrary to the provisions of the Environmental Protection Act, 1986. However, contrary to this position, the land acquisition proceedings were initiated which necessitated the petitioners to approach this Court by filing the Writ Petitions challenging the notification issued under Section 3A(1) of the Act.

5. It is further submitted that the proposed project if allowed to be implemented without prior environmental clearance, it would be against the principles of sustainable development and would violate the provisions of Article 19, 47, 48A and 51A of the Constitution of India.

6. The other Writ Petitioners, whose lands are to be acquired submitted that the Collector of Salem made public announcement in the media by convening press meeting and stated that the Government will provide suitable compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter referred to as the 'Act 30 of 2013'), however the landowners will be deprived of their fertile agricultural lands and their livelihood would be affected. In order to justify their stand that there is no need for the proposed project highway, the details and statistics regarding the Passenger Car Units (PCUs) in the existing three highways were highlighted. It is submitted that there is a hidden agenda for the proposed project owing to rich iron ore deposits in Kanjamalai hills, bauxite deposits in Kalvarayon hills and platinum deposits in the hills in Namakkal district. The petitioners

would further state that they reliably understand that there are more than 2 lakh MTs of rich deposits of iron, bauxite, platinum in Salem, Namakkal and Tiruvannamalai Districts. Further, a company under the name and style M/s.J.S.W. Steels Ltd., in Mecheri in Salem District, are stated to have acquired about 4000 acres of land in and around Salem Steel Plant in order to exploit the available natural resources like iron ore, bauxite and platinum and the purpose of the proposed project is not for a public purpose, but with a hidden agenda. Further, it is submitted that identical Eight Lane Express Way project was to be implemented in the State of Kerala with an investment of Rs.26000 crores, has been opposed by public and the project is under way because impact assessment is required to be done prior to implementation of the project. Thus, it is contended that before implementing the proposed project, NHAI has to conduct a survey of Impact Assessment in a phased manner by ascertaining the road essentiality and this would require a minimum of six months period after which only other steps can be taken. Further, it is submitted that the project which was originally conceived by the Government of India scheme was between Chennai and Madurai but however, for reasons best known, it has been changed to Salem to Chennai. The impact of the proposed

project on the Forest land, water bodies, wildlife, flora and fauna were elaborately set out by the petitioners. Thus, it is the contention that only during the course of preparing the environmental impact assessment report as per the guidelines issued in the terms of reference, it can be ascertained as to whether the project could be implemented or not. Public hearing is a pre-requisite and it should precede any step that may be taken under the provisions of the Act. It is further submitted that from the counter affidavit filed by the NHAI, it is clear that the notification originally issued stands modified and consequently, the draft feasibility report prepared by the consultant has to be eschewed and if at all the Government decides to proceed it can do so only by initiating the process afresh from its inception. Further, by referring to portions of the draft feasibility report, it is submitted that the report has been prepared in great haste which is evident from the glaring errors which are apparent on the face of the report, such as, there is a reference to a road project in China, there is a reference to the terms of reference pertaining to a project in Bangalore, these would go to show that there has been no due application of mind by the consultant while preparing a draft feasibility report. Further, the consultant did not conduct a survey of the existing roads, there has

been no comparative cost or benefit analysis done. The Indian Highway Capacity Manual lays down guidelines which appear to have been ignored while preparing the draft feasibility report. Furthermore, the right of way has been reduced in non-Forest areas as well as Forest areas and consequently, the scope of the project stood totally amended and the respondents cannot proceed in the manner, they propose to do. Further, the environmental clearance notification dated 14.09.2006, uses the word "prior" which shall mean that prior approval is mandatory and failure to obtain prior approval will result in serious and disastrous consequences.

7. The public interest litigants in the challenge to the acquisition proceedings would contend that in the absence of an Environmental clearance, Forest clearance and final approval by the NHAI, the project is violative of Articles 14, 19 & 21 of the Constitution of India. It is submitted that the proposed project highway is still in the planning stages, the detailed project report including the environmental impact assessment is yet to be prepared and collection of data has commenced and therefore, to acquire vast tracks of land on the basis of unapproved alignment is arbitrary and shows complete non-application of mind on the part of

the official respondents. The notification issued under Section 3A(1) of the Act is not only arbitrary, but pre-mature, since the proposed alignment is yet to be approved. The action of the official respondents in proceeding with the acquisition proceedings has lead to failure of the constitutional duties cast upon them under Article 51A, which mandates them to protect and preserve environment. Further, as per the terms of reference issued by MoEF, dated 08.06.2018, the environmental impact assessment report should provide details of an alternate alignment from the proposed alignment and there is a very realistic chance that the proposed alignment on the basis of which the acquisition has commenced will be altered drastically.

8. The Environmental Impact Assessment Manual, 2010 directs that after identifying the transportation problem and all means of addressing such problems should be considered and only if it is determined that the only option is a new road, then they issue design to form the same and what would be its design, alignment, causing least damage to the environment and the local people. The report prepared by the consultant M/s.Feedback Infra Pvt., Ltd., contains plagiarized content from other reports, which is evident

from the fact, that it states that this project would benefit the woman of XI'AN a province of China and reference to how HIV prevention action was taken both of which are unconnected to the subject highway project. Thus, the feasibility report prepared by the consultant for Rs.10000 crores project was done in a grossly negligent manner which has been accepted by the NHAI, which shows complete non-application of mind. It is further submitted that in the absence of environmental impact assessment and social impact assessment, the authorities concerned would have no clear idea as to how to visualise likely environmental impact that the project would entail. The impugned acquisition will impact the rights of the landowners even before the environmental assessment is done. The terms of reference dated 08.06.2018, directs to reanalyse options of possible routes in respect of their suitability from environmental point of view; realignment from Chengam to Salem to avoid Kalvarayan hills and assessment of proposed road alignment on wet lands including tanks and reservoirs along the alignment and its mitigation strategy. By referring to this document, it is contended that alignment proposed by the NHAI has not been approved and is liable to change. The NHAI issued a request for proposal dated September 2017 for consultancy services

for preparation of DPR for development of economic corridors, inter corridors, feeder routes and national corridors to improve the efficiency of freight movement in India under Bharatmala Priyोजना (Lot No.6). In the said lot, the corridors which were notified where Chennai-Madurai NH132 NH32, NH38, Mumbai-Kanyakumari NH66 and Coimbatore-Trichy-Tanjore NH83. Thus, it is contended when the consultant was appointed, the proposed highway project was not even considered as a viable proposal and there is no explanation as to why the Chennai-Madurai Highway proposal was dropped and replaced by the proposed highway project. As per the scope of services for the consultant would consist of basically eight stages namely, inception, feasibility, land acquisition and clearances, detailed project report, technical schedules, land acquisition stage-2 and project clearances, land acquisition stage-3, award and determination of compensation and land acquisition stages-4 and taking over possession. Out of the above stages, stages 3, 5 & 6 are to be done simultaneously with stages 2 & 4 i.e., land acquisition and bids will be simultaneous with the statutory clearances of the project. It is submitted that the condition imposed by the NHAI is arbitrary and renders stages 2 & 4 as a mere paper work, if the project commences even before its feasibility is

established and clearances have been obtained. Therefore, assuming the project can be implemented, the land acquisition process can commence only after completion of stage 4 and any other interpretation would render the process of giving clearances meaningless. Further, it is submitted that in exercise of the powers conferred on the Central Government under the Environment Protection Act, 1986, the Environment Impact Assessment Notification 2016, was issued. This notification details the different types of project that would need to obtain environmental clearance prior to commencing the project. Regulation No.2 of the notification provides that prior environmental clearances is required for all projects provided in the schedule to the notification. Item No.7(f) of the schedule deals with highways and it states that if a new highway is being constructed when such a project is classified as category 'A' project. Regulation 4 states that there are two kinds of projects, category 'A' project which need environmental clearances from the Central Government and category B project which come within the purview of the respective States. Therefore, it is submitted that a new highway project needs to receive prior environmental approval from the Central Government before commencing construction work. It is further submitted that as per

EIA notification, dated 14.09.2006, there are four stages to the prior environmental clearances for new projects, namely, (1) screening (2) scoping (3) public consultation and (4) appraisal. The stage of screening is only required for category 'B' project and does not apply to category 'A' project. Thus, for the proposed project highway, the procedure for obtaining environmental impact assessment clearance commences with the process of scoping followed by public consultation and ultimately approval. The procedure for obtaining environmental clearance is to submit an application in form No.1 and this application is stated to have been submitted by the NHAI on 23.04.2018. In the said application, it has been stated that Forest clearance has to be obtained and the application for the same will be made and the area in the Forest land is yet to be finalised. Further the exact extent of the agriculture land has not been provided by the NHAI, but they would vaguely commit that the agricultural land is required without specifying the length, the extent, they intend to acquire. After referring to the various steps, which are mandated as per the procedure, it is submitted that the facts clearly show that the alignment provided in the draft feasibility report is not final and part of the mandatory requirement of the terms of reference is to

explore all alternatives including the possibility of not having the project altogether.

9. It is further submitted that upon finalisation of the terms of reference, the project proponent, NHAI has to collect data for EIA report on the basis of finalising the terms of reference. The said EIA report should contain detailed analysis of all alternatives including alternate transport option, alternate sites or alignments etc. Once a summary of EIA report is available, the next important step is conducting public consultation, which is a very important step and not an empty formality and it is indispensable. In terms of condition XXVI of the terms of reference mandates a social impact assessment to be conducted. Further, it is contended that the public consultation allow the authorities to gauge, the acceptability of the project and verification of EIA details and without such public consultation, a complete assessment is not plausible. There are two parts to the public consultation, the first being a public hearing at the site or in close proximity, district-wise, to determine the concerns of the local people. The second is when written responses are received from the concerned persons, who have a plausible stake in the environmental aspect of the project, a public hearing

must be conducted by the State Pollution Control Board or any other public agency or authority and to complete the same within 45 days. The draft EIA report and the summary EIA report have to be made available by NHA I in local language and they have to be widely publicized and made known to the local people, so that they can take an informed decision during public consultation. The entire proceedings are to be videographed and the officials of the NHA I have to be present at the venue and present the details of the project and answer the queries raised in the hearing. The entire proceedings are to be recorded in writing and the minutes have to be read out and only after the public agree to the recorded minutes, it can be signed by the relevant authorities of the Pollution Control Board. For the purpose of submission of objections, the authority should upload the details of the project including the summary EIA report and connected documents within seven days from the receipt of a request for public consultation. Once views from the public consultation and written views have been received, the NHA I has to address all the environmental concerns raised and make appropriate changes to the draft EIA report or submit a supplemental report addressing the issues. The EAC will appraise the project on the basis of the findings and the data collected and presented in the EIA

report including the concerns raised during public consultation. The NHAI could be asked to be present and provide clarification and the appraisal will have to be completed within 60 days from the receipt of the final EIA report. Thus, when an environmental clearance is provided at the end of the procedure, it would have been a fair appraisal of the merits of the project and the environmental harm cost. It is submitted that the impugned project highway has crossed the first stage of this project i.e., scoping and newspaper reports indicate that the NHAI through the competent authority has begun to collect the required information from EIA report. Therefore, it is clear that the alignment is still subject to change and the expenditure of acquiring lands for an unapproved alignment shows complete non-application of mind. It is further submitted that after obtaining environmental clearance, NHAI has to obtain Forest clearances under the Forest Conservation Act, for which application has to be submitted in form 'A', wherein NHAI has to provide a detailed justification as to why the project has to pass through Forest along with a purpose wise breakup of the total land required. Therefore, it is submitted that the Forest clearance has to be obtained in addition to environmental clearance and both are to be compulsorily obtained prior to commencing work. Therefore, it

is submitted that the acquisition of lands prior to forest clearance being provided for an alignment, that has not been approved shows complete non-application of mind. To implement the project highway, it is submitted that 6400 trees are to be cut without providing any data as to how they have determined this number and the assessment of 6400 trees is glaringly low and it would be much more. Further, it is submitted that the consultant, who has been appointed by NHAI, has been debarred by the World Bank and it is not clear as to how NHAI continues to utilise the services of the consultant.

10. Elaborate reference was made to the Environmental Impact Assessment Guidance Manual for Highway (2010) and the factors mentioned therein are to be considered at the stage of determining the project itself and failure to adhere to the same renders the action of the respondents as being wholly arbitrary. Further, the damage that may be caused to the flora and fauna were highlighted how endangered species are likely to become extinct and there has been no attempt to assess these aspects. It is further submitted that the original proposal was for widening of six lane Chennai-Madurai NH132 between Tindivanam and Trichy for a

length of 205kms. However, for reasons best known to the respondents, the proposal for road widening was changed to Chennai-Tiruvannamalai-Karur-Salem Green Field Highway. To this proposal, two additional proposals were included namely, Salem bye-pass of 22kms and 3 spurs on Chennai-Salem highway of 51kms. The respondents, instead of proceeding with the original proposal of widening the existing 6-lane highway, have opted for a Green Field Eight Lane Highway. The justification for the same is said to facilitate a fully access controlled highway and to eliminate bottlenecks which is existent in the present corridors and to reduce travel time between Salem and Chennai. The petitioner would contend that the draft feasibility report only superficially deals with comparative merits and demerits of the existing three roads and on a comparison of the merits and demerits, it is clear that there is no substantial merit in the proposed Green Field Salem Highway and there is no need for a completely access controlled corridor. The Green Field Highway requires acquisition of 2913 hectares of private land including vast tracks of agricultural lands. It will have to cut across Forest lands several rivers, water bodies, permanently altering the drainage pattern along with the proposed highway, affecting ground water level and killing the agriculture on the lands

along the highway. It will isolate smaller towns and villages along its proposed alignment and the project highway is no benefit to the common man and there are no industry along the proposed highway to be of any economic significance. A total of 854 villages fall along the express way alignment and since there is no free access to the proposed project highway, the residents of these villages will be barricaded by the proposed highway and will be put to great hardship as their movement will be curtailed. The draft feasibility report is bereft of any details with regard to why the expansion of the existing roads is not viable except stating that the existing roads are very congested and widening/expansion will lead to many socio-economic issues. The reasons assigned by the consultant are absolutely vague and speculative with no concrete facts or analysis provided anywhere in the report. The rigour of analysis that is expected by the NHA Manual, the EIA Manual for the Highways is conspicuously absent throughout the report. The report prepared by the consultant has been done in a casual manner and equally accepted in a casual manner. The incomplete data and information mentioned in the report has been accepted in a casual manner by the MoEF, which is the basis for issue of the final terms of reference. Further, it is submitted that there is a lack of clarity about the

source of funding for the project and despite the same, the respondents are going ahead with the acquisition of lands and in all probability, there are no funds to pay the necessary compensation. Thus, it is contended that the action of acquiring the lands is premature and implementing a proposal which is yet to be approved would result in irretrievable loss of resources and money and wholly violative of Article 48A of the Constitution, the proposed acquisition of lands prior to the final alignment of the project is illegal, arbitrary and discriminatory.

11. It is submitted that a declaration under Section 2(2) of the Act is an enabling provision only to declare an existing highway as a National Highway and not for creating a National Highway from a non-existent road and plain land. Therefore, it is submitted that the entire proceedings initiated by the respondents are wholly without jurisdiction and stands vitiated. It is further submitted that the declaration under Section 2(2) of the Act has been issued even before feasibility report was submitted and there cannot be a declaration of a new National Highway without a validly approved alignment plan, when the feasibility report has not been submitted and reviewed and approved before the declaration under Section

2(2) of the Act. It is further submitted that the declaration under Section 2(2) of the Act cannot precede the very approval of such a project and in-principle approval of the project is required from the Public/Private/Partnership Appraisal Committee (PPPAC) as mandated by the Controller and Auditor General, Audit Guidelines. It is further submitted that there are six existing routes between Chennai and Salem and the distance of these six routes were referred to. It is submitted that the data obtained from NHAI shows that the existing primary routes from Chennai to Salem are with vehicular traffic of only between 35% and 45% of designed capacity utilisation except for a 40kms stretch between Thoppur-Omalur-Salem (NH-7) ending at the north-west of Salem. Further, from the feasibility report dated 23.04.2018, submitted by the consultant shows that the vehicular traffic between Chennai and Salem on an origin-destination basis is only between 16000PCU to 19000PCU from major three roads from Chennai to Salem and much lesser than the greater than 50000PCU required for an express way under Bharatmala-I.

12. Further, it is submitted that the Chennai-Express Salem way proposal is not part of the original list of projects under

Bharatmala-I declared on 25.10.2017. The Government of Tamil Nadu having not agreed to bear at least 50% of the land acquisition cost for Chennai-Salem Express way, the condition prescribed for subsequent inclusion of project as prescribed under Bharatmala-I scheme approved by the Cabinet Committee of Economic Affairs chaired by the Hon'ble Prime Minister on 24.10.2017, has not been satisfied. The feasibility report submitted by the consultant, dated 23.04.2018, reflects the violation of policy by inclusion of Chennai-Salem Express way in the place of Chennai-Madurai Economic Corridor 6 laning project proposal that was part of the original self of projects under Bharatmala-I. Ironically, the data of the Ministry of Road Transport indicates that among the 44 economic corridors scientifically identified, Chennai-Trichy-Madurai Economic Corridors, has the highest vehicular traffic at an Annualised Average Daily Traffic (AADT) of 43671 PCU and the basis for dropping the high priority Chennai-Trichy-Madurai Economic corridor project in preference to Chennai-Salem Express is in contravention of the policy and scheme under Bharatmala-I approved by Cabinet Committee of Economic Affairs chaired by the Hon'ble Prime Minister on 24.10.2017. The details in this regard remained undisclosed. The project highway has not been approved by the

Cabinet Committee on Economic Affairs as required under policy of Bharatmala – I or by PPPAC as required by the guidelines issued by CAG, which is mandated by the statute. It is submitted that on 25.10.2017, Bharatmala-I shelf projects were announced and on 25.11.2017, the State Government presented a memo to the Ministry of Road Transportation seeking attention to a list of project sought to be implemented in Tamil Nadu. On 23.11.2017, Union Minister of MoRTH, announced a list of projects approved for Tamil Nadu to the tune of Rs.1 lakh crores. On 18.12.2017, with the Ministers of State of MoRTH replied to questions in Rajya Sabha, the project highway was not mentioned. On 24.01.2018, when Bharatmala-I was reviewed, the project was not mentioned and on 05.03.2018, when the Minister of State MoRTH replied to questions in Rajya Sabha about new projects under various stages including DPR stage, the project highway was not referred. Thus, it is submitted that there could not have been a consultant appointed for DPR for Chennai-Salem Project at least until 05.03.2018. Further on perusal of the list of tenders issued through Infraconportal, there was no reference to Chennai-Salem Express Way Project or NH179B. Thus, when there is no record of any tender regarding consultancy services for DPR relating to Chennai-Salem Express

Way Project, the consultant M/s.Feedback Infra Pvt Ltd., out of the blue has on 23.04.2018, presented a feasibility report to the NHAI. In the said report, the consultant mentions that they were appointed for consultancy services for DPR on 5 corridors under "LOT-6/Package-1", which turns out to be completely different scope of tender and did not cover Chennai-Salem Express Way and there has been no further or subsequent tender relating specifically to the project highway. Further, there is no reference to any approval from CCEA that formulated the policy, programme and projects under Bharatmala-I and thus, it is in contravention of the policy approved by the Cabinet Committee on Economic Affairs on 24.10.2017. It is therefore submitted that tender to award the consultancy services relating to Chennai-Salem Express Way was never called for by tender through infraconportal. Thus, without any record of the Chennai-Express Salem Highway being under stage of consideration until 05.03.2018 and without any record of any tender being called for consultancy services for preparation until then it is not known as to how the consultant, out of the blue submitted feasibility report on 23.04.2018 for Chennai-Salem Express way, in gross abuse of existing procedure, only as a *ex post facto* justification for the project proposal's approval and in an

exercise to suit a predetermined out-come expected by the MoRTH from the consultant. The consultant was blacklisted and debarred and could not have been entrusted the project.

13. The petitioner would further contend that non-application of mind is apparent considering the fact that MoRTH has totally relied on the feasibility report of the consultant which has no finding to support the need for Chennai-Salem Express Way and has not adequately analysed the publically available data and information in respect of the facts related to. To support such a contention, the following are pointed out by the petitioner to discredit the feasibility report:-

"Characteristic of the project

(i) *That Chennai – Salem is not one of the 44 economic corridors scientifically identified by the 1st Respondent but just an Inter-corridor Feeder Route connecting Chennai – Madurai economic corridor (at NH-45) and North – South Economic Corridor (NH-7)*

(ii) *That there are 6 existing routes from Chennai to Salem with 2 of them being the primary routes with dedicated 4/6 lane carriageway.*

Traffic Survey and Analysis

(iii) That even as per the 7th Respondent's Feasibility Report, the vehicular traffic between Chennai and Salem on a Origin – Destination basis is only between 16,000 PCU to 19,000 PCU from the major 3 Roads from Chennai to Salem and much lesser than the greater than 50,000 PCU required for an Expressway.

(iv) That the Feasibility Report has not studied the designed capacity of the existing 2 National Highway Roads between Chennai and Salem.

(v) That the Feasibility Report has not studied the capacity utilization as a percentage of designed capacity of the existing 2 National Highways between Chennai and Salem detailed supra.

(vi) That the Feasibility Report has failed to observe that there are no constraints is capacity augmentation on the 2 primary National Highways between Chennai and Salem when they are presently utilized way below designed capacity and many capacity augmentation works are underway as detailed supra.

(vii) That the Feasibility Report has failed to factor in the diversion in traffic that could be caused by the similarly proposed Chennai –

Bangalore Expressway as part of the Chennai – Bangalore Economic Corridor, leading to further lower capacity utilization in one of the 2 primary routes between Chennai and Salem (NH-4 and NH-46 before converging with NH-u leading to Salem).

Study of alternatives

(viii) That there are 6 existing routes and many improvement works on these 6 routes are under various stages of implementation and consideration including for capacity augmentation even when capacity utilization in most parts of the routes are far lower than designed capacity.

Economic Analysis

(ix) That the Feasibility Report has not correlated the connection between the proposed Expressway and Regional economic development with empirical data from previous projects in terms comparison of collection of Direct Taxes and Indirect Taxes in a 4-laning project region (say, a sub-circle within a tax circle) as against a region without a 4-lane Highway over a 10-year period from available public data.

Financial Analysis

(x) That the Feasibility Report has grossly failed to analyze the financial consequences of the Chennai – Salem Expressway becoming an

Additional Tollway or Competing Road to existing tollways (connecting the same points with a distance that is 20% longer than existing tollway, as per existing Concession Agreements) and thus triggering a series of contractual obligations under present Concession Agreements that would

(a) Extend existing concession periods by 50% to 100% of the remaining period from the time of operation of the Expressway thus burdening road users will longer toll paying periods to the benefit of existing Concessionaires.

(b) Make compensation payable by NHAI (2nd Respondent) to existing Concessionaires for loss of revenue thus burdening the public exchequer.

(c) Cause the toll rates in the proposed Expressway to be priced 25% to 33% higher than existing tollways (on a cost per KM basis) and thus burdening road users to the benefit of new Concessionaires.

(d) Take away the possibility of revenue accruing to the 2nd Respondent in the event of existing tollways being run at above 120% of designed capacity and thus a revenue loss for the public exchequer to the benefit of existing Concessionaires.

(e) Take away the possibility of exercising the right to terminate existing Concession Agreements in the event of existing tollways being run at above 100% capacity for 3 years and thus a revenue loss to public exchequer, burden on road users with longer toll period and benefiting existing Concessionaires.

(xi) The Feasibility Report has grossly failed to analyze the financial consequences of the Chennai - Salem Expressway delaying the recovery of capital cost to existing Concessionaires and thus taking away the possibility of toll rates being reduced to 40% of last existing toll rates in the event of recovery of capital cost, as per NHA I (2nd Respondent) Policy Matter "Technical 171/2014" taken on 27-11-2014 and notified to all existing tollway Concessionaires on 12-12-2014, thus burdening road users with longer than necessary toll period and benefiting existing Concessionaires.

Sensitivity Analysis

(xii) That the Feasibility study has not adequately addressed sensitivity over

(a) Impact of destruction of forest land

(b) Ecological imbalance caused by carriageway cutting through habitat for flora and fauna

- (c) Loss of cultivable lands in fertile 2-crops per year regions*
- (d) Felling of large number of trees*
- (e) Destruction of water-bodies*
- (f) Absence of public consultation/hearing to ascertain the very need for the project."*

14. Further it is contended that the project highway will benefit the existing toll way concessioner, as it will lead to extension of the concession period, which ultimately would lead to burdening the travelling public. Thus, it is contended that the Chennai-Salem sector does not qualify to have an express way; there is no need or request for the express way; it involves higher cost than some of the existing routes; burdens public exchequer, deprives the right to terminate concession agreements; burdens road users with longer toll paying period and serves no rational public purpose or any other valid purpose.

15. We shall now refer to the decisions cited by the learned counsel for the petitioners.

Mr.K.Sakthivel, learned counsel referred to the decision of the Hon'ble Supreme Court in the case of **Bondu Ramaswamy & Ors.**

vs. Bangalore Development Authority & Ors., (2010) 7 SCC

129. The matter pertains to challenge of acquisition of lands for formation of a project by the Bangalore Development Authority and one of the contentions was the acquisition is vitiated as there were several discrepancies in the scheme. The scheme was not properly framed and there was no application of mind by the State Government on proper consideration of the scheme before according sanctioned under the provisions of the Bangalore Development Authority Act. In the said decision, it was pointed out that where arbitrary and unexplained deletion and exclusion from acquisition of large extension of notified lands, render the acquisition meaningless and totally unworthable and the Court will have no alternative, but to quash the entire acquisition. Referring to the decision of the Division Bench of the High Court of Bombay in **The Industrial Development and Investment Co. Pvt. Ltd., & Anr., vs. State of Maharashtra & Ors., AIR 1989 Bombay 156,** it was submitted that the public purpose specified in the declaration must continue to subsist until the land vest in the State and the public purpose ceasing to continue subsequent proceedings for acquisition are void and not merely voidable. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **State**

of U.P. & Ors. vs. Babu Ram Upadhya AIR 1961 SC 751, to explain the meaning of the word "shall" to mean it is mandatory. This decision was cited to support the contention that prior environmental clearance as stipulated in the notification dated 14.09.2006 is a mandatory condition required to be followed. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Life Insurance Corporation of India vs. Escorts Ltd., & Ors., (1986) 1 SCC 264** wherein the Hon'ble Supreme Court pointed out the distinction between permission simplicitor and previous permission. Reference was made to the decision of the Hon'ble Supreme Court in the case of **Karnataka Industrial Areas Development Board vs. C.Kenchappa, (2006) 6 SCC 371** to emphasize their contention that the impact of development on ecology and environment has to be necessarily carried out before acquisition of land. Referring to the decision of the Hon'ble Supreme Court in the case of **Ujjain Vikas Pradhikaran vs. Raj Kumar Johri & Ors., AIR 1992 SC 1538**, that if the statutory requirements are not complied with, then acquisition for any scheme cannot be carried out.

16. Mrs.D.Nagasaila, learned counsel referred to the decision of the Hon'ble Division Bench of this Court in the case of ***M.Velu vs. State of Tamil Nadu, 2010 SCC OnLine Madras 2736***, wherein the Division Bench held that before issuing notification for acquisition under Section 3(1), the authorities have to approach the statutory authority constituted under Environment (Protection) Act for environmental clearance. The report of the statutory authority must also be considered by the Government by dealing with the objections submitted by the landowners and other interested persons, pursuant to notice being issued. Reliance was placed on the decision of the High Court of Kerala in ***George Joseph and Ors. vs. Union of India, Manu/KE/0086/2008***, wherein it was held that public hearing should be conducted before deciding to issue notification under Section 4(1) of the Land Acquisition Act. Referring to the decision of the Hon'ble Supreme Court in ***Raghibir Singh Sehrawat vs. State of Haryana and Ors., (2012) 1 SCC 792***, it is submitted that the Hon'ble Supreme Court had come down heavily on the State for acquiring farm lands for industrialisation. The learned counsel also referred to the following decisions rendered by the various Courts in United States of America:-

(i) Opinion from John P.Kennedy, Associate General Counsel for Finance and Regulatory Enforcement, CF [Review (US), 26.02.2002];

(ii) Commonwealth of Massachusetts vs. James G.Watt [716F.2d.946 (1938)];

(iii) Lathan vs. Volpe [455F.2d1111 (1972)];

(iv) Arlington Coalition On Transportation vs. John A.Volpe, Secretary of Transportation [458F.2d.1323 (1972)];

(v) Jones vs. District of Columbia Redevelopment Land Agency [499F.2d.502 (1974)]; and

(vi) National Wildlife Federation vs. Robert F.Burford [835 F.2d 305 (1987)]

17. Mr.C.Kanagaraj, learned counsel emphasising the need for public hearing referred to the decision of the Hon'ble Supreme Court in the case of **Alaknanda Hydropower Company Limited vs. Anuj Joshi And Ors., (2014) 1 SCC 769**, with regard to the scope of judicial review in policy matters. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Jal Mahal Resorts Private Ltd., vs. K.P.Sharma And Ors., (2014) 8 SCC**

804. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of ***Rajendra Shankar Shukla And Ors., vs. State of Chhattisgarh And Ors., (2015) 10 SCC 400*** wherein the validity of town planning scheme was tested and the same was set aside on account of various illegalities committed by the authorities including that there was no prior survey or assessment of the need for addition of the land to an area of a scheme undertaken by the Raipur Development Authority.

18. Mr.Kabilan Manokaran, learned counsel for the petitioner referred to the following decisions in support of his contention that Courts do have power of judicial review over policy decision

(i) Delhi Development Authority, N.D. & Anr. vs. Joint Action Committee, Allottee of SFS Flats & Ors., 2008 (2) SCC 672;

(ii) Secretary, Ministry of Chemicals & Fertilizers Government of India vs. M/s.Cipla Ltd.,&Ors., 2003 (7) SCC 1;

(iii) Col. A.S.Sangwan vs. Union of India & Ors., 1981 AIR (SC) 1545;

(iv) Indian Drugs & Pharmaceutical Ltd., vs. Famy Care & Ors., 2010 (6) SCC 401.

The learned counsel referred to three decisions of the Hon'ble Supreme Court dealing with the power of judicial review when public purpose is involved namely:-

(i) Jilubhai Nanbhai Khachar & Ors. vs. State of Gujarat & Anr., AIR 1995 SC 142;

(ii) Life Insurance Corporation of India vs. Escorts Limited & Ors., AIR 1986 SC 1370;

(iii) M/s.Dwarkadas Marfatia and Sons vs. Board of Trustees of The Port of Bombay, AIR 1989 SC 1642.

19. Mr.T.Mohan, learned counsel appearing for the petitioner submitted that the decision in the case of **M.Velu** (supra), had attained finality, furthermore in the light of the decision of the Hon'ble Supreme Court in the case of **C.Kenchappa & Ors.**, (supra), that being the general direction prior environmental clearance is required.

20. Mr.G.Rajagopalan, learned Additional Solicitor General of India assisted by Mr.G.Karthikeyan, learned Assistant Solicitor

General of India made their submissions on behalf of the Government of India and NHAI. It is submitted that as per Section 13 of the Act any land required by NHAI for discharging its function under the Act shall be deemed to be land needed for public purpose and such land can be acquired under the provisions of the Act. It is further submitted that Section 16 of the Act specifies the functions of the authority which includes to develop, maintain and manage National Highways and any other highways vested in or entrusted to it by the Government. Thus, it is the submission that Section 2 of the Act has to be read harmoniously with Section 13 & 16 otherwise NHAI cannot carry out its function mandated under the Act. Reference was made to the decision of the Division Bench in W.P.No.2353 of 2018, dated 18.04.2018 in which the challenge to Section 2 of the Act on the ground it does not enable the Central Government to declare a new highway as National Highway was rejected and the Special Leave Petition filed against the said judgment was dismissed. Therefore, it is submitted that challenge against Section 2 is not maintainable and the law relating to the power of the Central Government under Section 2 has already been settled.

21. The learned Additional Solicitor General raised objections contending that the Writ Petitions are pre-mature, since NHA has not even initiated further proceedings subsequent to the notification under Section 3A of the Act. Therefore, neither the Writ Petitioners/landowners or public interest litigants can have any legitimate grievance and if at all they have any grievance it can be raised only after issuance of notification under Section 3D of the Act or at the commencement of the construction of the road and not any time before that. It is submitted that as per the notification of MoEF and CC, NHA is bound to obtain environmental clearances and other statutory clearances such as Forest clearance, Wildlife clearance etc., before starting the construction of the road and not prior to the same. So far as the landowners are concerned, they can raise objections only on two grounds namely, that the land is not needed for public purpose and that fair compensation has not been given, both issues do not arise in this case and the stand taken by the respondents is fully supported by the decision of the Hon'ble Supreme Court in ***K.T.Plantation Pvt., Ltd., & Anr., vs. State of Karnataka (2011) 9 SCC 1***. It is further submitted that the contention advanced by the petitioners are mere apprehension and no relief can be granted on hypothetical claims. Further, it is

submitted that the Writ Petitioners cannot question the preliminary feasibility report prepared by the Competent Technical Experts and it is not for the Writ Petitioners to indulge in cherry-picking and insignificant errors with limited expertise in this area. Further, Courts also have a limited role/jurisdiction under judicial review in matters of technical reports prepared by the technical experts. Hence, it is best left for the technical experts to determine whether Chennai-Salem Green Field Corridors is required or not, if so in what form and which alignment. Further, by referring to the counter affidavit filed by the MoEF, more particularly, W.P.19385 of 2018 in paragraph 10 it is submitted that there is no requirement for obtaining prior environmental clearance for the purpose of land acquisition in terms of EIA Notification 2006 as amended from time to time. It is further submitted that the notification issued by MoEF and CC falls under subordinate legislation and even assuming without admitting that the said notification is binding on NHAI, such interpretation will lead to erroneous conclusion of rendering the substantial legislation subservient to the subordinate legislation in the form of notification. It is further submitted that the National Highways Act is a substantive legislation and it cannot be overridden or controlled by the notification issued by the MoEF and CC and the

National Highways Act, 1956 and the National Highways Authority of India Act, 1988 are substantive and stand alone legislation having their own sphere of authority governing the respective fields. Therefore, reading down into the NHAI Act from prism of the said EIA notification is impermissible.

22. It is further submitted that land acquisition and environmental clearance are two different and distinct activities at this stage of the project and therefore, challenge directed at land acquisition is pre-mature and not legally sustainable. Further in terms of EIA notification dated 14.09.2006., provides for securing of land and securing has been interpreted to mean fencing, in case of private lands, and in the instant cases, it means to complete the process of land acquisition as per law to acquire ownership of the land acquired for the project and keep the land ready for the project. Further, it is submitted that the judgments relied on by the petitioners stating that the prior environmental clearances is pre-requisite are not applicable to linear projects like highway projects. It is further submitted that this Court has upheld the constitutional validity of Section 105 of Act 30 of 2013, granting exemption to the National Highways Act except in relation to compensation,

rehabilitation and resettlement and provisions of the infrastructural facility as per Schedule I, II and III of the Act 30 of 2013. The Government is entitled to exercise its power of eminent domain and the landowners are entitled for fair compensation as per Act 30 of 2013. The lands which are to be acquired by the NHAI are for public purpose by virtue of Section 30 of NHAI Act 1988. It is further submitted that obtaining a feasibility report is not a statutory requirement, but it is only a facilitating process to expedite the implementation of the project to the technical experts. Since detailed project report which is the third and final stage of the report is received, the pre-feasibility report and final feasibility report have lost their significance. With regard to the change of scope of the consultant, it is submitted that it is the policy decision taken by the competent authority of MoRTH in January 2018 and the minutes of the meeting do provide adequate grounds for changing the project from 'Chennai to Madurai' to 'Chennai to Salem'. The Courts will normally refrain from interpreting in policy decisions of the Government. The arguments that the project was changed without any rhyme or reasons and the decisions was taken in opaque manner for mysterious reasons to benefit from unknown influential persons are not sustainable, this is evident from the

minutes of the meeting along with the connected files which have been submitted before the Court.

23. It is submitted that both Chennai-Salem Express Corridor, Chennai-Salem National Corridor are retained. The DPR study of 8 laning of Tambaram-Tindivanam Section is already under progress as a part of Chennai-Madurai corridor. Thuvrankurichi-Madurai section is also under progress, which is also a part of Chennai-Madurai corridor. In order to decongest the Chennai-Tindivanam-Trichy corridor and Chennai-Bangalore corridor, the proposed Chennai-Salem Green Field corridor project is taken up. It is further submitted that MoRTH has identified express way between Chennai-Trichy-Tanjore in Phase-II of Bharatmala and this project also will be taken up at the earliest point. Highlighting upon the advantages of Green Field Project, it is submitted that most of the National Highways during the course of upgradation face challenges of poor geometrics and high engineering requirement lower standards of road safety and congestion due to increased traffic. It is submitted that worldwide highways/express way have been developed as Green Field Alignment/project to overcome these challenges. The Green Field Alignment aims at the advantage of reducing origin-

destination distance, improved geometrics which allow for higher vehicle carrying capacity with comparatively killing of less number of trees, reduction in fuel consumption and also reduces social displacement. It is submitted that by the present project, the original distance will be reduced by 17%, which will result in reducing emissions of green house gases. Thus, it is submitted that the Writ Petitions are pre-mature and filed on the basis of imaginary apprehensions and baseless fears inflated by vested interest and wrong assumptions and cannot be a ground for any proceedings before this Court. It is submitted that the grievances of the landowners are fully taken care of by NHAI as per the law and fair compensation will be provided as per law. Prior environmental clearances is not a pre-condition for acquisition of lands by NHAI under the Act, at this stage of the project, and it will be obtained before commencement of actual forming of the road. The challenge to the feasibility report is unwarranted, since it is not a statutory requirement and its life-cycle is short and temporary and it serves very limited purpose. Reliance was placed on the decision of the Division Bench of this Court in the case of **J.Parthiban & 14 Ors., vs. State of Tamil Nadu [2008-2L.W.989]**, wherein it was held that prior environmental clearance is not required. Reliance was

placed on the decision of the Division Bench of the High Court of Bombay in ***Madan Malji Kambli and Ors., vs. State of Goa and Ors., 2012 SCC OnLine Bom 694;*** and the decision of the High Court of Punjab and Haryana at Chandigarh in ***Prithvi Singh & Ors., vs. Union of India & Ors., CWP No.689 of 2012 (O & M), dated 16.05.2013*** for the same proposition. In support of the argument that NHA is a professionally managed statutory body having expertise in the field of development and maintenance of National highway, reliance was placed on the decision of the Hon'ble Supreme Court in ***Union of India vs. Kushala Shetty & Ors., (2011) 12 SCC 69.*** Explaining the doctrine of sustainable development, reference was made to the decision of the Division Bench of this Court in ***New Kattalai Canal and Aerie Pasana Vivasayigal Welfare Association vs. Union of India & Ors., (2012) 1 MLJ 207.*** For the same proposition, reliance was placed on the Division Bench of this court in the case of ***O.Fernandes vs. TNPCP and Ors., 2005-1-L.W. 13.*** Regarding the scope of judicial review especially in land acquisition matters, reliance was placed on the decision of the Hon'ble Supreme Court in ***Sooraram Pratap Reddy and Ors., vs. District Collector, Ranga Reddy District & Ors., (2008) 9 SCC 552.*** Reliance was placed on the

decision of the Three Judge Bench of the Hon'ble Supreme Court in ***State of Tamil Nadu & Ors. vs. L.Krishanan & Ors., (1996) 1 SCC 250***, which overruled the decision in the case of ***State of Tamil Nadu & Anr., vs. K.Mohammed Yousef & Ors., (1991) 4 SCC 224***, wherein it was held that there is no need for a scheme to be prepared and finalised by the Housing Board, will contemplating acquisition of land. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***K.T.Plantation vs. State of Karnataka*** (supra) to explain the power of eminent domain.

24. Mr.T.V.Ramanujam, learned Senior Counsel assisted by Mr.S.Akshay Ringe & Mr.M.Vivekanadan, learned counsels for M/s.Feedback Infra Pvt., Ltd., the consultant reiterated the submissions made by the learned Additional Solicitor General that the Writ Petitions are not maintainable. It is submitted that the objections raised by the Writ Petitioners to the draft feasibility report are all based on surmises and conjunctures, Writ Petitioners are attempting to make a roving enquiry, which is impermissible. The petitioners cannot raise disputed questions of fact in a Writ Petition. The NHA is an expert body and they produced records before this Court to substantiate their stand. It is submitted that the

consultant is among the most reputed companies in India involving in work of preparation of detailed project work and is fully competent to carry out such work. The learned counsel referred to the profile of the company and the projects undertaken by them, since its incorporation during 1990. It is further submitted that NHAI is an expert body and fully competent to review the work done by the consultant. The consultant is under contractual commitment to submit its work to NHAI in accordance with the terms and conditions of the contract entered into between it and NHAI. The work of the consultant is subject to review by NHAI only and not open to public scrutiny. The learned counsel elaborated upon the eight stages of work of the consultant under the contract and presently the stage (ii) has been reached, namely, stage (i) Inception Report (IR) and QAP to be done in 15 days (ii) alignment options report and feasibility report to be done in 60 days;

25. With regard to the environmental issues, it is submitted that utmost care has been taken to minimise environmental impact. It is submitted that number of water bodies impacted has come down to 38 from 54 for which NOC is being obtained from the respective Government departments. Apart from that sufficient

mitigating steps have been identified to minimise the environmental impact such as providing via-ducts over the ponds, water ways etc. Similarly impacts on Forest areas are also minimised by realigning certain portion of the proposed routes, as a result of which the extent of acquisition of Forest area has come down from 23kms [120hect to 8.8kms (42 hect)]. The services of IIT, Dhanbad, has been engaged for assessment of the impact of the project on local biodiversity and they have already submitted a draft report. Apart from that, other organisations of excellence have been engaged to gauge, the impact on the mountain eco system (hilly region). The services of Kitco, a reputed institution of Government of Kerala has been engaged to carry out comprehensive social economic assessment with emphasis of impact on ongoing land acquisition on the local people living around the proposed alignment. The comprehensive environmental impact assessment including the above items, as per contract, is under preparation. Explaining the reason for change of scope from Chennai-Madurai to Chennai-Salem, the stand taken by NHAI has been adopted. It is submitted that consultant was informed by NHAI to undertake studies for Chennai-Salem Green Field Road Project and as a consultant it complied with the order of NHAI. It is submitted that this Court,

exercising Writ jurisdiction will not sit in appeal over the reports submitted by the consultant under the contract with NHAI. However in order to satisfy the conscious of this Court, the consultant has responded to the allegations raised by the petitioners during the course of argument. According to the consultant, nearly 41 allegations were made, as against the correctness of the report submitted by the consultant to NHAI and for each of such allegations, the consultant has given their respective answers as contained in the written notes of arguments submitted by the consultant. Therefore, it is submitted that the Writ Petitions are liable to be dismissed. A copy of the contract entered into between consultant and NHAI, dated 22.02.2018 was placed before this Court.

26. The challenge in these batch of cases is to the proceedings initiated for acquisition of land under the provisions of the National Highways Act, 1956, commencing with the publication of notification under Section 3A(1) of the Act, dated 24.05.2018, and the consequential notification issued by the competent authority namely, the District Revenue Officers of the respective Districts, dated 29.05.2018. The project highway for which land acquisition

proceedings had been initiated is a new highway, hence called a "Green Field Project". The highway proposed is between Chennai-Salem with a total length of 277.300 kms, which stood subsequently reduced. The proposed alignment is to start near the Chennai Outer Ring Road at Mannivakkam, passes through the Districts of Kancheepuram, Thiruvannamalai, Krishnagiri, Dharmapuri to reach Salem and it terminates near Ariyalur in Salem District. The respondent namely, National Highways Authority of India justifies the need for the project on the ground that the traffic from the western districts such as Salem, Namakkal, Karur, Erode, Tiruppur, Pollachi, Coimbatore, Uthagamandalam and Kerala have to use two routes namely, (i) Chennai-Tindivanam-Ulundurpet-Salem and (ii) Chennai-Kancheepuram-Vellore-Krishnagiri-Dharmapuri-Salem. It is stated that by passage of time, these roads will become congested like the city roads and in several locations widening of existing roads will involve additional acquisition of land, which may require dismantling of several structures, which will include residential, commercial and industrial buildings. It is further stated that the study conducted by the consultant appointed by the NHA I would show that the traffic, which are leading to the western districts and the Kerala State are estimated as nearly 30% of the present traffic

on these two routes and expansion of the existing two routes to six laning will involve dismantling of number of structures and even after expansion, it would not be sufficient to cater to the needs of the traffic. Therefore, the respondent would justify the need for a Green Field Corridor to Salem, which will be able to take the increased traffic as well as de-congest the existing routes thereby improving the traffic flow of all routes.

27. It is further stated that the consultant appointed by the NHAI had studied various routes of the alignment along the existing routes and finalised the proposed alignment as being technically feasible. It is further stated that the proposed highway reduces travel time between Chennai-Salem to 2 hours 30 minutes from the existing 5 hours, it saves fuel of 15 litres for each truck, 6 litres for each car trip, thus nearly 200085 litres of the diesel will be saved every day amounting to 10.40 crore litres of diesel per year. Thus, it is stated that the total amount of Rs.700 crores will be saved every year on diesel alone. It is further stated that apart from savings, there will be reduction in carbon emission, saving natural resources, reduction of atmosphere pollution etc. They would further state that the proposed highway opens avenue for

industrialisation of some of the most backward Taluks of Tamil Nadu such as Vandavasi, Polur etc. The development of the area will benefit the common public living in and around the area in all aspects including financial development, apart from comfortable transportation. It is stated that during the times of medical emergency, this highway can be used to reach hospitals in Salem or Chennai and it will save substantial time and the highway will benefit the students and working community, as there is substantial reduction in travel time.

28. It is further stated that for the purpose of obtaining environmental clearances for the project, application was submitted to MoEF to get the approval for the Terms Of Reference (TOR). The Expert Appraisal Committee in its 189th meeting held on 07.05.2018, recommended for grant of TOR with specific conditions in addition to the standard TOR. It is further stated that the Ministry of Environment vide letter dated 08.06.2018, accorded approval for the TOR. Further NHAI has requested the Department of Environmental Science and Engineering, IIT, Dhanbad to make comprehensive assessment impact road on local biodiversity, Wild Life Corridors etc. This request has been accepted by the IIT,

Dhanbad and a sum of Rs.21,00,000/- has been deposited with the institution to carry out the aforementioned study. It is submitted that the consultant appointed by the NHA I namely, M/s.Feed Back Infrastructure Private Ltd., (Feed Back), has commenced the base line study, air quality monitoring etc and after the completion of the Environment Impact Assessment Study Report will be submitted to the State Pollution Control Board for public hearing, which will be conducted as per the provisions of the EIA Notification, 2006. It is thereafter the matter will be placed before MoEF for getting environmental clearance. It is stated that the proposed alignment passes through Reserve Forest for a length of 9.955kms and a request has been made to the Principal Chief Conservator of Forest as early as on 12.05.2018 for collection of necessary data and conducting necessary surveys in Forest areas. In response thereto, permission has been granted by communication dated 08.06.2018, pursuant to which field survey is in progress and proposals will be sent with the concerned Forest Department to get permission for diversion of the Forest land.

29. It is further submitted that the Principal Chief Conservator of Forests and Chief Wild Life Warden vide a letter dated

14.06.2018, have granted no objection for the alignment from Wild Life Angle as directed by the Ministry of Environment. It is submitted that the District Revenue Officer of the concerned districts is the competent authority to carry out the land acquisition for the project, who has been notified by the Central Government and land acquisition is being carried out as per the provisions of the Act. It is submitted that the notification under Section 3A(1) of the Act has been published with intention to acquire the land and further steps such as inspection, survey, measurement, valuation, setting out boundaries placing marks cutting trenches etc., can be carried out as per Section 3B of the Act, which can be done only after the publication of the notification under Section 3A(1) of the Act. Thus, the respondent would state that it is essential to publish the notification under Section 3A(1) to carry out the aforementioned studies. The NHA refers to an Office Memorandum dated 07.10.2014, issued by the Ministry of Environment to state that complete acquisition of land is required for consideration of environmental clearance and the notification issued under Section 3A(1) of the Act is only a threshold of the project and the petitioners cannot be stated to be aggrieved over the same and the Writ Petitions are pre-mature.

30. The learned counsels appearing for the Writ Petitioners who are the landowners and the Public Interest Litigants had focused before us varied points on which the acquisition is stated to be bad in law. We would cull out the salient objections, which were raised by the petitioners as well as the objections raised by the Union of India into points for consideration so as to answer the relevant issues, which were raised before us.

31. The learned Additional Solicitor General of India appearing for the NHAI raised preliminary objection with regard to the maintainability of the Writ Petition. It is contended that the Writ Petitions are pre-mature and therefore, they are liable to be dismissed. Thus, while framing the points for consideration, we propose to take note of the submission of the learned Additional Solicitor General with regard to the maintainability of the Writ Petitions as the first point. The points for consideration are:-

(i) Whether the Writ Petitions are maintainable, since all that has been done by the respondents is to notify their intention to acquire the lands by publishing a notification under Section 3A(1) of the Act and the petitioners cannot be stated to be aggrieved;

(ii) Whether the entire land acquisition proceedings are wholly without jurisdiction as a declaration under Section 2(2) of the Act enables only to declare an existing highway, as a National Highway and not for creating a National Highway from a non-existing road or a plain land;

(iii) Whether if the project is allowed to be implemented without prior environmental clearance, would it be against the principles of sustainable development and would violate the provisions of the Articles 19, 46, 48A and 51A of the Constitution of India;

(iv) Whether there is a need for the proposed project Highway given the statistics regarding the Passenger Car Units in the existing three highways;

(v) Whether there is any hidden agenda for the proposed project and whether it was intended to benefit a chosen few;

(vi) Whether Chennai-Salem proposed highway project was not even considered as a viable proposal, when lots were invited under Bharat Mala Priyojana

and Chennai-Madurai proposal was found to be viable resulting in appointment of the consultant (Feedback), could there have been a change of the project after appointment of the Consultant for a different project;

(vii) Whether the respondents who had originally notified the project between the Chennai and Madurai could have changed the same after the tender for awarding the consultancy contract was finalised for Chennai-Madurai Section;

(viii) What would be the impact of the proposed project on Forest lands, Water Bodies, Wild Life, flora and fauna as admittedly the proposed alignment passes through all these areas;

(ix) Whether public hearing is a pre-requisite and should it precede any step that may be taken under the provisions of the Act;

(x) Whether public consultation which includes public hearing at site should have preceded the land acquisition proceedings or at what stage it is required to be done;

(xi) If the notification as initially notified by the

Central Government (Chennai-Madurai) was modified is the draft feasibility report liable to be scrapped, as the award of consultancy contract was entirely for a different project;

(xii) Whether the report prepared by the Consultant (Feedback) contains plagiarized contents, whether it was prepared in great haste, replete with errors apparent on the face of the record and should the report be held to be an outcome of non-application of mind;

(xiii) Whether guidelines prescribed in the Indian Highway Capacity Manual were ignored while preparing the draft feasibility report;

(xiv) Whether on account of the reduction of the right of way in various sections including the proposed alignment, which passes through Forest area, whether the scope of the project stood totally amended and whether the respondents can proceed in the manner they propose to do.

(xv) Whether the feasibility report has failed to analyse the financial consequences of the Chennai –

Salem express way becoming an additional toll way or competing road to the existing toll way and thus triggering a series of contractual obligations under the present concessional agreements that would get extended by 50 to 100% of the remaining period.

The above are the salient points for consideration in these batch of cases.

32. The learned Additional Solicitor General submitted that the Writ Petitions are pre-mature, as the respondents have issued notification under Section 3A(1), which is only an intention to acquire lands, which power has been given to the Government to acquire lands for the building, maintenance, management or operation of an National Highway. It is submitted that Section 3B(d) empowers the person authorised by the Central Government after issue of notification under sub-section (1) of Section 3A, set out boundaries and intended lines of work. Section 3C deals with hearing of objections and in terms of sub-section (1) thereof, any person interested in the land may within 21 days from the date of publication of the notification under sub-section (1) of Section 3A object to the use of land for the purpose or purposes mentioned in

that sub-section. It is submitted that if such objection is received, the same will be considered and only thereafter, a notification declaring that the lands should be acquired, will be published under Section 3D of the Act. It is submitted that if objections are found to be valid, there is every possibility of dropping the acquisition proceedings and if after considering the objections, a notification is issued under Section 3D of the Act, then the Court seldom interferes in such proceedings and this is all the more a reason to hold that the Writ Petitions are pre-mature. It is submitted that the decision making process is not yet over and hence question of going into the validity of the report submitted by the Consultant does not arise at this stage.

33. It is true that the petitioners are before this Court challenging the acquisition proceedings soon after the notification under Section 3A(1) of the Act was published. Under normal circumstances, Constitutional Courts seldom exercise their jurisdiction to interdict a land acquisition proceeding at the very inception, such as a notification issued under Section 4(1) of the erstwhile Land Acquisition Act 1894. However, there have been exception to this self-imposed restriction, when it has been found

that there is arbitrary exercise of power or there is serious error in the decision making process leading to issuance of the preliminary notification. Therefore, we are of the view that if the petitioners are able to make out a case that there are serious error at the very inception, then the petitioners should not be shut out from challenging the acquisition proceedings, which according to them is vitiated for certain valid reasons at the very threshold and it will be too harsh on the petitioners namely land owners/losers to state that they can approach the Court after the land acquisition proceedings are completed and after many of them are dispossessed from their lands. Therefore, a fine and delicate balance is required to be adopted in such matters.

34. The seriousness of the issue stood escalated on account of certain unsavoury incidents, which took place, while the Writ Petitions were pending and the hearing had commenced, initially during July 2018, when we took up for consideration the challenge to Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Act 30 of 2013).

35. Ever since August 2018, we had been continuously hearing the matters and at the first instance, we had reserved orders in the public interest Writ Petitions, which had challenged the constitutional validity of Section 105 of Act 30 of 2013. The orders were reserved in those Writ Petitions on 21.08.2018 and we pronounced orders on 04.09.2018, upholding the validity of Section 105 of Act 30 of 2013. Immediately thereafter, from 20.09.2018, we had been hearing the Writ Petitions virtually on a day today basis and in between the hearing could not proceed on account of one of us was notified to hold Court in Madurai Bench. Thereafter after obtaining permission, the hearing commenced through video conferencing with one of us in Chennai and other at Madurai and we concluded the hearing on 04.12.2018. The NHAJ was directed to circulate their files, the counsels appearing for the petitioners and the respondents were given sufficient time to file their written submissions, if any.

WEB COPY

36. Initially when we started hearing the Writ Petitions since August 2018, there were no interim orders granted. Subsequently, by turn of events, we found that the respective competent

authorities and the Revenue Administration of the respective districts where a law unto themselves, arbitrary action was initiated clearly exceeding the powers under the Act. However, we do not wish to over burden this order with the various interim directions, which we had issued from time to time in the batch of cases and propose to refer to only such of those interim orders, which would be relevant for the present, one such order being the order dated 14.09.2018. This order came to be passed since 109 fully grown trees were unauthorisedly fell and the trees were situated in a land classified as grazing ground adjoining the Forest area and in close proximity to the proposed alignment, that is, within distance of 30mtrs from the proposed alignment. The miscreants, who had done the felling, had in fact been granted permission to remove six wind fallen trees at a different location and it is not known as to how they had unauthorisedly fell 109 trees in Government lands adjoining the proposed alignment.

37. Thus, the land owners and the public interest litigants expressed their apprehension, more particularly, in the light of the stand taken by the Project Director, NHAI, Kancheepuram on the status of Environmental Impact Assessment Study and Feasibility

Study, dated 14.09.2018, and they made a prayer that the respondents should not proceed with acquisition proceedings by issuing notification under Section 3D of the Act. At that stage, the learned Additional Solicitor General submitted that nothing will happen as apprehended by the petitioners. This submission of the learned Additional Solicitor General of India was placed on record in our order dated 14.09.2018. Subsequently, we found that the miscreants, who had illegally fell the trees had not been prosecuted in the manner required to be done and the Court monitored the matter till the accused were brought to books. In the mean time, a case came up concerning an Engineer, who alleged that he had been picked up from his residence by the Police in the wee hours for no reason and false case has been foisted against him, as if, he was standing near the bus stand and speaking with persons to plan a protest against the proposed highway. A public interest Writ Petition in W.P.No.20532 of 2018, was filed on behalf of those persons and parallely the Court was monitoring the same. Since the investigation done by the jurisdictional Police was not proceeding in the right direction, we have transferred the case to CBCID and the Writ Petition is still pending.

38. On 20.09.2018, we had heard the submissions of the learned Additional Solicitor General of India with regard to the matters concerning the No Objections Certificate from the Wild Life angle and during the course of said hearing, we referred to our order dated 14.09.2018, where we recorded the submission of the learned Additional Solicitor General of India that nothing will happen as apprehended by the petitioners, as they apprehended that notification under Section 3D will be issued. In our order dated 20.09.2018, we observed that as we had commenced hearing of the Writ Petitions we deemed it appropriate that the submission made by the learned Additional Solicitor General of India, which was placed on record in our order dated 14.09.2018, shall continue and no further precipitative action shall be initiated by the department, pursuant to the notification issued under Section 3A(1) of the Act.

39. In the said hearing, it was brought to our notice that four persons had come to Cheyyar, which is also an area falling within the proposed alignment with a view to assist the local public who are likely to be affected by the acquisition and help them in preparing written objections and those persons were arrested. This was brought to the notice of this Court by the learned counsel

appearing for the petitioners in W.P.No.20194 of 2018. Subsequently, when we heard the matter on 26.09.2018, it was brought to our notice that one of the Writ Petitioners in W.P.Nos.20625 to 20627 of 2018, who was collecting signatures objecting to the proposed project was taken into custody and detained by the Police along with others. We directed the learned Government Pleader to get instruction in the matter who confirmed that several persons were detained in a marriage hall and subsequently were released. The conduct of the officials lead us to make an observation that if there is a peaceful protest, the State Police machinery should refrain from taking extreme steps of arrest and detention of the persons some of whom would be landlosers, if the project is implemented. We also pointed out that certain busy bodies may take advantage of the situation and the police are expected to know the difference between the genuine protester and a troublesome interlopers and indiscriminate arrest and detention for expressing democratic views should be avoided. We also reiterated that in our earlier orders, we had made an observation that State Government or its machinery should not precipitate things. We directed the learned Government Pleader to issue necessary instructions to all the authorities concerned that no form

of precipitative action should be initiated against persons who wants to express their views in peaceful and democratic manner, more particularly, the landowners who are entitled to do so. Parallely we had issued directions for planting of fresh saplings in the area where 109 trees illegally fell and directed the Forest officials to monitor the same.

40. As an offshoot of the happenings during the pendency of these cases we had also called for details from the State Government with regard to formation of Biodiversity Management Committee and as to whether the State Government proposes to enact the Tree Act. Appropriate response was given by the learned Advocate General.

41. The above facts have been placed on record to highlight the aspect that the land acquisition proceedings for the current project did not proceed on the lines, as it normally goes, but there appear to be a sense of haste on the part of the officials of the State Government in some how getting the project through. This haste was manifest from various high handed actions initiated by the officials. In such circumstances, need arose for this Court to

examine as to whether there is a gross error in the decision making process, which according to the petitioners arose at the very threshold of the project.

42. Reverting back to the preliminary objections raised by the learned Additional Solicitor General, are the Writ Petitions pre-mature, in other words, is this Court denuded of jurisdiction to determine the questions raised before us. We look for an answer in the decisions of the Hon'ble Supreme Court in ***State of Bombay vs. R.S.Nanji, AIR 1956 SC 294***, wherein the Constitutional Bench observed that *prima facie* the Government is the best Judge as to whether "public purpose" is served by issuing a requisition order, but it is not a sole Judge. The Courts have jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose. In ***Somawanti vs. State of Punjab AIR 1963 SC 151***, the Hon'ble Supreme Court held that if the purpose for which land is being acquired by the State is within the legislative competent of the State, the declaration of the Government will be final, subject, however, to one exception. That exception is that if there is a colourable exercise of power, the declaration will be open to

challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside for a moment the purpose of a company. Thus, when an acquisition proceedings is challenged on the ground of irrationality, unreasonableness, arbitrariness, it should be well open to the Court to decide the question. Thus, we get an answer from the aforementioned decisions that the Writ Petitions before us question the very initiation of the proceedings, as being arbitrary, unreasonable against the public interest and would not serve public purpose. Therefore, we are of the clear view that the Writ Petitions are maintainable and consequently, the preliminary objection raised by the learned Additional Solicitor General of India stands rejected.

43. Point No.(ii):-

It is the submission of the learned counsel for the petitioner that to invoke the provisions of the Act and to declare certain highways to be a 'National Highway', the pre-requisite is it should be a highway, in terms of Section 2(2) of the Act, the Central Government may, by notification in the official Gazette, declare any other highway to be a 'National Highway' and on publication of such

notification, such highway shall be deemed to be specified in the schedule. It is submitted that the Central Government is empowered to act in terms of the powers conferred under Entry 23 of List 1 of the 7th Schedule, which specifically states that the Parliament has exclusive power to make a law declaring highways to be a 'National Highway'. It is submitted that Entry 13 of List 2 empowers the State Legislature to enact laws concerning roads, bridges, harezes etc., not specified in List 1. Reference was also made to Article 257(2) of the Constitution and also the proviso under Article 257(2) and Article 254(4) and it is submitted that it is the State Legislature, which is empowered to declare a land or a road to be a highway, as defined under Section 2(12) of the Tamil Nadu Highways Act, 2001, read with Section 3 of the said Act. Thus, it is the submission of the learned counsel that a National Highway can come into existence only upon a declaration under Section 2(2) of the Act and going by the impugned notification issued under Section 2(2) of the Act, no land is available with the Government on the date of notification and no road or highway has been declared as a 'National Highway'. Further, by referring to the Schedule of the National Highways Act, list out the towns which are falling within the description of National Highway on the proposed

National Highways, however no such details are mentioned for the subject highway. Hence, it is submitted that there has to be highway to be declared as a 'National Highway', and plain lands cannot be declared as 'National Highway' and plain lands cannot be acquired by the Union Government for declaration as 'highway' and then as a 'National Highway'. Therefore, the respondents cannot invoke the powers under Section 3A of the National Highways Act for acquiring the vacant lands.

44. Identical contention was canvassed before the Division Bench of the Madurai Bench to which one of us (TSSJ) was a party, in the case of **B.Nambirajan & Ors., vs. District Collector, Kanyakumar District, Nagercoil & Ors., CDJ 2018 MHC 2862**. In the said case, there was a proposal for converting the existing National Highway NH47 between Kanyakumari to Trivandrum as a four way road. However, when the proposal was drawn, it was noticed that the road has to pass through thickly populated towns and therefore, a change of alignment was proposed. This change of alignment was objected to by the petitioners therein on various grounds and also on the ground that the alignment proposed was entirely a new alignment, a new road, not declared as a 'National

Highway' and unless a declaration is made to the said effect in terms of Section 2(1) of the Act, the question of terming it as a 'National Highway' does not arise. In the said case, the Court pointed out that the submission of the petitioners was devoid of merits, as the acquisition is for four laning is NHAI, which includes widening of the existing road. Further by interpreting Section 3 of the Act, it was pointed out that the Act provides for construction of Highway and also for maintenance and existing road can also be declared as State Highway and developed and for the purpose of giving effect to the Act, all Acts can be done by the competent authority, which includes the acquisition of lands also. It appears that the said decision has become final, as the appeal filed against the same was rejected. The correct way of interpreting the provision is to read Section 3A along with Section 2(2) of the Act. If the same is done, the position becomes clear, that is, where the Central Government is satisfied that for public purpose, any land is required for building, maintenance, management or operation of a National Highway or part thereof, it may, by notification in the official gazette declare its intention to acquire such land. The power under sub-section (2) of Section 2 deals with 'declaration of certain highways to be National Highways'. Therefore, the power

under Section 3A of the National Highway Acts, is wide enough to acquire the land for the purpose of building a National Highway or for the purpose of maintenance of National Highway or for management of National Highway or operation of National Highway or part thereof. Therefore, to contend that unless and until a highway is formed in terms of Section 3 of the Tamil Nadu Act read with Section 2 (12) of the Act, then only it can be notified as National Highway, is an argument which is stated to be rejected.

45. Section 3 of the Tamil Nadu Highways Act is the power to declare roads, ways or lands as "Highways". This provision gives power to the State Government to declare any road, it may be a village road or district road or a major road or a land to be a highway and can classify it, as a 'State Highway' or a major district road or other district road or a village road. This power is exercised by the State Government on the recommendation of the State Highways Authorities and if the road, way or land is owned by any local authority, the concurrence of the local authority is required before issuing notification in the Tamil Nadu Government Gazette. Therefore, we are of the considered view that the Central Government has sufficient power to acquire vacant lands for the

purposes of building, maintaining, managing or operating a National Highway or part thereof. Thus, the contention raised by the petitioners that the Central Government has no jurisdiction to acquire vacant land for the purpose of developing a highway, does not merit acceptance. Hence, for the above reasons, this question is answered against the petitioners.

46. Point No.(iii):-

The learned Additional Solicitor General submits that Section 3 of the Environmental Protection Act gives power to the Central Government to take measures to protect to improve the environment which is an enabling provision to issue notification and one such notification being the notification, dated 14.09.2006, regarding prior environmental clearance. It is submitted that the power under the National Highways Act and the National Highways Authority of India Act to acquire lands is unconditional. Therefore, unless and until the National Highways Act or the National Highways Authority of India Act specifically provide for an Environmental Impact Assessment prior to acquisition, the question of such approval to precede the declaration under Section 3D of the NH Act does arise. The notification issued under the Environmental

Protection Act is a subordinate legislation and cannot prevail over the statutory provisions of the Highways Act. Therefore, it is the submission that securing a land for the purpose of implementing the National Highway Project does not require prior environmental clearance and therefore, there is no inconsistency between the two enactments.

47. To decide this question, we may straightaway refer to two decisions of the Hon'ble Division Bench of this Court. In the case of **J.Parthiban & Ors., vs. State of Tamil Nadu [2008-2-L.W.989]**. The challenge was to the acquisition proceedings initiated by the State Government under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, for the expansion of the Chennai Airport. One of the grounds of challenge was that environmental clearance is a must for the proposed project and the same ought to have been obtained before the acquisition proceedings are initiated. In this regard, the petitioners placed reliance on the decision of the Hon'ble Supreme Court in the case of **Karnataka Industrial Areas Development Board vs. C.Kenchappa & Ors., (2000) 6 SCC 371 (ASG TSP)** wherein the Hon'ble Supreme Court set aside the direction given by the

Karnataka High Court to leave a land of 1 km as buffer zone from the outer periphery of the village in order to maintain a 'green area'. The Court directed that in future, before acquisition of lands for development, the authority must properly comprehend the consequences and adverse impact on the environment and that the land acquired for development do not gravely impair the ecology and the environment. This decision was pressed into service by the petitioners to state that it is a general direction issued and prior environmental clearance is necessary. The Division Bench pointed out that the Hon'ble Supreme court has not given general direction that in all projects, the authorities are duty bound to obtain prior environmental clearance before initiation of the acquisition proceedings. In this regard, para 2 of notification, dated 14.09.2016, was referred and it was submitted that except for securing land, the other matters required prior permission.

48. The second decision, in ***M.Velu vs. State of Tamil Nadu & Others, 2010 SCC Online Madras 2736***, the petitioner sought for a direction to forbear the respondents therein from converting the use of lands covered by lakes etc., from agricultural to industrial use and to protect the same. In the said case, the State had

proposed to acquire the lands for industrial purposes and after taking note of the various decisions, the Division Bench directed that prior environmental clearance should be obtained before proceeding further in the matter of issuance of notice under Section 3(1) of the Tamil Nadu Industrial Purposes Act.

49. The respondents by referring to clause 2 of the notification contend that prior environmental clearance may be required for other purpose and not for securing the land, which is being done by the impugned notification which is to be followed by notification under Section 3D of the National Highways Act.

50. The "Public Trust Doctrine" as propounded by the Hon'ble Supreme Court in the celebrated decision in the case of ***M.C.Metha vs. Kamal Nath (1997) 1 SCC 388***, is part of our jurisprudence. The State and the society have become alive to the need to protect environment for the posterity. Times are changing. There is a paradigm shift in the needs and expectation. Technology has advanced in leaps and bounds. There is a quest for perfection and accuracy. Citizen have become quality conscious. Citizen question State action and seek to strike them down, if it smacks of

arbitrariness. Right to Information Act has made information accessible to the public. Therefore, we need to be alive to these situations, while we ponder upon what is required to be done in the instant case bearing in mind the larger public interest. We cannot be mistaken, as if we are propounding a theory oblivious of the economic interest of the State. Undoubtedly, a balance has to be struck between protecting environment and protecting the economic interest of the State. The Hon'ble Supreme Court while dealing with this issue has observed that protection of environment would have precedence over the economic interest (***M.C.Mehta vs. UOI, AIR 2004 SC 4016***). In the said decision, it was pointed out that the harm can be prevented even on a reasonable suspicion, and it is not always necessary that there should be a direct evidence of harm to the environment.

51. The counter affidavits filed by the respondents speak of reducing travelling time between Chennai and Salem. It claims that very backward areas, such as Vandavasi and Polur would stand to be benefited, there would be a substantial saving on diesel, thereby avoiding carbon footprints and would lead to environmental preservation. What has been lost sight of is the fact that agriculture

is the main part of the economy and source of livelihood of rural India. The land of an agriculturist is vital to sustain his livelihood. India being predominantly an agricultural society, there is a strong bond between the land owner and his land. The land provides dignity for the person. It provides a source of livelihood. Therefore, any dent on this source of livelihood should be viewed with utmost seriousness. If the State fails to do so, it will be failing in the public trust reposed on it. The State being the trustee is bound to protect life and livelihood of agriculturists. It is bound to protect the natural resources, the forest, flora and fauna. If there is failure to do so, it will result in disastrous consequences much of which will be irreversible. Therefore, in our view, the issue as to whether prior or post, environmental clearance is required to be decided on a case to case basis. The subject highway is a Rs.10,000 crores project. Large sums of public money is to be invested. Therefore, the project of this magnitude requires to be processed with utmost dexterity. Therefore, the respondents can hardly take a plea that the Hon'ble Division Bench in **Karnataka Industrial Areas Development Board** (supra) did not give a general direction and therefore, it cannot be applied as a binding precedent for other cases.

52. We opine that this is not the correct manner of interpreting a decision, which considered the manner in which the environmental protection laws are to be implemented. These set of laws are to be put at a higher pedestal than other procedural laws. Therefore, we are out-rightly reject the plea of the respondents that the notification issued under the Environmental Protection Act cannot take precedence over the National Highways Act or the National Highways Authority of India Act. As pointed out earlier, protection of environment stands in a higher pedestal when placed on scale with that of the economic interest. Environmental Protection Act was enacted pursuant to the decision taken at the United Nations Conference on Human Environment in 1972 in which India participated and agreed to take appropriate steps for the protection and improvement of human environment. The legislative framers were conscious of the decline in environmental quality evidenced by increasing pollution, loss of vegetal cover and biodiversity. The world community resolved to protect and enhance environmental quality. The legislative framers were conscious of the fact that there are existing laws dealing directly or indirectly with several environmental matters, yet enacted, the Environmental Protection Act, 1986, as it was found that these exists uncovered

gaps in areas of major environmental hazards. This Act seeks to protect and preserve the fundamental right enshrined under Article 21 of the Constitution. Viewed from this angle, the interpretation that is to be given to a notification issued under Section 3 of the Environmental Protection Act, undoubtedly, should rule supreme, over other procedural laws including the National Highways Act, which provides for procedure for acquiring land to build, maintain or develop a National Highway.

53. We do not agree with the learned Additional Solicitor General that prior clearance is not required in terms of para 2 of the notification, dated 14.09.2006, for securing the land. The National Highways Act does not define the word "secure" nor defines the expression "securing the land". According to the respondents 'securing the land' would mean upto the stage of issuance of notification under Section 3D of the Act or even up to taking possession under Section 3E of the Act. In our considered view this is an incorrect interpretation of the expression 'securing the land' as contained in para 2 of the notification, dated 14.09.2006. In 'securing the land', in terms of the National Highways Act can at best be up to the stage of issuance of notification under Section

3(A)(1) of the Act, where the Government notifies that it is satisfied that for a public purpose any land is required for building, maintaining, managing or operating a National Highway or part thereof, any subsequent step cannot fall within the exclusion as provided for in clause (2) of the notification, dated 14.09.2006.

54. The decisions which have been referred to by the respondents to sustain their argument that prior environmental clearance is not required for securing the land are distinguishable for yet another reason. In those decisions, the project which was subject matter of consideration was not a Green Field Project, a project where a new road is formed through virgin land. Therefore, the degree of sensitivity with which a Green Field Project has to be approached is different from a road widening project of an existing road. Admittedly, there is no village road, municipal road, state highway or national highway in the proposed alignment. Agricultural lands, farm lands, residential properties, water bodies, forest lands etc., are required to be acquired to form this new road. Therefore, to state that Environmental Impact Assessment is required to be done only when the road is to be formed is virtually amounting to "putting the cart before the horse". The counter

affidavits filed by the respondents do not disclose as to what are the plans which are in the pipeline for rehabilitation and resettlement of the persons, who are likely to be displaced. The only stand taken by the respondents is by contending that the time has not come to consider those aspects. We are not convinced with these answers given by the respondents. The entire project i.e., commencing with the appointment of the consultant is subject matter of these cases. Therefore, the respondents owe a duty to the Court to disclose the plans which are in the pipeline for rehabilitation and resettlement as admittedly several persons are likely to be displaced from their residential homes, evicted from their agricultural lands, which is the only source of their livelihood. Peaceful protest were stifled, unwritten gag orders were promulgated, police force was used to handle the peaceful protesters, who were making a request to spare them and their lands. Only after this Court intervened these high handed actions had subsided.

55. Thus, considering the peculiar facts of the instant case, magnitude of the project, the proposed alignment, which admittedly cuts across the Forest land, water bodies, big and small fertile agricultural lands etc., it is necessary that prior environmental

clearance is required before the respondents proceed further, pursuant to the notification under Section 3A(1) of the Act.

56. Having taken note of the two decisions of the Division Benches of this Court, we also take note of the decision of the Hon'ble Supreme Court in the case of **Raghubir Singh Sehrawat vs. State of Haryana And Others, (2012) 1 SCC 792**. The judgment begins with quoting "John Stuart Mill", "Pt. Jawahar Lal Nehru" and "Dr. M. S. Swaminathan" on the following lines:-

"2. More than 16 decades ago, John Stuart Mill wrote:

"Land differs from other elements of production, labour and capital in not being susceptible to infinite increase. Its extent is limited and the extent of the more productive kinds of it more limited still. It is also evident that the quantity of produce capable of being raised on any given piece of land is not indefinite. These limited quantities of land, and limited productiveness of it, are the real limits to the increase of production."

3. In 1947, the first Prime Minister of India Pt. Jawahar Lal Nehru said "everything else can wait, but not agriculture". In its fifth and final report, the National Commission on Farmers headed by Dr. M. S. Swaminathan observed that prime farmland must be conserved for agriculture

and should not be diverted for non-agricultural purposes, else it would seriously affect the availability of food in the country where 60% of the population still depends on agriculture and people living below poverty line are finding it difficult to survive."

57. The Hon'ble Supreme Court lamented that the above words of wisdom appear to have become irrelevant for the State apparatus which has used Land Acquisition Act, 1894 in the last two decades for massive acquisition of agricultural land in different parts of country which has not only adversely impacted the farmers, but also generated huge litigation, adjudication, which consumes substantial time of the Courts. The Hon'ble Supreme Court was testing the correctness of a judgment of the Division Bench of Punjab and Haryana High Court, which upheld acquisition of agricultural lands. One of the grounds raised by the land owner is that there was no justification to acquire his land, which was the only source of livelihood for him and his family. The Hon'ble Supreme Court noted that the appellant had been non-suited by the High Court only on the ground that possession of the acquired land had been taken by the officers concerned and the same will be

deemed to have vested in the State Government free from all encumbrances. The Court tested the legality of the mode and manner of taking possession of the acquired land and noted decisions on the said point. Ultimately, it was held that the record prepared by the Revenue Authorities showing delivery of possession of the acquired land has no legal sanctity and the High Court committed serious error by dismissing the writ petition on the specious ground that possession of the acquired land had been taken and vested in the State Government in terms of Section 16 of the Land Acquisition Act, 1894.

58. Before concluding, the Hon'ble Supreme Court observed that it is difficult, if not impossible, to appreciate as to why the State and its instrumentalities resort to massive acquisition of land and that too without complying with the mandate of the statute. It was further pointed out that acquisition of agricultural land in the name of planned development or industrial growth would seriously affect the availability of food in future. The following observations of the Hon'ble Supreme Court, in our considered view, would be apt for the cases on hand:-

"42..... After independence, the

administrative apparatus of the State has not spent enough investment in the rural areas and those who have been doing agriculture have not been educated and empowered to adopt alternative sources of livelihood. If land of such persons is acquired, not only the current but the future generations are ruined and this is one of the reasons why the farmers who are deprived of their holdings commit suicide."

59. Ms.D.Nagasaila assisted by Ms.S.Tanvi learned counsels had referred to decisions from the United States of America. The exposition of law by the Law Courts in United States were considered by us. After going through the decisions, we found that the principles laid down therein are on the same plane and latitude as that of erudite decisions of our superior Courts and the wisdom of our legislative framers.

60. The first of the decisions, which we would like to refer to is that of the United States Court of Appeals, First Circuit in the case of **Commonwealth of Massachusetts vs. James G. Watt, 716 F.2d.946 (1983)**. The Government was on appeal before the Court to set aside a preliminary injunction stopping it from

auctioning rights to drill for oil on 488 tracts near Georges Bank, a fishing area. The District Court issued the injunction on the ground that the proposed sale of "right to drill oil" was likely to violate four separate statutes, viz., the National Environmental Policy Act; the Endangered Species Act; the Coastal Zone Management Act; and the Outer Continental Shelf Lands Act. The appeal filed before the Court of Appeals was rejected and the order passed by the District Court was affirmed stating that the National Environmental Policy Act requires the Department, before auctioning its oil lease, prepare a statement that describes the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided and alternatives to the proposed auction. In the said case, after the Department prepared its Final Environmental Impact Statement, it radically revised its estimates of oil likely to be found on the tracts it intended to lease and it lowered its estimation by 97%. The question was whether on account of this reduction, which is a significant new circumstance sufficient to require an Environmental Impact Statement (EIS) supplement. The Department took a decision not to supplement the EIS and this decision was held to be not reasonable, as without a supplement, the Final EIS did not describe the likely environmental harms while

enough to allow the Secretary to impact an environment decision. It was further pointed out that after reading the Final EIS, the authority would have no clear idea as to how to visualize the environmental harms under the new mean estimates, as the entire Final EIS is couched in terms of the old mean, the new document merely says that the harm is "not as great", but the crucial question for a rational decision-maker is by how much the likely environmental harm will be reduced.

61. Referring to a decision in the case of ***California vs. Watt, 683 F.2d 1253 (9th Cir.1982)***, it was held that the Court considered the environmental significance of the new information, the probable accuracy of the information, the degree of care with which the agency considered the information and evaluated its impact and the degree to which the agency supported its decision not to supplement with a statement of explanation or additional data.

62. With regard to whether prior clearance is required, it was pointed out that it is appropriate for the Courts to recognise the type of injury in a National Environmental Policy Act case, for it

reflects that the very theory upon which the Act is based – a theory aimed at presenting governmental decision makers with relevant environmental data before they commit themselves to a course of action. It was pointed out that the plaintiffs would suffer harm, if they are denied an injunction, if the lease sale then took place, and if the Court then held that a supplemental Environment Impact Statement was required and in that event, the Oil Companies who have committed time and efforts to planning the development of the blocks, they had leased and the relevant State agencies would have begun to make plans based on the leased tracts and this is a chain of bureaucratic commitment that will become progressively harder to undo the longer continues. Thus, it was pointed out that the National Environmental Policy Act's purpose is to require consideration of environmental factors before project momentum is irresistible, before options are closed and before agency commitments are set in concrete.

63. In the decision of the United States Court of Appeals, Ninth Circuit in ***Roosevelt Lathan and Pearline Lathan, his wife, vs. John A. Volpe, Secretary of the United States Department of Transportation, 455 F.2d 1111***, the plaintiffs

appealed against the denial of their motion for preliminary injunction to halt all further acquisition of property by the State Highway Officials for proposed interstate highway until statutory, administrative and constitutional requirements are met. Interestingly, the preliminary study for the interstate highway began in 1944 and continued into 1960 (*in the case on hand, the Consultant is stated to have completed the study and submitted draft feasibility report within 60 days*). The plaintiffs were residents of the portion of the corridor area and they sought to prevent continued progress on the planning and construction of the highway. The Court discusses about the statutory scheme which governs those proceedings and it appears that the procedure is some what similar to the National Highways Manual published by the Government of India.

64. In the said case also, the provisions of the National Environmental Policy Act, 1969, was taken into consideration. The Highway Administration did not argue that the Highway Act or the National Environment Policy Act does not apply to the case and while conceding their applicability, they stated that the time to apply them is yet to arrive. The trial Judge agreed with them. (The

defence raised before us in these Writ Petitions by NHA is more or less identical, as they say the Environmental Impact Assessment is not required at this stage, as NHA is in the process of securing the land, which does not require prior environmental clearances). Thus, the only question which the Court of Appeals was to decide is when and how the admittedly applicable statutes must be applied. The purpose of the statute was analysed on the following terms:-

"The policies behind the enactment of Chapter 5 point to the same conclusion. The purpose of the chapter is to protect all persons who will be displaced from their homes because of a federal-aid highway program. Nothing in its language, or in the legislative history cited to us, suggests that it is to become fully operative only when the final design is approved and actual condemnation proceedings are authorized. If the purpose of the statute is to be accomplished, it must be fully implemented not later than the approval of the "corridor" or "route" of the highway under section 106. At that point, the route is known, although the precise location of the right of way within it is not. At that point all of the pressures leading to displacement come into play. Unless the state is then in a position to give the statutory assurances as defined by the Secretary, there is danger that displacements will proceed

without anyone's knowing whether the requirements of the statute can be fully met. "Hardship" displacements may use up all of the available housing that meets statutory requirements, leaving the project stalled and the remaining residents of the corridor trapped in a deteriorating area, because at the time of design approval the necessary assurances cannot be given."

65. The effect of the National Environmental Policy Act was discussed as follows:-

E.....“Given the purpose of NEPA to insure that actions by federal agencies be taken with due consideration of environmental effects and with a minimum of such adverse effects, it is especially important with regard to federal-aid highway projects that the Sec. 102(2) (C) statement be prepared early. If defendants' contention were accepted-that no environmental impact statement is required until the final approval stage-then it could well be too late to adjust the formulated plans so as to minimize adverse environmental effects.

Once the highway-planning process has reached these latter stages, flexibility in selecting alternative plans has to a large extent been lost.

To paraphrase the District of Columbia Circuit, "In the language of NEPA, there is likely to be an 'irreversible and irretrievable commitment of resources,' which will inevitably restrict the [highway officials'] options. Either the [highway planners] will have to undergo a major expense in making alterations in a completed [plan] or the environmental harm will have to be tolerated. It is all too probable that the latter result would come to pass." Calvert Cliff's Coordinating Committee v. U. S. Atomic Energy Commission, D.C.Cir., 1971, 449 F.2d 1109 (1971). This was clearly not the intent of Congress when it enacted NEPA."

Ultimately, the Court ordered the Environmental Impact Statement to be prepared in consultation with the appropriate Government Agency as required under the said enactment.

66. In ***Arlington Coalition on Transportation vs. John A. Volpe, Secretary of Transportation***, 458 F.2d.1323 (1972), the United States Court of Appeals, Fourth Circuit while considering the effect of National Environmental Policy Act, held as follows:-

Given the purpose of NEPA to insure that actions by federal agencies be taken with due consideration of environmental effects and with a minimum of such adverse effects, it is especially

important with regard to federal-aid highway projects that the Sec. 102(2)(C) statement be prepared early. If defendants' contention were accepted-that no environmental impact statement is required until the final approval stage-then it could well be too late to adjust the formulated plans so as to minimize adverse environmental effects.(emphasis supplied)

Once the highway-planning process has reached these latter stages, flexibility in selecting alternative plans has to a large extent been lost. To paraphrase the District of Columbia Circuit, "In the language of NEPA, there is likely to be an 'irreversible and irretrievable commitment of resources,' which will inevitably restrict the [highway officials'] options. Either the [highway planners] will have to undergo a major expense in making alterations in a completed [plan] or the environmental harm will have to be tolerated. It is all too probable that the latter result would come to pass."(emphasis supplied)

67. In **Jones vs. District of Columbia, 499 F.2d.502 (1974)**, the issue was as to when environmental clearance had to be obtained and it was held that environmental impact assessment

is to be done at the stage of planning itself and not after approval and thus, rejected the argument that the case was pre-mature. The relevant portion of the judgment is quoted as hereunder:-

"In short, unless defendant agencies were about to take, or were taking, physical steps to carry out the action year program, a preliminary injunction requiring compliance with NEPA could not issue.

"We think that the District Court defined too narrowly the kind of harm that, under NEPA, may be sufficient to warrant the intervention of a court of equity, even at a preliminary stage. The harm against which NEPA's impact statement requirement was directed was not solely or even primarily adverse consequences to the environment; such consequences may ensue despite the fullest compliance. Rather NEPA was intended to ensure that decisions about federal actions would be made only after responsible decision-makers had fully adverted to the environmental consequences of the actions, and had decided that the public benefits flowing from the actions outweighed their environmental costs. Thus, the harm with which courts must be concerned in NEPA cases is not, strictly speaking, harm to the

environment, but rather the failure of decision-makers to take environmental factors into account in the way that NEPA mandates. And, for purposes of deciding whether equitable relief is appropriate, we think that this harm matures simultaneously with NEPA's requirements, i. e., at the time the agency is, under NEPA, obliged to file the impact statement and fails to do so.”

The above decisions will come to the aid and assistance of the petitioners.

68. The respondents, being a welfare State, while implementing the project which, in the opinion of the Government, is in public interest, cannot close its eyes to reality and forget that protecting agriculture is equally in public interest.

69. As pointed out earlier, the balance between agricultural development and economic development is delicate may at times very difficult for the bureaucrats and policy decision makers to perceive. Thus the interpretation, insofar as India is concerned, should lean towards agriculture. Therefore, we are of the clear view that if the project is allowed to be implemented without prior

environmental clearance, it would be grossly in violation of the principles of sustainable development and would violate the provisions of Articles 19, 21, 46, 48A and 51A of the Constitution of India.

70. Point Nos.(iv), (v) and (vi):-

These questions hinges upon quasi technical data. We say so because until we heard this matter, we had no inkling of what PCU stands for. We were enlightened by the counsels that it denotes "Passenger Car Units". Mr.Kabilan Manokaran, learned counsel appears to have done an elaborate exercise on this issue. He argued that the project is vitiated on four major grounds. The Bharatmala policy evolved by the Union Government lays down detailed criteria for bringing a highway project into the Bharatmala Scheme. The Chennai – Salem project was not included in Bharatmala Program 2017. The conditions required for inclusion of the project subsequently which is provided for, have not been fulfilled in the Chennai – Salem Green Field Project. The Cabinet Committee and the Committee of Ministers are required to approve such projects and the Chennai – Madurai project was approved in October, 2017. This approval was unilaterally dropped by the

Ministry without the permission of the Cabinet Committee. It is submitted that there are eleven criteria to declare a "Highway" as a "National Highway" and none of the criteria has been followed. Referring to Clause II F of Bharamala Pariyojana – Phase I, it is submitted that Green Field Express way are certain sections of National and Economic Corridors have traffic exceeding 50000 PCUs and have also developed several choke points. About 1900 kms of these structures have been identified for development of Green Field Express ways. Around 800 kms are being taken up under this category in Phase I of Bharatmala. It is the submission of the learned counsel that this criteria has not been met. Furthermore, the list of economic corridors given in annexure-I of the project does not include the subject express way, however, in serial no.19, Chennai – Madurai Economic Corridor finds place. It is submitted that Chennai – Salem Express way was never shown to be under any stage of consideration as per records. On 25.10.2017, when Bharatmala - I self projects were announced; on 25.11.2017, when the State of Tamil Nadu presented a memorandum to the Central Government seeking attention to a list of projects sought to be implemented in Tamil Nadu; on 23.11.2017, when Hon'ble Union Minister of MoRTH announced a list of projects approved for Tamil

Nadu to the tune of Rs.1 Lakh Crore; on 18.12.2017, from Minister of State – MoRTH replied to questions in Rajya Sabha; on 24.01.2018, when Bharatmala – I was reviewed; and on 05.03.2018, when Ministers of State – MoRTH replied to questions in Rajya Sabha about new highway projects under various stages including DPR stage.

71. Thus, the petitioner's contention is that the question of appointing a Consultant – M/s.Feed Back could not have been done at least until 05.03.2018, as in the said list of new projects, the Chennai – Salem project did not find place. Furthermore, in the representation given by the Government of Tamil Nadu on 23.11.2017, nothing has been stated about the traffic congestions etc., warranting a need for a Green Field Express way between Chennai and Salem. The petitioner submits that the traffic congestion is in Tambaram and Paranur and at the entry point in Salem and nothing is clear as to how the project highway will help de-congestion.

72. Nextly, the learned counsel explained what is LoS – Level of Service. In this regard, the Highway Capacity Manual was referred to and elaborate submissions were made on the designed

capacity of multi-lane highways etc. These submissions are to substantiate the petitioner's contention that there is no excess traffic flow, than the designed capacity in the existing roads.

73. The project is also stated to be vitiated for violation of the guidelines stipulated by the Central Government. It is submitted that the Public Investment Board's clearance has not been obtained, in-principal approval of Ministry of Finance and Comptroller and Auditor General (CAG) not obtained; audit of project formulation by CAG not done; alignment report and approval should be as per DPR guidelines of Ministry of Road Transport, the same has not been complied with; change of scope of consultation, that is, Chennai – Madurai changed to Chennai – Salem in violation of DPR guidelines; and guidelines of tendering process as per Ministry of Transport and Post Award Portal Guidelines have been violated. To substantiate the above contentions, the learned counsel had referred to the CAG guidelines, the guidelines for procurement, preparation, review and approval of DPR etc.

74. The next contention is that there has been abuse of process commencing from the manner of appointment of Consultant. The Consultant has been debarred and such Consultant

ought not to have been chosen. It is further submitted that there has been non-application of mind at all levels. The characteristics of the project have never been taken into consideration, more particularly, when there are six existing roads, this is probably why, this was not considered as a priority in Bharatmala. It is submitted that there has not been proper or no study of the alternatives which is primordial; there has been no proper study of the traffic survey and analysis, as origin – destination basis is the requirement for traffic analysis, which has not even been mentioned in the final feasibility report. Furthermore, no reasons have been assigned for dropping Chennai – Madurai Project and there is no rational basis for doing so. Further, the Consultant – M/s.Feedback did not factor Chennai – Bangalore Express way, which is sought to be implemented. Further, it is submitted that there has been absolutely no economic analysis done before approval of the project.

WEB COPY

75. The respondents justified the project on three grounds, viz., (i) existing capacity is fully utilized; (ii) there will be economic development in general; and (iii) there will be reduction in carbon

foot print.

76. According to the petitioners, all these three reasons are absolutely without any basis. It is submitted that none has factored the financial consequences of additional toll road and the existing concessioner of the toll ways will be benefited, as their concession period has to be extended by minimum 50% of the time and in some cases, it has to be extended by 100%.

77. Rebutting the contention of the Consultant that all National Highways have exceeded full capacity, that is, 120% and if it is so, the concessioner has to pay money to NHAI. The learned counsel for the petitioners submits that if that is the factual position, NHAI has to accept the same, but if they failed to accept the same, then the data and statistics relied on them is wrong. Thus, on several grounds, the final feasibility report was faulted.

WEB COPY

78. The Central Government has not filed any counter affidavit on the issues pertaining to as to how the project was included in Bharatmala Scheme. The Counter affidavit of NHAI also does not

touch upon the same, except to state that it is a policy decision. The Consultant seeks to justify the stand, but nevertheless his role is limited, as he had been appointed as a Consultant for preparing the report. The faults which were pointed out by the petitioner with regard to the draft feasibility and the final feasibility report are sought to be rebutted by the Consultant in their written submissions, firstly by contending that NHAI is an expert body and is fully competent to review the works done by the Consultant.

79. As pointed out by us, at the very inception, these are quasi technical issues, but whether the project did form part of the Bharatmala Scheme at the first instance, is a question of fact which needs to be answered. The first respondent, namely, MoRTH has not filed a counter affidavit. In the absence of a counter affidavit, we are constrained to go by the records, which are placed before us. The records clearly demonstrate more particularly, annexure-I to Bharatmala Pariyojana Phase – I, which is a press release by the Government. Annexure-I contains the list of economic corridors and the Chennai – Salem Economic Corridor does not find place, but Chennai – Madurai finds place in serial no.19. Therefore, what is clear from the above is that the subject project was not included in

the list of projects approved under the Bharatmala Scheme. It is for the Central Government to take a decision in the matter as to whether a particular highway project should be brought under the Bharatmala Scheme, which appears to be need based depending upon various factors. Undoubtedly, the decision to include a particular project under a particular scheme may be a policy decision. However, such decision cannot confer unfettered discretion on the executive. The exercise of discretion should be guided on certain principles.

80. So far as the Bharatmala Scheme is concerned, it lays down certain guidelines which were elaborated before us. In terms of the scheme formulated by the Union of India to include a road project in the Bharatmala-I Scheme, the approval of the Cabinet Committee of Economic Affairs chaired by the Hon'ble Prime Minister is mandated. In fact, the Committee took a decision on 24.10.2017 with regard to the projects which have to be brought under Bharatmala Scheme. Admittedly, the Government of Tamil Nadu has not agreed to bare at least 50% of the land acquisition cost. In such circumstances, it has to be seen as to how a project could be included in the Bharatmala Scheme subsequently. No

record has been placed before us to show as to how this project was included subsequently in the Bharatmala Scheme, that is, after 24.10.2017. The data made available by MoRTH mentions 44 economic corridors scientifically identified and the Chennai-Trichy-Madurai Economic Corridor is stated to have higher vehicular traffic at an annualised average daily traffic of 43671 PCU and there is nothing placed on record by the respondents to show as to why such a higher priority project should be dropped and a project which was never in the pipeline to be included. The respondents have not placed any material to show that the subject project has been approved by the Cabinet Committee or by the PPPAC as mandated in the guidelines issued by the Comptroller and Auditor General.

81. As noticed above, the Consultant, M/s.Feed Back Infra was not appointed for the Chennai-Salem project up to 05.03.2018. Further, the tender issued by NHAI calling for bids to offer consultancy services for DPR was for the Chennai-Trichy-Madurai Economic Corridor. Therefore, such a consultant who was appointed for a different project and never given any written orders for conducting a feasibility study, has submitted a feasibility report on 23.04.2018 citing that they were directed by NHAI to make a study

and submit a report. Therefore, it is manifestly clear that there has been serious flaws in the decision making process and those flaws goes to the root of the matter affecting the entire proceedings.

82. It was argued by the learned Additional Solicitor General that the writ petitioners are indulging in cherry picking, pointing out insignificant errors when they do not have any expertise in the area. We do not agree with the submission, since the endeavour of the petitioners is to point out the flaws not only in the acquisition proceedings, but the steps taken preceding the acquisition and those done after the notification issued under Section 3A(1) of the Act. One other argument put forth by the learned Additional Solicitor General is that there is no statutory requirement for obtaining a feasibility report. NHAI cannot take such a stand having decided to call for tenders for appointing a consultant for preparation of a feasibility report. It might have been a different matter if NHAI themselves had carried out the exercise, but having not done so and thought fit to outsource the work to a private agency by calling for tenders, the work which has been outsourced is deemed to be a work which ought to have been done by NHAI. If there are flaws in the work done by the consultant so appointed, the

Court is not powerless to test the correctness of the procedure which has been followed if not the ultimate decision. One other argument was advanced by contending that after the detailed project report had been received, the pre and final feasibility report loses its significance. Such an argument cannot be put forth by NHA I because, the writ petitions were filed when the draft feasibility report was submitted. The draft feasibility report has been faulted on several grounds and when the same was being tested, the consultant proceeded to prepare the final report and ultimately the detailed project report. Thus, if an error had occurred at the first instance, not rectified at the subsequent stage, it is deemed that such an error stood perpetuated. Therefore, we are well within our jurisdiction to test the correctness of the entire proceedings commencing from the appointment of the consultant. The respondents cannot take umbrage by contending that the change from Chennai-Madurai to Chennai-Salem is a policy decision. It is submitted that the minutes of the meeting of MoRTH shows adequate grounds for change of the project to Chennai-Salem. A policy decision is not always immune from challenge. If there has been arbitrariness in the decision making process, Courts are entitled to exercise their power of judicial review. The minutes of

the meeting relied on by the respondents would, in fact, go to strengthen the case of the petitioner that there was a change of the project midway, that is, much after the consultant was appointed for the Chennai-Madurai project.

83. Shri T.V.Ramanujam, learned Senior Counsel appearing for the consultant submitted that the work of the consultant is subject to review by NHA I and not open to public scrutiny. We do not agree with the submission for more than one reason. Firstly, the work done by the consultant is a work which was required to be performed by NHA I who took a decision to outsource the work by calling for tenders from consultants. Having done so, the work executed by the consultant so appointed is subject to judicial review on stated parameters, as it is work performed on behalf of a wholly owned Government agency having special powers and expertise. Secondly for the reason that public funds are employed to meet the expenditure of the consultancy firm. Thus, the work of the consultant is subject to judicial review.

84. Thus, the decision to make a project to fall under Bharatmala Scheme may be a policy decision, but to implement such policy decision, necessarily, the guidelines have to be

scrupulously followed, as the Bharatmala Scheme provides for priority for certain projects over others. Therefore, if project 'B' is to be prioritised over project 'A', then project 'B' should meet the criteria and satisfy the basic requirements and should have distinguishing features to surpass project 'B'. In the absence of any counter affidavit and no proper explanation given by NHA I except to state that it is a policy decision and they are experts, we are of the considered view that the entire matter was executed in a great haste and much of the required settled parameters to be followed, have been ignored. Therefore, we are of the view that there has been no proper scrutiny of all details, more particularly, the alternatives before a decision was taken to implement this project.

85. There is an allegation that there is a hidden agenda for the proposed project. One of the Writ Petitioners has named a Public Limited Company manufacturing Steel stated to have garnered about 2000 acres of land in Salem district with a view to exploit the natural resources. However, there is no material placed before us to show that the project has had a hidden agenda. Nevertheless, we may observe that there has been great haste in notifying the project and one fails to understand as to why there is

such a hurry in doing so, when the State is still grappling about the after-effects of two cyclonic storms in last four years. We deem it appropriate to say nothing more on this.

86. Point No.(vii)

To answer this question, we need to look into the basic facts which establish that "the cart has been put before the horse". Nothing more is to be stated except to hold that the award of the consultancy contract was wholly illegal. The NHAI invited bids for various projects on 06.09.2017 with bid due date as 23.10.2017, which was extended up to 03.11.2017. We are concerned with lot – 6 which pertains to consultancy services for preparation of DPR for development of economic corridors, inter-corridors, feeder routes and national corridors to improve efficiency of freight movement in India under Bharatmala Project. The original files which were circulated for the Court's perusal show (Volume I page 18) that there were 18 consultancy firms, who submitted their bids via e-portal. The committee recommended for evaluation of the bids on the basis of eligibility/evaluation criteria. The files disclose that up to the stage of acceptance of the bids submitted by the consultant, the project for which Consultant – Feed Back had quoted is for

Chennai – Madurai, as a consequence of which the other bidders obviously stood disqualified. If such was the admitted factual position, could there been a draft feasibility report prepared and submitted by the Consultant for a totally different project with regard that the project for which tenders were invited. The only answer to the question should be in the negative. A bid which is offered by a bidder is for the work called for and cannot be extended in respect of a different work. If there is a change in scope of work, one of the two options would be available, that is, to scrap the tender and invite fresh bids or to issue a supplemental notification and invite all the bidders intending to participate, that is, those who were short listed as well as those who were not short listed. In the instant case, the second option cannot be done, because the project is a new project; the parameters are different; the considerations are different; the data and statistics are different; above all, the project which was dropped was an approved project under the Bharatmala Scheme, whereas, there is nothing on record to show that the subject project was approved as part of the Bharatmala scheme in terms of the procedure required to be followed. The facts are not in dispute because, the Consultant himself states that he was directed to prepare a report to be

discussed in a meeting. This oral direction appears to have been issued much prior to the written contract between the parties, which was much later. Therefore, there has been a serious error in the decision making process.

87. One of the arguments on behalf of the Consultant was that none of the other bidders have challenged it. We are at a loss to understand as to why there has not been any challenge. Probably, it is a small group of Consultants who regularly carry out such consultancy assignments to NHAI. We are not aware of what are the "internal economics" or "internal chemistry" between those bidders, yet that can never in any manner sanctify an illegality committed by the authorities in permitting the Consultant to proceed on oral directions to conduct a survey and collect data in respect of a project, which was never approved under the Bharatmala. Therefore, we have no hesitation to hold that the project originally notified in lot no.6 was different from the project now sought to be implemented and the Consultant having been declared as "successful bidder" for the Chennai – Madurai project, could not have been permitted to proceed with the Chennai – Salem project except for inviting fresh tenders and offers.

88. Point No.(viii):-

The respondents do not deny the fact that the subject project if implemented, will pass through Forest lands, lakes, ponds, water bodies, agricultural lands, part residential accommodation, farm lands etc. The impact of the project on the eco system is yet to be studied. In-principle approval has been granted to study the impact in Forest area. In the meantime, there has been realignment and it is reported that the project will pass through Forest area only to an extent of less than 10 kms. The petitioners have stated about the rich flora and fauna in the area, the rare type of birds and animals, insects and worms which are found exclusively in that area. The counter affidavits filed before us does not in any manner render any assistance in arriving at a decision as to what has been done in this angle. Presumably, nothing has been done. Reducing the distance in Forest area may be appreciable, but it cannot be taken to be a laudable idea. The endeavour should have been to avoid Forest area. Elsewhere in the country, where in the yester years, roads were laid through wildlife sanctuaries and Reserve Forest, when the traffic was minimal and by efflux of time, these roads virtually have become city roads and many at times, Forest officials find it very

difficulty to regulate traffic on those roads, especially during night time, when the wild animals move around freely. This has resulted in the human-animal conflict. Who is to be blamed? It is none other than the humans, who treaded into their territory for personal gains and comforts.

89. Earlier we have held that the reports submitted by the Consultant is required to be scrapped. Even going by the draft feasibility report, we find the merits of the three existing routes and the proposed alignment has been discussed. The report states that since the existing roads are already present, there is no structure affecting and land acquisition unlike the proposed Green Field Highway. It has been further stated that all the existing routes are either no access/partial access control, and the connectivity is much higher to the villages/towns along its pathway. The average travel time in these three routes from Chennai to Salem is 5 hours 45 minutes and with improvement to the existing routes, it can be reduced. Further, there is no forest land acquisition, which is a very difficult and lingering process required for proposed Green Field Highway. Further, the proposed Green Field Highway with closed toll policy system is difficult to access for a common man. When we

compare the merits of the three existing routes with that of the proposed alignment, we find that the object is to connect industrial area and special economic zone present along Chennai and Salem district and it is claimed that the access control Green Field Highway will pave the way for economic development of the region and ensure shorter travel time and distance compared to the existing routes. However, we find that the merits in the existing three routes are far superior and higher than the merits in respect of the proposed alignment, more particularly when the Consultant themselves have stated that by improving the existing routes the average travel time can be reduced. Furthermore, it is admitted that acquisition of forest land is very difficult and it is a lingering process and the proposed access controlled Green Field Highway is difficult to access for a common man. The report has analysed the seismicity and it has been stated that the proposed highway will be located in very high damage risk zone as per wind and cyclone hazard classification of India. Further the report while considering the Surface Water Impact states that the proposed Green Field Alignment is crossing rivers namely, Palar Pennaiyar etc., and also many irrigation lakes/tanks etc.

90. The lessons learnt elsewhere should be an eye opener for the State while designing any project which is near Forest area or intended to pass through a Forest area. In other words, prevention is better than cure. Two of the popular hill stations in the State of Tamil Nadu is crumbling with large scale encroachments and unregulated constructions. The authorities have not been able to make any significant progress, despite directions and orders issued by this Court. Should we permit that to happen again. If the road passes through a Reserve Forest to an extent of 10 kms, will it not only pave way for establishments in the near vicinity, it would also pave way for poaching of endangered species of birds and animals in the hill area. It will pave way for illicit felling and transportation of valuable timber. Obviously, the National Highway cannot build a compound wall on both sides of the highway nor post armed security guards 24 X 7 to be prevent any ingress or egress into the Forest area.

WEB COPY

91. During the pendency of these Writ Petitions, it was brought to our notice that more than 100 trees were unauthorisedly felled from the lands in close proximity with the proposed

alignment. The persons who had unauthorisedly felled those trees had been granted permission only to remove the wind fallen trees numbering about 8 or 6 trees at different location several kilo meters away. However, the persons had trespassed into Government land and unauthorisedly felled more than 100 trees. Thus, if the project highway is to pass through the reserve forest area, even it is to a distance of about 10 kms, it will undoubtedly pave way for the forest poachers and will felicitate easy access to the forest area. We can take judicial notice of the fact that in a village called Thengumarada, the villagers are required to cross the Moyar river to reach their residence. The only way to cross the river is by availing the services of coracle and when the water level is bit low, the villagers avail the services of the four wheel drive Jeeps. For several years, the villagers have been representing to the Government for constructing a bridge to enable them to easily access their village. It is stated that the Forest Department has not given permission to put up the bridge on the ground that it will pave way for illegal felling of trees in the area. Therefore, the stand taken by the department in the instant case appears to be rather surprising by justifying their action contending that they have minimised the length of the road within the Forest area to 10kms.

It is common knowledge that in all places throughout the country where roads have been formed through forest area, there has been always human-animal conflict. Those roads which were formed decades ago was for different purpose, but the same roads have become a great nuisance to the Wild Life in the area. Very recently, the Government sought to relocate tribal settlements in forest areas to avoid poaching and to avoid human-animal conflict. We wonder as to how these issues will be tackled if a new road is to be formed inside a Reserve Forest regardless of the distance proposed.

92. Therefore, we are of the clear view that a more thorough study was required in the matter and it defies logic that in such a sensitive project, study could have been made within 60 days, when in the United States of America, study commenced in 1944 and went on till 1960 for linking two highways. We are not stating that the project should take such long, but the seriousness with which the study should be conducted should be appreciated at all levels. The Consultant appointed is paid consideration for the work to be done, he has a duty to protect the rights enshrined under the Constitution of India. Therefore, the report should be balanced, as the Consultant states before us that the report is not binding on

NHAI. Therefore, the report need not suit the needs of NHAI, nor be doctored to suit any other requirements. The report should report the true and correct facts, as it is with no rounding off or making concessions. Obviously, within 60 days, nothing could have been done. Nothing worthwhile could have been done, given the length of the project and the sensitivity of the area through which, it passes through the different terrain and other cultural and social factors. It may be true that the contract between NHAI and the Feed Back provides for 60 days time to submit a report. Nothing prevents a Consultant, who claims to be the one of the best in the field doing several projects, to seek for additional time. It is admitted by the consultant that google maps were referred to and relied on for preparing report. This will go to show that the entire length of the proposed alignment has not been physically verified or visited. Sample surveys are stated to have been conducted. It is not clear as to whether personnel were deputed for collecting the data of PCUs or the data available in the toll plazas were collated. There is a serious dispute raised by the petitioner as to how the PCU is required to be computed whether the traffic on one way of the road alone should be taken into consideration or both ways. In any event, given the distance to which the proposed highway is to be

formed and considering the terrain in which it is proposed to be formed, consultant could not have made any justifiable study to reflect the true picture within less than 60 days.

93. The procedure adopted by NHAI in asking the Consultant to carry out a work which was never the scope of the bid document by an oral arrangement is unheard of. Therefore, unless a proper study is made, the impact on the Forest lands, water bodies, wildlife, flora and fauna cannot be assessed and therefore, if the Central Government still is of the opinion that the subject project is required to be implemented and it passes through the required procedural formalities, then it is well open to the respondents to make a comprehensive study of the environmental impact.

94. Point Nos.(ix) & (x):-

While deciding issue no.3 regarding prior environmental clearance, we have pointed out that the facts demand a prior environmental clearance, that is, prior to issuance of the notification under Section 3D of the National Highways Act. Prior environmental clearance would undoubtedly require a thorough study of the area through which the project is proposed to be implemented. The

agriculturists in the area have raised protest and some of them have approached this Court by filing Writ Petitions. It does not matter that some section of people for reasons best known are agreeable to be part of the project and surrendered their lands for the project without being well informed as to what would enure to them upon such surrender. We are not concerned with those people who are willing to run the risk and it is up to them to seek sane advice. We are more concerned about the innocent people who are not aware of their rights, all that they know is that they will not be able to survive without their agricultural lands. The nature of attachment to the land is inseparable. Therefore, to understand the impact of the project *vis-a-vis* the object with which NHAI is said to have conceived the project, it is essential that the people who are likely to be affected, if not all, at least few of them should be heard in the matter. This procedure, if adopted, will ensure fairness and reasonableness and this so called delay is not going to hamper the project, which even as per the report will be fully implemented in the year 2025. Therefore, before seeking prior environmental clearance, it is necessary that a public hearing is held before any such project is implemented.

95. Point No.(xi)

While deciding issue no.6, we have held that the award of tender was for a different project and the report has been prepared pursuant to oral directions issued to the Consultant for a different project. If this is so obvious, the report can have no sanctity, as there has been an error at the very inception which goes to the root of the matter. However, good may be the report, the award in favour of the Consultant being for a different project, unless a fresh bid is invited and proposal was made with due inputs, the draft feasibility report or the final feasibility report submitted by the Consultant cannot be accepted. We decide this issue, accordingly.

96. Point No.(xii)

In one place, the draft feasibility report speaks of a town in China and in other about Bangalore. The petitioners would state that the report prepared by the Consultant-Feed Back contains plagiarized content. The Consultant, nor the NHAI, deny the fact that there is a reference to a town in China and there is reference to Bangalore, which are in no way concerned about the subject project. However, they say that this is a mistake and this cannot be taken to discredit or totally reject the entire exercise done by the

Consultant. We are not convinced with the answer given by the NHAH or by the Consultant.

97. To be borne in mind, the project is Rs.10,000 Crore project. Therefore, utmost seriousness and dedication is required at all levels. The copies of the draft feasibility report, its annexures etc., were produced before us. They contain volumes and volumes of papers with tabulated statements, narrations and various facts and figures. Presumably, the person who prepared the report had earlier prepared similar reports and some of the materials which according to him would have been "stock" materials which were "cut & pasted" from earlier report. Even if that had been done, before the Consultant/their authorized signatory affixes their seal and signature, utmost care should have been taken to ensure that the report contains details concerning the project. Assuming that we condone the same by ignoring it as an inadvertent mistake, the resultant position would be to approve a report which can contain several materials in different places which may not be relevant for the subject project highway. Therefore, it will be putting a premium on the report, if it is allowed to be accepted. We may not agree with the contention of the learned counsel for the petitioner that the

report is plagiarized, but what is evident is that there has been non-application of mind and presumably, the report was required to be prepared within a short period for reasons best known. Therefore, the report prepared by the Consultant needs to be scrapped.

98. Point No.(xiii)

Having held that the report of the Consultant needs to be scrapped for the reasons assigned by us, while answering question Nos.6 and 11, it may not be necessary for us to go into the question as to whether the guidelines prescribed in the Indian Highways Capacity Manual were ignored or not and leave the issue open.

99. Point No.(xiv)

While deciding issue no.3, we had noted decisions rendered by the Court of Appeals in United States of America and in particular, the decision in **Commonwealth of Massachusetts** (supra). The original project in the said case was on auctioning the rights to drill oil for 488 tracks. Subsequently, the numbers of rights to be auctioned got substantially reduced. The question was whether this needs to be placed before the competent authority while considering the impact in terms of National Environmental Policy Act. The Court

held that the matter requires to be considered afresh, though there is a reduction in number of oil fields. The above decision will apply with full force to the cases on hand because, there has been a change of alignment, reduction of area, supplemental notification has been issued during the course of hearing of the writ petition etc. Therefore, the so called report which was relied upon by the respondents can no longer be of assistance and they cannot be relied upon.

100. Point No.(xv)

This is a very important issue pointed out by the petitioner as regards the impact of the subject highway on the existing toll way. One of the existing concessioners of the tollway has impleaded themselves in the Writ Petition. They have projected a case that there will be severe dent on their collection, consequently, they will be put to prejudice. It is brought to our notice by the learned counsel for the petitioner that there is a condition in the concessionaire agreement between the Concessioner and NHAI that on account of a new road, if the collection of toll is affected, then the concessionaire agreement is liable to be extended for a period up to 50 to 100% of its original period. Therefore, the existing toll

operators on the three toll roads will continue to collect toll far beyond their original period, which will ultimately affect the travelling public. The NHAI has stated that the road is an access control road to mean that the road is accessible only at designated spots which appears to be in four to six places between Chennai and Salem. Therefore, it is hard to believe that a small businessman in Vandavasi or Polur would stand benefited on account of this express way, where the traffic is zipping in speeds over 120 kms and to reach the small towns and villages, one has to travel several kilometres to take a spur and drive back to these small towns. Therefore, the projection made by NHAI, as to the benefits of the project highway appears to be illusory. The financial consequences were not analysed by the Consultant and the prejudice, which will be caused to the common man using any of the existing roads was never factored by the respondents.

101. For all the above reasons, we are of the considered view that the project highway as conceived and sought to be implemented is vitiated on several grounds as mentioned above and consequently, the notifications issued for acquisition of lands under Section 3A(1) are liable to be quashed.

102. In the result, the Writ Petitions are allowed and the land acquisition proceedings are quashed.

103. In view of the above, Crl.O.P.No.22714 of 2018 is closed. Consequently connected Miscellaneous Petitions are closed. There shall be no order as to costs.

104. During the pendency of these Writ Petitions, when we heard the cases, the learned counsel for the land owners pointed out that the revenue records were mutated and stood transferred as Government lands. This had happened even much prior to issuance of the Notification under Section 3D of the Act. We had pointed out that such an action could not have been initiated, as, by issuance of a Notification under Section 3A of the Act, the Government only conveyed its intention to acquire the lands.

WEB COPY

105. The learned Government Pleader sought to explain by contending that those entries were only temporary in nature and that in the event of the lands get excluded from the project, the

entries would stand reverted back.

106. We do not agree with the said stand taken by the learned Government Pleader at that juncture itself. Now that we had allowed the writ petitions, all the entries in the revenue records, which stood mutated, shall be reversed in the names of the respective land owners and fresh orders be issued and communicated to the respective land owners within two weeks thereafter. This direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this judgment.

(T.S.S., J.)

(V.B.S., J.)

08.04.2019

Index:Yes/No

Speaking/Non-Speaking Order

pbn/abr

WEB COPY

To

- 1.The Government of India,
Rep., by the Secretary,
Ministry of Road Transport and Highways,
Transport Bhawan,
No.1, Parliament Street,
New Delhi -110001.
- 2.The Government of India,
Rep., by its Director,
Impact Assessment Division,
Ministry of Environment, Forest and Climate Change,
Indira Parayavaran Bhawan,
3rd Floor, Vayu Wing,
Jor Bagh Road, Aliganj,
New Delhi – 110003.
- 3.The District Revenue Officer,
Dharmapuri District.
- 4.The Project Director,
Project Implementation Unit,
SRI Towers, 3rd Floor,
DP-34(SP) Industrial Estate,
Guindy, Chennai – 600 032.

WEB COPY

3538

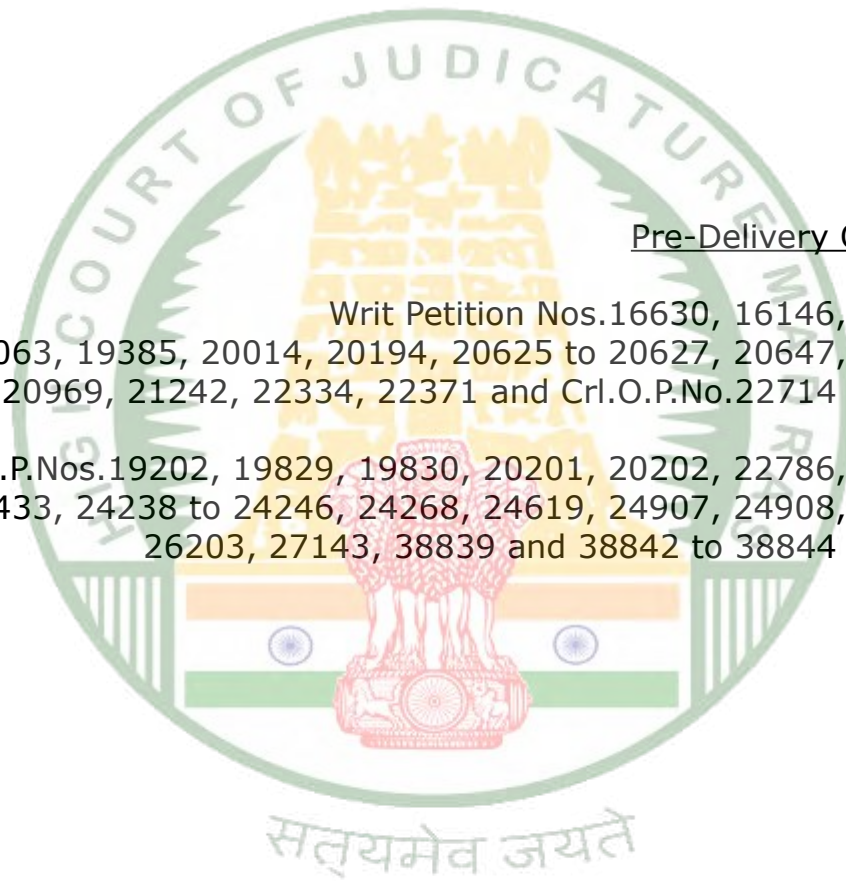
135

T.S.SIVAGNANAM, J.
AND
V.BHAVANI SUBBAROYAN, J.

pbn/abr

Pre-Delivery Order in

Writ Petition Nos.16630, 16146, 16961,
19063, 19385, 20014, 20194, 20625 to 20627, 20647, 20764,
20969, 21242, 22334, 22371 and Crl.O.P.No.22714 of 2018
and
W.M.P.Nos.19202, 19829, 19830, 20201, 20202, 22786, 23432,
23433, 24238 to 24246, 24268, 24619, 24907, 24908, 26170,
26203, 27143, 38839 and 38842 to 38844 of 2018



WEB COPY

08.04.2019

P.V. GEORGE v. STATE OF KERALA

557

(2007) 3 Supreme Court Cases 557

(BEFORE S.B. SINHA AND MARKANDEY KATJU, JJ.)

a P.V. GEORGE AND OTHERS . . . Appellants;

Versus

STATE OF KERALA AND OTHERS . . . Respondents.

Civil Appeals No. 322 of 2007[†] with No. 323 of 2007[‡],
 decided on January 23, 2007

b **A. Precedents — Prospective overruling — Doctrine of — Applicability of, in instant case involving service matter — Question as to — Held, law declared by a court will have a retrospective effect if not otherwise stated to be so specifically — Thus, there is no prospective overruling unless it is so indicated expressly and in clearest possible terms — Constitution of India — Art. 141 — Service Law — Practice and Procedure — Prospective overruling — Applicability**

c Application of the doctrine of prospective overruling in service matters was in question in the present appeals.

d The appellants were working in the Government Presses, Kerala. The Government of Kerala framed rules for the employees of Kerala Government Presses Subordinate Services to which cadre the appellants belonged. The mode of appointment as also the qualifications therefor had been prescribed in the Rules. By reason of a government order dated 1-7-1980, the rule framed in terms of SRO No. 1030 of 1976 was amended prescribing a ratio of 1:1 for the purpose of promotion between diploma-holders and certificate-holders by adding a note thereto. A further proviso was appended thereto by a government order dated 30-8-1984 in term of SRO No. 1044 of 1984. Constitutionality of the said provision was challenged before the Kerala High Court, whereupon a Division Bench thereof in *Daniel*, 1985 KLT 1057, declared the same to be ultra vires.

e The correctness of the said decision was questioned before another Division Bench of the said Court in a writ appeal, which was dismissed. However, Jagannadha Rao, J. (as His Lordship then was) in *Ravindran v. State of Kerala*, (1992) 1 KLT 524 took a different view. The conflict in the said decisions was noticed and eventually referred to a Full Bench in *Subaida Beevi*, (2005) 1 KLT 426 (FB) by another Division Bench of the said Court. By a judgment dated 4-11-2004, the Full Bench held that the amended Special Rules for the Government Presses Subordinate Services were not suffering from any infirmity and fixation of ratio of 1:1 for promotion to higher posts between diploma-holders and certificate-holders needed no interference. Whereas the decision in *Daniel* was expressly overruled, the decision in *Ravindran* was upheld. The special leave petition filed thereagainst was dismissed by the Supreme Court.

g Thereafter, the appellants were issued notices as to why they must not be reverted from the post of Assistant Superintendent pursuant to or in furtherance of the said decision of the Full Bench of the Kerala High Court. Legality of the

h [†] Arising out of SLP (C) No. 8305 of 2006. From the Judgment/Final Order dated 31-3-2006 of the High Court of Kerala at Ernakulam in WP (C) No. 2487 of 2006 (U)

[‡] Arising out of SLP (C) No. 8744 of 2006

558

SUPREME COURT CASES

(2007) 3 SCC

said notices was questioned by the appellants in a writ petition. By reason of the impugned judgment, the said writ petition had been dismissed by the High Court. Hence, the present appeals.

The appellants submitted that the High Court committed a manifest error insofar as it failed to take into consideration that in service matters ordinarily doctrine of prospective overruling would apply. It was contended that the promotions were given to the appellants when the law laid down by the Kerala High Court in *Daniel* and *Ravindran* was in force and, thus, as the law was declared by the Full Bench only in the year 2005, the same was not applicable in their case. The respondents, on the other hand, supported the impugned judgment.

Dismissing the appeals, the Supreme Court

Held :

The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term.

(Paras 29 and 19)

Suresh Chandra Verma (Dr.) v. Chancellor, Nagpur University, (1990) 4 SCC 55 : 1991 SCC (L&S) 194 : (1991) 16 ATC 439; *M.A. Murthy v. State of Karnataka*, (2003) 7 SCC 517 : 2003 SCC (L&S) 1076, *followed*

National Westminster Bank Plc. v. Spectrum Plus Ltd., 2005 UKHL 41 : (2005) 3 WLR 58; *R. (on the Application of Ernest Leslie Wright) v. Secy. of State for the Home Dept.*, 2006 EWCvA Civ 67; *E.A. Sathyanesan v. V.K. Agnihotri*, (2004) 9 SCC 165; *Subaida Beevi v. State of Kerala*, (2005) 1 KLT 426 (FB); *Daniel v. State of Kerala*, 1985 KLT 1057; *Ravindran v. State of Kerala*, (1992) 1 KLT 524, *considered*

Lord Rodger of Earlsferry: *A Time for Everything under the Law: Some Reflections on Retrospectivity*, (2005) 121 LQR 57, *referred to*

Golak Nath v. State of Punjab, AIR 1967 SC 1643; *Bhakre case*, WP No. 1876 of 1984 decided on 7-12-1984 (Nag); *Banco Popolare di Cremona v. Agenzia Entrate Ufficio Cremona*, Case C-475 of 2003 dated 17-3-2005; *Launchbury v. Morgans*, 1973 AC 127 : (1972) 2 WLR 1217 : (1972) 2 All ER 606 (HL); *Kleinwort Benson Ltd. v. Lincoln City Council*, (1999) 2 AC 349 : (1998) 3 WLR 1095 : (1998) 4 All ER 513 (HL); *R. v. Governor of Brockhill Prison, ex p Evans (No. 2)*, (2001) 2 AC 19 : (2000) 3 WLR 843 : (2000) 4 All ER 15 (HL); *Ajit Singh (I) v. State of Punjab*, (1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239; *M.G. Badappanavar v. State of Karnataka*, (2001) 2 SCC 666 : 2001 SCC (L&S) 489; *Managing Director, ECHL v. B. Karunakar*, (1993) 4 SCC 727 : 1993 SCC (L&S) 1181 : (1993) 25 ATC 704; *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481; *Union of India v. Virpal Singh Chauhan*, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813; *Ashok Kumar Gupta v. State of U.P.*, (1997) 5 SCC 201 : 1997 SCC (L&S) 1299; *Ajit Singh (II) v. State of Punjab*, (1999) 7 SCC 209 : 1999 SCC (L&S) 1239; *Baburam v. C.C. Jacob*, (1999) 3 SCC 362 : 1999 SCC (L&S) 682 : 1999 SCC (Cri) 133; *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2006) 10 Scale 301; *Ashok Kumar Sharma v. Chander Shekher*, (1997) 1 SCC 18 : 1997 SCC (L&S) 913; *State of J&K v. Triloki Nath Khosa*, (1974) 1 SCC 19 : 1974 SCC (L&S) 49 : AIR 1974 SC 1; *Mohd. Shujat Ali v. Union of India*, (1975) 3 SCC 76 : 1974 SCC (L&S) 454 : AIR 1974 SC 1631; *Pushpadharan v. Food Corpn. of India*, 1983 KLT 987; *Rajan v. State of Kerala*, 1983 KLT 878; *Abdul Basheer v. Karunakaran*, ILR (1981) 2 Ker 527; 1975 KLT 1;

P.V. GEORGE v. STATE OF KERALA

559

Balakrishnan v. State of Kerala, (1990) 1 KLT 66; *Roop Chand Adlakha v. DDA*, 1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639 : AIR 1989 SC 307; *Cheru case*, OP No. 1851 of 1984 (DB), *cited*

a Arden, L.J.: *Prospective Overruling*, (2004) LQR 7; Duncan Sheehan and T.T. Arvind: *Prospective Overruling and Fixed/Floating Charge Debate*, (2006) 122 LQR 20, *cited*

Union of India v. Madras Telephone SC & ST Social Welfare Assn., (2006) 8 SCC 662 : (2007) 1 SCC (L&S) 35 : (2006) 9 Scale 626, *impliedly distinguished*

In service matters, the Supreme Court on a number of occasions have passed orders on equitable consideration. But the same would not mean that whenever a law is declared, it will have an effect only because it has taken a different view from the earlier one. In those cases it is categorically stated that it would have prospective operation. (Para 25)

The judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. (Paras 29 and 17)

c **B. Precedents — Prospective overruling — Power as to — Exercise of — Supreme Court vis-à-vis High Court — Held, the Supreme Court in exercise of its jurisdiction under Art. 32 or Art. 142 of the Constitution may declare a law to have a prospective effect — Though in view of *Golak Nath*, AIR 1967 SC 1643 the power of overruling is vested only in Supreme Court and that too in constitutional matters, the High Courts under Art. 226 of the Constitution, even without applying the doctrine of prospective overruling, may grant a limited relief in exercise of its equity jurisdiction — Constitution of India, Arts. 32, 142 and 226**

The legal position as regards the applicability of doctrine of prospective overruling is no longer res integra. The Supreme Court in exercise of its jurisdiction under Article 32 or Article 142 of the Constitution of India may declare a law to have a prospective effect. The Division Bench of the High Court may be correct in opining that having regard to the decision of the Supreme Court in *Golak Nath*, AIR 1967 SC 1643 the power of overruling is vested only in the Supreme Court and that too in constitutional matters, but the High Courts in exercise of its jurisdiction under Article 226 of the Constitution of India, even without applying the doctrine of prospective overruling, indisputably may grant a limited relief in exercise of its equity jurisdiction. (Para 14)

f *Golak Nath v. State of Punjab*, AIR 1967 SC 1643, *referred to*

W-M/35670/Cl.

Advocates who appeared in this case :

C.S. Rajan, Senior Advocate (Ajay K. Jain, Dileep Pillai and M.P. Vinod, Advocates, with him) for the Appellants;

Uday U. Lalit, Senior Advocate (B.V. Deepak, T.T.K. Deepak & Co. and G. Prakash, Advocates, with him) for the Respondents.

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

1. (2006) 8 SCC 662 : (2007) 1 SCC (L&S) 35 : (2006) 9 Scale 626, *Union of India v. Madras Telephone SC & ST Social Welfare Assn.* 568d e

2. (2006) 8 SCC 212 : (2006) 10 Scale 301, *M. Nagaraj v. Union of India* 564b

3. 2006 EWCA Civ 67, *R. (on the Application of Ernest Leslie Wright) v. Secy. of State for the Home Dept.* 567f

h 4. (2005) 1 KLT 426 (FB), *Subaida Beevi v. State of Kerala* 561b, 563b c, 563c d

560	SUPREME COURT CASES	(2007) 3 SCC
5.	2005 UKHL 41 : (2005) 3 WLR 58. <i>National Westminster Bank Plc. v. Spectrum Plus Ltd.</i>	566g, 568a b
6.	(2004) 9 SCC 165. <i>E.A. Sathyanesan v. V.K. Agnihotri</i>	564b, 568f g
7.	(2003) 7 SCC 517 : 2003 SCC (L&S) 1076. <i>M.A. Murthy v. State of Karnataka</i>	565g
8.	Case C-175 of 2003 dated 17-3-2005. <i>Banco Popolare di Cremona v. Agenzia Entrate Ufficio Cremona</i>	567e
9.	(2001) 2 SCC 666 : 2001 SCC (L&S) 489. <i>M.G. Badappanavar v. State of Karnataka</i>	568g-h
10.	(2001) 2 AC 19 : (2000) 3 WLR 843 : (2000) 4 All ER 15 (III.). <i>R. v. Governor of Brockhill Prison. ex p Evans (No. 2)</i>	567g
11.	(1999) 7 SCC 209 : 1999 SCC (L&S) 1239. <i>Ajit Singh (II) v. State of Punjab</i>	564b, 568g-h
12.	(1999) 3 SCC 362 : 1999 SCC (L&S) 682 : 1999 SCC (Cri) 433. <i>Baburam v. C.C. Jacob</i>	564b, 566c
13.	(1999) 2 AC 349 : (1998) 3 WLR 1095 : (1998) 4 All ER 513 (III.). <i>Kleinwort Benson Ltd. v. Lincoln City Council</i>	567g
14.	(1997) 5 SCC 201 : 1997 SCC (L&S) 1299. <i>Ashok Kumar Gupta v. State of U.P.</i>	564a b, 566c
15.	(1997) 4 SCC 18 : 1997 SCC (L&S) 913. <i>Ashok Kumar Sharma v. Chander Shekher</i>	566c
16.	(1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239. <i>Ajit Singh (I) v. State of Punjab</i>	568g
17.	(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813. <i>Union of India v. Virpal Singh Chauhan</i>	564a-b
18.	(1995) 2 SCC 745 : 1995 SCC (L&S) 518 : (1995) 29 ATC 181. <i>R.K. Sabharwal v. State of Punjab</i>	564a b, 568g
19.	(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704. <i>Managing Director, ECH v. B. Karunakar</i>	564a b, 566b
20.	(1992) 1 KLT 524. <i>Ravindran v. State of Kerala</i>	562f g, 563d, 564b c, 564f g
21.	(1990) 4 SCC 55 : 1991 SCC (L&S) 194 : (1991) 16 ATC 439. <i>Suresh Chandra Verma (Dr.) v. Chancellor, Nagpur University</i>	565c
22.	(1990) 1 KLT 66. <i>Balakrishnan v. State of Kerala</i>	562c d, 562d, 562e, 563b c
23.	1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639 : AIR 1989 SC 307. <i>Roop Chand Adlakha v. DDA</i>	563b
24.	1985 KLT 1057. <i>Daniel v. State of Kerala</i>	561f g, 562b c, 562c, 562d e, 562e-f, 563b-c, 563c-d, 564b-c, 564f, 564f-g
25.	WP No. 1876 of 1984, decided on 7-12-1984 (Nag). <i>Bhakre case</i>	565d-e, 565e-f, 565f
26.	OP No. 1851 of 1984 (DB). <i>Cheru case</i>	563b
27.	1983 KLT 987. <i>Pushpadharan v. Food Corpn. of India</i>	561g
28.	1983 KLT 878. <i>Rajan v. State of Kerala</i>	561g
29.	ILR (1981) 2 Ker 527. <i>Abdul Basheer v. Karunakaran</i>	561g
30.	(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : AIR 1974 SC 1631. <i>Mohd. Shujat Ali v. Union of India</i>	561g
31.	1975 KLT 1	562a
32.	(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : AIR 1974 SC 1. <i>State of J&K v. Triloki Nath Khosa</i>	561g
33.	1973 AC 127 : (1972) 2 WLR 1217 : (1972) 2 All ER 606 (III.). <i>Launchbury v. Morgans</i>	567f g
34.	AIR 1967 SC 1643. <i>Golak Nath v. State of Punjab</i>	564d e, 566b

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

a **2.** Application of the doctrine of prospective overruling in service matters is in question in these appeals which arises out of a judgment and order dated 31-3-2006 passed by a Division Bench of the Kerala High Court whereby and whereunder on interpretation of a Full Bench decision in *Subaida Beevi v. State of Kerala*¹ it was held to have no prospective operation.

b **3.** The appellants were working in the Government Presses, Kerala. The Government of Kerala framed rules for the employees of Kerala Government Presses Subordinate Services to which cadre the appellants belonged. It consisted of several branches. Admittedly, there are several categories and sub-categories of employees working therein. The mode of appointment as also the qualifications therefor has been prescribed in the Rules. By reason of
c a government order dated 1-7-1980, the rule framed in terms of SRO No. 1030 of 1976 was amended prescribing a ratio of 1:1 for the purpose of promotion between diploma-holders and certificate-holders by adding a note thereto, which reads as under:

d “*Note.* Promotion of persons qualified under Items 2(a) and 2(b) above shall be made in the ratio 1:1 starting with promotion of persons qualified under Item 2(a). If no person qualified under Item 2(a) is available for promotion, the turn of promotion will be given to the person qualified under Item 2(b) and vice versa.

e Provided that no senior diploma-holder shall be superseded by a junior certificate-holder and provided that the benefit of turn under the ratio of 1:1 forfeited by the certificate-holder by virtue of the promotion of the senior diploma-holder, shall be restored to the certificate-holder in the arising vacancy.”

f **4.** A further proviso was appended thereto by a government order dated 30-8-1984 in term of SRO No. 1044 of 1984, which reads as follows:

“Provided further that the benefit of the ratio of 1:1 forfeited by the certificate-holder by virtue of the promotion of the senior diploma-holder shall be restored to the certificate-holder in the next arising vacancy.”

g **5.** Constitutionality of the said provision was challenged before the Kerala High Court, whereupon a Division Bench thereof in *Daniel v. State of Kerala*², declared the same to be ultra vires, stating: (KLT p. 1058, para 5)

“5. In the light of the decisions of the Supreme Court in *State of J&K v. Triloki Nath Khosa*³, *Mohd. Shujat Ali v. Union of India*⁴, and *Pushpadharan v. Food Corpn. of India*⁵, *Rajan v. State of Kerala*⁶, Abdul

h 1 (2005) 1 KLT 426 (F.B)

2 1985 KLT 1057

3 (1974) 1 SCC 19 : 1974 SCC (J.&S) 49 : AIR 1974 SC 1

4 (1975) 3 SCC 76 : 1974 SCC (J.&S) 454 : AIR 1974 SC 1631

5 1983 KLT 987

6 1983 KLT 878

562

SUPREME COURT CASES

(2007) 3 SCC

*Basheer v. Karunakaran*¹ and 1975 KLT 18, we have no doubt at all that this classification on microscopic distinction could not be allowed. We would therefore strike down the notes to Branch Nos. 1 and 9 named in Ext. P-2.”

6. The correctness of the said decision was questioned before another Division Bench of the said Court in Writ Appeal No. 149 of 1990. By a judgment dated 14-1-1992, Paripoornan, J. (as His Lordship then was), held:

“Having heard counsel at length, we are of the view, that since the service involved in the present cases is the same as the one which came up for consideration in *Daniel case*² and the Rules are also the same, the judgments appealed against, do not require interference. It is agreed that the Bench decision in *Daniel case*² considered the identical rules in the same service (Government Presses Subordinate Service), which is in issue in these two OPs as well. Even so, learned Government Pleader, Mr V.C. James, very forcefully submitted that the Bench decision in *Daniel case*² is not good law, or, at any rate, requires reconsideration in view of the later Bench decision of this Court in *Balakrishnan v. State of Kerala*⁹. We are unable to accept this plea for more reasons than one. The service rules, which came up for consideration in the later decision, *Balakrishnan case*⁹ are ‘Engineering Service (Radio and Electrical Branches) Rules, 1967’. The import and impact in evaluating and upholding the reason for fixing the ratio in the later case are entirely different. The perspective is also different. That apart, the earlier Bench decision in *Daniel case*² does not appear to have been brought to the notice of the learned Judges, who rendered the decision in *Balakrishnan case*⁹. Prima facie, the later decision should be considered to be one rendered per incuriam. In these circumstances, we are satisfied that the ratio of the earlier Bench decision in *Daniel case*² should govern the fate of the present two original petitions. That is what has been done by the two learned Judges of this Court.

In these circumstances, we are of the view that no interference is called for in these writ appeals. The judgments appealed against are confirmed. The writ appeals are dismissed. There shall be no order as to costs.”

7. It is, however, not in dispute that Jagannadha Rao, J. (as His Lordship then was) in *Ravindran v. State of Kerala*¹⁰, took a different view, opining: (KLT p. 528, para 8)

“8. In the present case the Government has filed a counter stating that after considering various aspects, the Government prescribed the necessary qualification for the various supervisory posts ‘according to the requirement of duties and functions of the post’. It is also stated that special rules were made for the petitioner and other similarly situated

7 II R (1981) 2 Ker 527

8 1975 KLT 1

9 (1990) 1 KLT 66

10 (1992) 1 KLT 524

P.V. GEORGE v. STATE OF KERALA (*Sinha, J.*)

563

a persons. It is also stated that Government considered that seniors who are not diploma-holders may be prejudiced by the Rules as they stood in 1976, and that the ratio of 1:1 fixed for promotion between the certificate-holders and diploma-holders is quite reasonable and rational and hence valid. Having regard to the technical nature of the posts in the government presses we do not think that the ratio prescribed between diploma-holders and certificate-holders is in any way unreasonable. In view of the subsequent decision of the Supreme Court in *Roop Chand case*¹¹ and also in view of the two judgments of the Division Bench in *Balakrishnan case*⁹ and in *Cheru case*¹², we are not inclined to follow the decision of the Division Bench in *Daniel v. State of Kerala*².”

b 8. The conflict in the said decisions was noticed and eventually referred to a Full Bench in *Subaida Beevi*¹ by another Division Bench of the said Court. By a judgment dated 4-11-2004, the Full Bench held that the amended Special Rules for the Government Presses Subordinate Services were not suffering from any infirmity and fixation of ratio of 1:1 for promotion to higher posts between diploma-holders and certificate-holders needs no interference. Whereas the decision in *Daniel*² was expressly overruled, the decision in *Ravindran*¹⁰ was upheld, holding: (*Subaida Beevi case*¹, KLT p. 429, para 5)

c d “We hold that the impugned amendment made in the Special Rules for the Government Presses Subordinate Service providing ratio of 1:1 for promotion to higher posts between diploma-holders and certificate-holders is not discriminatory and it is not violative of Articles 14 and 16 of the Constitution of India. Government is bound to effect promotions on the basis of the amended Special Rules.”

e 9. A special leave petition filed thereagainst was dismissed by this Court by an order dated 4-3-2005.

f 10. The appellants were issued notices as to why they shall not be reverted from the post of Assistant Superintendent pursuant to or in furtherance of the said decision of the Full Bench of the Kerala High Court. Legality of the said notices was questioned by the appellants herein in a writ petition. By reason of the impugned judgment, the said writ petition has been dismissed by the High Court, opining:

g “... Since the Government has accepted the Full Bench decision and has taken steps, but, did not implement the same, only because of the stay order passed in the other writ petitions and has undertaken, since the vacation of the stay order, the judgment would be implemented, the contempt petitions are closed recording the undertaking that the judgment will be implemented within three months from today. With the above observations, all the writ petitions are dismissed and the contempt court petitions are closed.”

h ¹¹ *Roop Chand Adlakha v. DDA*, 1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639 : AIR 1989 SC 307

¹² OP No. 1851 of 1984 (DB)

564

SUPREME COURT CASES

(2007) 3 SCC

11. Mr C.S. Rajan, learned Senior Counsel appearing on behalf of the appellants, submitted that the High Court committed a manifest error insofar as it failed to take into consideration that in service matters ordinarily doctrine of prospective overruling would apply. Reliance in his behalf has been placed on *Managing Director, ECIL v. B. Karunakar*¹³, *R.K. Sabharwal v. State of Punjab*¹⁴, *Union of India v. Virpal Singh Chauthan*¹⁵, *Ashok Kumar Gupta v. State of U.P.*¹⁶, *Ajit Singh (II) v. State of Punjab*¹⁷, *Baburam v. C.C. Jacob*¹⁸, *E.A. Sathyanesan v. V.K. Agnihotri*¹⁹ and *M. Nagaraj v. Union of India*²⁰.

12. It was furthermore submitted that the promotions were given to the appellants when the law laid down by the Kerala High Court in *Daniel*² and *Ravindran*¹⁰ was in force and, thus, as the law was declared by the Full Bench only in the year 2005, the same was not applicable in their case.

13. Mr Uday U. Lalit, learned Senior Counsel appearing for the respondents, would, however, support the judgment.

14. For the views we propose to take, it is not necessary for us to consider all the decisions relied upon by Mr Rajan. The legal position as regards the applicability of doctrine of prospective overruling is no longer res integra. This Court in exercise of its jurisdiction under Article 32 or Article 142 of the Constitution of India may declare a law to have a prospective effect. The Division Bench of the High Court may be correct in opining that having regard to the decision of this Court in *Golak Nath v. State of Punjab*²¹ the power of overruling is vested only in this Court and that too in constitutional matters, but the High Courts in exercise of their jurisdiction under Article 226 of the Constitution of India, even without applying the doctrine of prospective overruling, indisputably may grant a limited relief in exercise of their equity jurisdiction.

15. We are, however, in this case not concerned with such a situation. The law was in a state of flux in the sense that as far back as in the year 1992, the two Division Benches took contrary views; while one applied the ratio laid down in *Daniel*², another refused to follow the same.

16. The Full Bench of the Kerala High Court upheld the views of the Division Bench of the said Court in *Ravindran*¹⁰ and overruled *Daniel*².

17. The Full Bench of the High Court indisputably did not say that the promotions which had already been granted would not be disturbed. The judgment of the Full Bench attained finality as special leave petition filed

13 (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704

14 (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481

15 (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813

16 (1997) 5 SCC 201 : 1997 SCC (L&S) 1299

17 (1999) 7 SCC 209 : 1999 SCC (L&S) 1239

18 (1999) 3 SCC 362 : 1999 SCC (L&S) 682 : 1999 SCC (Cri) 433

19 (2004) 9 SCC 165

20 (2006) 8 SCC 212 : (2006) 10 Scale 301

21 AIR 1967 SC 1643

P.V. GEORGE v. STATE OF KERALA (*Sinha, J.*)

565

thereagainst was dismissed. The Rules as amended by the State of Kerala on 1-7-1980 and 30-8-1984 were upheld.

a 18. If the said Rules ultimately were held to be constitutional, it was required to be given effect to. The law declared by a court ordinarily affects the rights of the parties. A court of law having regard to the nature of adversarial system of our justice-delivery system exercises adjudicatory role. Legal consequences are determined in respect of the matters which had taken place in the past.

b 19. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto.

c 20. As would be noticed by us hereafter in *Suresh Chandra Verma (Dr.) v. Chancellor, Nagpur University*²², this Court held: (SCC p. 64, para 15)

d “15. The second contention need not detain us long. It is based primarily on the provisions of Section 57(5) of the Act. The contention is that since the provisions of that section give power to the Chancellor to terminate the services of a teacher only if he is satisfied that the appointment ‘was not in accordance with the law at that time in force’ and since the law at that time in force viz. on 30-3-1985 when the appellants were appointed, was the law as laid down in *Bhakre case*²³ the termination of the appellants is beyond the powers of the Chancellor. The argument can only be described as naive. It is unnecessary to point out that when the court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise. This being the case, since the Full Bench and now this Court has taken the view that the interpretation placed on the provisions of law by the Division Bench in *Bhakre case*²³ was erroneous, it will have to be held that the appointments made by the University on 30-3-1985 pursuant to the law laid down in *Bhakre case*²³ were not according to law. Hence, the termination of the services of the appellants were in compliance with the provisions of Section 57(5) of the Act.”

e 21. The ratio laid down by this Court, as noticed hereinafter, categorically shows the effect of a decision which had not been directed to have a prospective operation. The legal position in clear and unequivocal term was stated by a Division Bench of this Court in *M.A. Murthy v. State of Karnataka*²⁴ in the following terms: (SCC pp. 520-21, para 8)

f “8. The learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is

h 22 (1990) 4 SCC 55 : 1991 SCC (L&S) 194 : (1991) 16 ATC 439

23 WP No. 1876 of 1984 decided on 7-12-1984 (Nag)

24 (2003) 7 SCC 517 : 2003 SCC (L&S) 1076

presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in *Golak Nath v. State of Punjab*²¹. In *Managing Director, ECH, v. B. Karunakar*¹³ the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See *Ashok Kumar Gupta v. State of U.P.*¹⁶ and *Baburam v. C.C. Jacob*¹⁸.) It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in *Ashok Kumar Sharma case No. II*²⁵. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set, aside.”

22. The effect of declaration of law, the rule of stare decisis and the consequences flowing from a departure from an earlier decision have been considered in great details by the House of Lords in *National Westminster Bank Plc. v. Spectrum Plus Ltd.*²⁶, opining:

“8. People generally conduct their affairs on the basis of what they understand the law to be. This ‘retrospective’ effect of a change in the law of this nature can have disruptive and seemingly unfair consequences. ‘Prospective overruling’, sometimes described as ‘non-retroactive overruling’, is a judicial tool fashioned to mitigate these adverse consequences. It is a shorthand description for court rulings on

25 *Ashok Kumar Sharma v. Chander Shekher*, (1997) 4 SCC 18 : 1997 SCC (L&S) 913

26 2005 UKHL 41 : (2005) 3 WLR 58

P.V. GEORGE v. STATE OF KERALA (*Sinha, J.*)

567

points of law which, to greater or lesser extent, are designed not to have the normal retrospective effect of judicial decisions.

- a* 9. Prospective overruling takes several different forms. In its simplest form prospective overruling involves a court giving a ruling of the character sought by the bank in the present case. Overruling of this simple or 'pure' type has the effect that the court ruling has an exclusively prospective effect. The ruling applies only to transactions or happenings occurring after the date of the court decision. All transactions entered into, or events occurring, before that date continue to be governed by the law as it was conceived to be before the court gave its ruling.

- b*
- c* 10. Other forms of prospective overruling are more limited and 'selective' in their departure from the normal effect of court decisions. The ruling in its operation may be prospective and, additionally, retrospective in its effect as between the parties to the case in which the ruling is given. Or the ruling may be prospective and, additionally, retrospective as between the parties in the case in which the ruling was given and also as between the parties in any other cases already pending before the courts. There are other variations on the same theme.

- d* 11. Recently Advocate General Jacobs suggested an even more radical form of prospective overruling. He suggested that the retrospective and prospective effect of a ruling of the European Court of Justice might be subject to a temporal limitation that the ruling should not take effect until a future date, namely, when the State had had a reasonable opportunity to introduce new legislation: *Banco Popolare di Cremona v. Agenzia Entrate Ufficio Cremona*²⁷, paras 72-88."

- e* [See also Lord Rodger of Earlsferry: *A Time for Everything under the Law: Some Reflections on Retrospectivity*, (2005) 121 I.Q.R. 55, 77.]

23. Lord Nicholls of Birkenhead speaking for the House of Lords clearly held that the power to apply prospective overruling is available to the House of Lords also.

- f* 24. In *R. (on the Application of Ernest Leslie Wright) v. Secy. of State for the Home Deptt.*²⁸ it was observed:

- g* "42. The English law in this respect is developing rapidly. Prospective rulings seemed anathema to Lord Wilberforce in *Lauchbury v. Morgans*²⁹, AC at p. 137 and Lord Goff of Chieveley in *Kleinwort Benson Ltd. v. Lincoln City Council*³⁰, AC at p. 379. By the time of *R. v. Governor of Brockhill Prison, ex p Evans (No. 2)*³¹, Lord Slynn at p. 26H considered that the effect of judicial rulings being prospective might in

²⁷ Case C-475 of 2003 dated 17.3.2005

²⁸ 2006 EWCA Civ 67

²⁹ 1973 AC 127; (1972) 2 W.L.R. 1217; (1972) 2 All ER 606 (HL.)

³⁰ (1999) 2 AC 349; (1998) 3 W.L.R. 1095; (1998) 4 All ER 513 (HL.)

³¹ (2001) 2 AC 19; (2000) 3 W.L.R. 843; (2000) 4 All ER 15 (HL.)

h

some situations be 'desirable and in no way unjust', though Lord Steyn at p. 28B thought the point was a 'novel one'. With some perspicacity Lord Hope of Craighead foresaw at p. 36 that 'the issue of retrospectivity is likely to assume an added importance when the Human Rights Act, 1998 is brought into force'. Lord Hobhouse at p. 481³² would have none of it. The latest in this line of authority seems to be *In re Spectrum Plus Ltd. (in liquidation)*³³ where the danger was acknowledged that *prospective overruling* 'would amount to judicial usurpation of the legislative function', per Lord Nicholls at para 28 but nonetheless he noted that, especially in the human rights field, '“Never say never” was a wise judicial precept' (para 42).

43. The question has attracted interest in the academic journals. See Arden, L.J., *Prospective Overruling*, (2004) 1 QJ 7; Lord Rodger of Earlsferry, *A Time for Everything under the Law: Some Reflections on Retrospectivity*, (2005) 121 LQR 57 and Duncan Sheehan and T.T. Arvind, *Prospective Overruling and Fixed/Floating Charge Debate*, (2006) 122 LQR 20.” (emphasis supplied)

25. In service matters, this Court on a number of occasions have passed orders on equitable consideration. But the same would not mean that whenever a law is declared, it will have an effect only because it has taken a different view from the earlier one. In those cases it is categorically stated that it would have prospective operation.

26. We are not oblivious that in *Union of India v. Madras Telephone SC & ST Social Welfare Assn.*³² this Court observed that where the rights had been determined in favour of some employees in a duly constituted proceeding, which determination had attained finality, a subsequent judgment of a court or tribunal taking a contrary view would not adversely affect the applicants in whose cases the orders had attained finality.

27. The rights of the appellants were not determined in the earlier proceedings. According to them, merely a law was declared which was prevailing at that point of time; but the appellants were not parties therein. Thus, no decision was rendered in their favour nor any right accrued thereby.

28. In *E.A. Sathyanesan*³³, a Division Bench of this Court (of which one of us was member) noticed: (SCC p. 173, para 15)

“15. In view of the aforementioned authoritative pronouncement we have no other option but to hold that the Tribunal committed a manifest error in declining to consider the matter on merits upon the premise that *Sabharwal*³⁴ and *Ajit Singh (I)*³³ had been given a prospective operation. The extent to which the said decisions had been directed to operate prospectively, as noticed above, has sufficiently been explained in *Ajit Singh (II)*³⁴ and reiterated in *M.G. Badappanavar*³⁴.”

32 (2006) 8 SCC 662 : (2007) 1 SCC (L&S) 35 : (2006) 9 Scale 626

33 *Ajit Singh (I) v. State of Punjab*, (1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 AIC 239

34 *M.G. Badappanavar v. State of Karnataka*, (2001) 2 SCC 666 : 2001 SCC (L&S) 489

KRISHNAMURTHY S. SETTLUR v. O.V. NARASIMHA SETTY

569

29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf.

30. We, therefore, do not find any merit in these appeals, which are dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

(2007) 3 Supreme Court Cases 569

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

KRISHNAMURTHY S. SETTLUR
 (DEAD) BY LRS.

Appellant;

Versus

O.V. NARASIMHA SETTY AND OTHERS

Respondents.

Civil Appeal No. 5079 of 2000[†], decided on February 23, 2007

Limitation Act, 1963 — S. 27 and Arts. 64 and 65 — Adverse possession — Duty of the plaintiff making claim for — Nature of the question as to whether the possession is adverse or not — Duty of first appellate court to examine the conclusion reached by trial court in that regard — Held, the plaintiff must plead and prove the date on and from which he claims to be in exclusive, continuous and undisturbed possession and also that such possession was actual and to the knowledge of the real owner — He has also to show hostile title and communicate it to the real owner — The question whether the possession is adverse or not though often a simple question of fact, may sometimes be a question of law or a mixed question of law and fact — The conclusion drawn from the facts as to ouster or adverse possession, held, is a question of law and must be considered by the first appellate court — In the present case, questions of law arising therein such as whether the tenant's possession could be treated as the owner's possession for the purpose of computing of limitation period not answered by the first appellate court — Moreover, its decision suffering from many other serious errors — Such a decision, held, called for interference under Art. 136 of the Constitution — Hence, the matter remitted to first appellate court for de novo decision in accordance with law — Civil Procedure Code, 1908, Ss. 96 and 100 — Constitution of India — Art. 136

After several rounds of litigation in respect of the suit property amongst the parties herein, *K* filed a suit on 11-12-1981 for a declaration that he was the owner of the suit lands and that the LRs of *I* or their alienees got no title from the two sale deeds dated 21-5-1970 and 7-9-1970 executed by LRs of *I* in favour of *N* and others (defendants). In the said suit, *K* alleged that the suit lands originally belonged to *KSI*, that they were cultivated by *S*, that in 1942 he had purchased the suit lands through his constituted attorney *I*, that the said deed of 1942 was

[†] From the Judgment and Final Order dated 22-3-1999 of the High Court of Karnataka at Bangalore in RFA No. 672 of 1996

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****SPECIAL LEAVE PETITION (C) NO. 11039 OF 2022**

MANOJ PARIHAR & ORS.

.....PETITIONER(S)

VERSUS

STATE OF JAMMU & KASHMIR & ORS.

.....RESPONDENT(S)

ORDER

1. This petition seeking leave to appeal under Article 136 of the Constitution is at the instance of unsuccessful original respondents in a writ application filed before the High Court of Jammu & Kashmir (Judicial Officers) and is directed against the judgment and order passed by a Division Bench of the High Court dated 27.05.2022 in the SWP No. 1350/2011 by which the High Court allowed the Writ Petition filed by the Respondents No. 3 to 19 herein (original writ applicants).

2. The facts giving rise to this special leave petition may be summarized as under:

2.1 At the outset, we may state that this is a 2nd round of litigation before this Court on the issue relating to fixation of the seniority of the Munsiffs (Batch of 2003) for promotion to the post of Sub-Judge in the State of Jammu & Kashmir (Now Union Territory).

2.2 This Court in the 1st round of litigation took notice of the fact that the respondents herein (original writ applicants) qualified at the Jammu and Kashmir Civil Services (Judicial) Examinations 2002 and were appointed as the Judicial Magistrates in 2002-03. They were placed higher in the merit list compared to the petitioners herein. However, the gradation list was prepared by applying the roster for direct recruitment as provided under Rule 5 of the Jammu and Kashmir Reservation Rules, 2005. This in effect led to the reserved category petitioners displacing the general category respondents in the gradation list. A Writ Petition was filed seeking to quash the gradation list of the Judicial Magistrates and for a direction to prepare the gradation

list based on merit.

3. The High Court held as under:

“16. The issue raised in the present petition squarely falls within the judgment rendered by the Division Bench in Ashok Kumar Sharma’s case. Though petitioners do not assail the Gradation List and the consequent promotion order on the ground that these are not constitutionally permissible and therefore ultra vires Constitution yet the law laid down in Indra Sawhney’s case and relied upon in Ashok Sharma’s case cannot go unnoticed, while dealing with present case as it touches constitutionally of the Reservation Rules whereupon the impugned Gradation List is based and therefore, validity of the High Court orders promoting private respondents on the basis of this placement in Gradation List. The Gradation List in question and promotion orders made on the basis thereof, in favour of private respondents, in implementation of reservation policy, are therefore, liable to be set aside on this ground alone. The conclusion so drawn, ordinarily, would clinches the matter. However, it would be, if not necessary, but appropriate to deal with the issues, other than constitutionality of Reservation in promotion scheme, raised in the petition.....

25. For the reasons discussed above, we find merit in challenge to Gradation List dated 01.06.2010 issued by respondent No. 2 as also order promoting respondents 3 and 4 as Civil Judge (Senior Division) on the basis of their placement in the Gradation List. Challenge to such other orders passed on the basis of the impugned Gradation List, allowing the private respondents,

belonging to different Reserved Categories to steal march over the petitioners, is also to succeed. We are told that Petitioner 1 to 10 stand already promoted as Civil Judges (Senior Division) and so are respondents 3 to 12 and 14 and 15. The interest of petitioners 1 to 10 is, therefore, restricted to their placement at appropriate place in the seniority list of Civil Judges (Senior Division) maintained by respondent No. 2.....

26. *Petitioners 11 to 16 and Mis Mir Afroz (on deputation) Abdul Qayoom Mir and Manzoor Ahmad Zargar figuring at S.No. 19 to 27 in order of merit in the Merit List rank senior to respondents 4, 5, 7 to 12 at S. Nos. 32, 37, 31, 33, 34, 41, 38, 30 in the Merit List, and already promoted as Civil Judges (Senior Division) vide different High Court Orders including High Court order No. 252 dated 04.07.2015. Petitioners 11 to 16 and M/s. Mir Afroz (on deputation) Abdul Qayoom Mir and Manzoor Ahmad Zargar, therefore, had a right to be considered for promotions as Civil Judges (Senior Division) ahead of respondents 4, 5, 7 to 12. The respondent No. 2 by ignoring petitioners claim and failure to accord consideration to their claim has infringed their fundamental rights guaranteed under Article 16 of the Constitution. However, M/s. Mir Afroz (on deputation) Abdul Qayoom Mir and Manzoor Ahmad Zargar, have not joined as petitioners in present petition. Petitioners have not questioned the orders whereby private respondents 4, 5, 7 to 12 were promoted including High Court order No. 252 dated 04.07.2015. Respondents 4, 5, 7 to 12 presumably have been working as Civil Subordinate Judges, Senior Division for quite sometime. We do not have definite information about the posts of Civil Judges (Senior Division) lying vacant as on date so as to*

examine whether petitioners 11 to 16 and M/s. Mir Afroz (on deputation) Abdul Qayoom Mir and Manzoor Ahmad Zargar, directed to be considered for promotion as Civil Judges (Senior Division) against such post without disturbing respondents 4, 5, 7 to 12 and thereafter placed in the seniority list of Civil Judges (Senior Division) to be prepared by respondent No. 2 strictly in accordance with merit. We, therefore, refrain from setting aside the orders whereby respondents 4, 5, 7 to 12 have been promoted as Civil Judges (Senior Division). We direct respondent No. 2 to undertake an exercise to find out whether any posts of Civil Judge (Senior Division) are lying vacant as on date so that consideration is accorded to petitioners promotion against available posts. Let such exercise be completed with three months from today. In the event, no such posts (s) is/ are found lying vacant or less than the posts required to consider petitioners 11 to 16 are lying vacant, the order (s) whereby respondents 4, 5, 7 to 12 have been promoted as Civil Judges (Senior Division), to the extent necessary to accord consideration to petitioners 11 to 16, shall stand set aside on expiry of three months from today and consideration accorded to the petitioners' promotion against the available vacancies. On completion of the exercise either way respondent No. 2 shall reframe and notify the seniority list in accordance with merit."

4. The petitioners herein being dissatisfied with the aforesaid judgment and order passed by the High Court challenged the same before this Court by way of the Special Leave Petition (Civil) No. 3786 of 2016. Leave was granted. The Special Leave Petition got culminated in the Civil Appeal No. 6928 of 2021. The

Civil Appeal No. 6928 of 2021 ultimately came to be disposed of by this Court holding as under:

“10. The main issue in the writ proceedings before the High Court is whether the seniority for the purpose of the gradation list can be founded on the basis of roster points and this issue would depend upon the view which is taken by the High Court on the legal position. As noted above, Mr. Gaurav Pachnanda, learned senior counsel has stated that the High Court has accepted the view that the gradation list is invalid. The High Court on its Administrative side is not precluded from taking a considered decision on this aspect of the matter.....

11. Consequently, the impugned judgment and order of the High Court dated 27 November, 2015 is set aside. The writ petition is restored to the file of the High Court for a decision afresh. Having regard to the pendency of the proceedings, we would request the High Court to dispose of the petition, on remand, preferably within a period of two months from the date of receipt of a certified copy of this order. In the meantime, pending the decision of the High Court, it would be appropriate if consequential directions on the basis of the gradation list for the batch of 2003 are held in abeyance so as to abide by the final result of the proceedings before the High Court. The High Court is at liberty on the administrative side to take a decision in the meantime....

12. The appeal is accordingly disposed of in the above terms.”

5. In view of the aforesaid, the High Court re-heard the matter

and took the view that the seniority should be fixed in accordance with the merit determined by the Public Service Commission and not in accordance with the roster points. We quote the relevant observations made by the High Court including the operative part of the impugned judgment and order as under:

“13. In the past, while it may be true that the High Court had been maintaining the seniority based upon the roster points, as mentioned under Rule 14 of the Reservation Rules of 1994 may be on the strength of the ratio of the judgment in P.S. Ghalaut, yet it cannot be ignored that the Apex Court on 10.03.2003 having declared the decision in P.S. Ghalaut as not laying good law on the subject, none of the authorities, including the High Court could have proceeded to make the roster points as the basis for determining the seniority and further make that a basis for promotions to the post of SubJudges. It needs to be reiterated that in the present case appointments of the selected officers were made in terms of Rule 42 of the Jammu & Kashmir Civil Services (Judicial) Recruitment Rules, 1967 vide Government Order dated 06.08.2003, i.e. much after the pronouncement of the judgment in Bimlesh Tanwar’s case.

It was precisely for that reason that the counsel representing the High Court had admitted before the Apex Court that the gradation list was invalid, which is the subject-matter of challenge in the present petitions....

14. We are told that both the petitioners and the private respondents have since been promoted

as Sub-Judges and, therefore, even when there was an initial challenge to the promotion of respondent Nos. 3 & 4 in the writ petition, no promotions would be effected if the seniority was directed to be fixed as per merit....

15. *Having considered the matter in the light of the facts and the law discussed hereinabove, we hold as under:-*

- a. The gradation list dated 01.06.2010 to the extent, and insofar as, it pertains to the selection made by the Public Service Commission for the post of Munsiffs in reference to Notification No. PSC/Ex-2001/64 dated 04.12.2001, is quashed.*
- b. The respondent No. 2 is directed to re-frame the seniority list in regard to the selection process for the post of Munsiffs, pertaining to notification dated 04.12.2001, strictly in accordance with merit obtained by the selected candidates in the examination conducted by the Public Service Commission.*
- c. Such of the candidates, including the petitioners, who on account of the impugned gradation list were not promoted on time and, therefore, could not gain the requisite experience for appearing in the limited competitive examination in terms of the Jammu & Kashmir Higher Judicial Service Rules, 2009, would be held eligible to take such an examination, if another Civil Judge in the same post but lower in*

the reframed seniority list was eligible to take such an examination.

16. *The writ petitions are, accordingly, disposed of.”*

6. Being dissatisfied with the aforesaid, the petitioners are once again before this Court with the present petition.

7. Mr. Ranjit Kumar, the learned Senior Counsel appearing for the petitioners vehemently submitted that the High Court committed a serious error in passing the impugned order. The learned Senior Counsel vehemently submitted that it cannot be argued as an absolute proposition of law that for the purposes of fixing seniority only merit is to be considered and not the roster points. He would submit that it should be left to the authorities such as the High Court in the case on hand to evolve a fair and just principle, more particularly, whether the Rules governing the seniority are absent. He would submit that since the Recruitment Rules 1967 are silent with regard to the procedure of promotion of Munsiffs to the posts of Sub-Judges as well as the manner of determination of their inter-se seniority. The High Court on its administrative side in exercise of powers under Article 111 of the Constitution of Jammu & Kashmir which is *pari materia* with

Article 235 of the Constitution of India had decided in its Full Court Resolution dated 04.12.1994 to adopt the Reservation Rules 1994 for the purpose of fixing the inter-se seniority of recruits for the post of Munsiff and this practice was followed consistently between 1995 and 2003.

8. Mr. Ranjit Kumar pointed out that the High Court adopted the methodology of fixing the seniority in accordance with the roster since 1995. First, it was applied to the 11 Munsiffs appointed in the year 1995, thereafter to the 10 Munsiffs appointed in the year 1997, thereafter to the 32 Munsiffs appointed in the year 2000, thereafter to the 17 Munsiffs appointed in the year 2001 and in the last 47 Munsiffs appointed in the year 2003 which included the petitioners and the respondents herein before this Court.

9. The learned Senior Counsel laid much emphasis on the fact that neither the petitioners herein nor the respondents herein thought fit to challenge either the Reservation Rules 1994 or the Full Court Resolution dated 04.12.1994 on the basis of which the candidates were appointed and their seniority was fixed in accordance with the roster. Both the sides were aware and

conscious that the fixation of seniority in accordance with the roster was based on the decision of the Full Court and, more particularly, for the reason that the 2003 batch was not the first batch where roster was applied in terms of the Reservation Rules 1994.

10. He would submit that both the sides since their appointment in the year 2003 never questioned the legality and validity of the methodology adopted by the High Court for the purpose of fixation of seniority in accordance with the roster.

11. The learned Senior Counsel vehemently submitted that the High Court committed a serious error in applying the Jammu & Kashmir Reservation Rules 2005 which in turn came to be framed under the Jammu & Kashmir Reservation Act 2004 and notified on 21.10.2005 for the purpose of fixation of the inter-se seniority. The argument of the learned Senior Counsel is that the Act and the Rules framed thereunder, do not have any retrospective operation and they could not have been made applicable to fix the seniority of the appointees of the year 2003. Mr. Ranjit Kumar invited the attention of this Court to the proviso to Rule 37 which mandates that the Rules shall not apply to the vacancies or posts

in respect of which advertisement have been issued or the selection process have been initiated before coming into force of the Rules 2005. In short, the argument of the learned Senior Counsel is that there cannot be any prospective operation of the Rules 2005. In the last, the learned Senior Counsel submitted that why should the petitioners suffer for no fault on their part as the 2003 batch is the last one to whom the Rules of 2005 are sought to be made applicable. In other words, the argument is that if the seniority is to be fixed in accordance with the merit of the appointees of the batch of 2003 and not on the basis of the roster points then many of the petitioners would have no chances of any further promotion.

12. In such circumstances referred to above, the learned Senior Counsel prays that there would be merit in his petition. Leave may be granted and the appeal may be admitted.

13. On the other hand, this petition has been vehemently opposed by the respective learned Counsel appearing for the private respondents, the High Court of Jammu & Kashmir and also the State of Jammu & Kashmir. All the learned Counsel in one voice submitted that no error, not to speak of any error of law

could be said to have been committed by the High Court in taking the view that the seniority should be fixed in accordance with the merit determined by the Public Service Commission and not in accordance with the roster points. All the learned Counsel would submit that the law in this regard is no longer *res integra* and is well settled.

14. In such circumstances referred to above, all the learned Counsel appearing for the respondents pray that no case is made out for grant of leave and the petition may be dismissed.

Analysis

15. Having heard the learned Counsel appearing for the parties and having gone through the materials on record the only question that falls for our consideration is whether the inter-se seniority of the Munsiffs appointed by way of direct recruitment on the recommendations of the State Public Service Commission should be fixed/ determined on the basis of the roster points or in terms of the order of their inter-se merit at the time of their selection?

16. The first and the foremost aspect, we would like to clarify, is that in the case of direct recruitment, the preparation of *inter se*

merit list of the selected candidates is inevitable, even in the absence of an explicit provision in the rule or policy, the recruitment authority cannot place the candidates *inter se* in the select list under the rule of thumb or by adopting the methodology which is inconsistent with the spirit of Articles 14 and 16 of the Constitution. The *inter se* merit list of the selected candidates can be prepared as a combined effect of several factors like written test, objective test, viva-voce and/or other parameters as may have been prescribed keeping in view the special requirement of service. Similarly, though not concerned in the present case, even in a case of promotion based on merit-cum-seniority, seniority by itself is not the only qualification for promotion to a selection post. If the criteria for promotion is merit-cum-seniority, the comparative merit has to be evaluated in which seniority will be one of the factors only. However, in the case of merit-cum-seniority even a junior most person may steal a march over his seniors and jump the queue for accelerated promotion.

17. Keeping the aforesaid fundamental principle of service jurisprudence, we now proceed to consider the case law on the subject governing the rights of the parties before us as under.

18. In ***R.K. Sabharwal v. State of Punjab***, (1995) 2 SCC 745,

this Court said as follows:

“5. We see considerable force in the second contention raised by the learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of “running account” is to make sure that the Scheduled Castes/Schedule Tribes and Backward Classes get their percentage of reserved posts. The concept of “running account” in the impugned instructions has to be so interpreted that it does not result in excessive reservation. “16% of the posts ...” are reserved for members of the Scheduled Castes and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Castes. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards up to 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The “running account” is to operate only till the quota provided

under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the “running account” must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at roster points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation.”

19. In **Bimlesh Tanwar v. State of Haryana**, (2003) 5 SCC

604, this Court stated thus:

“19. It was submitted that having regard to the instructions issued by the Haryana Government in

its circular letter dated 27-4-1972, roster points cannot be considered as seniority points and further having regard to the fact that these instructions have been followed by the High Court for a long time, there is absolutely no reason as to why such a practice should be deviated from. The learned counsel contended that this Court in Ajit Singh (II) 5 having categorically held that roster points are not intended to determine seniority between general candidates and reserved candidates, the impugned judgment cannot be faulted with.

24. The Rules, therefore, indisputably lay emphasis on merit. It for all intent and purport excludes the applicability of rule of appointment in terms of roster points.

33. The question as to whether the determination of inter se seniority would depend upon the filling up of the vacancies so far as the reserved categories are concerned, having regard to the roster points, in our opinion, is no longer res integra.

40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of a class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut does not lay down a good law."

20. In **G.P. Doval v. Govt. of U.P.**, (1984) 4 SCC 329, this Court stated as follows:

“16. A grievance was made that the petitioners have moved this Court after a long unexplained delay and the Court should not grant any relief to them. It was pointed out that the provisional seniority list was drawn up on March 22, 1971 and the petitions have been filed in the year 1983. The respondents therefore submitted that the Court should throw out the petitions on the ground of delay, laches and acquiescence. It was said that promotions granted on the basis of impugned seniority list were not questioned by the petitioners and they have acquiesced into it. We are not disposed to accede to this request because Respondents 1 to 3 have not finalised the seniority list for a period of more than 12 years and are operating the same for further promotion to the utter disadvantage of the petitioners. Petitioners went on making representations after representations which did not yield any response, reply or relief. Coupled with this is the fact that the petitioners belong to the lower echelons of service and it is not difficult to visualise that they may find it extremely difficult to rush to the court. Therefore, the contention must be rejected.

17. In view of the discussion, these petitions succeed and are allowed and a writ in the nature of certiorari is issued quashing the impugned seniority list dated March 22, 1971 in respect of Khand-sari Inspectors. The Respondents 1 to 3 are directed to draw up a fresh seniority list based on the principle of length of continuous officiation reckoned from the date of first appointment if the appointment is followed by confirmation i.e. selection/approval by the State Public Service Commission. We order accordingly, but in the circumstances of the case, there will be no order as to costs.”

21. In **Kuldip Chand v. Union of India**, (1995) 5 SCC 680, this

Court stated thus:

“4. It is next contended by Mr. M.M. Kashyap, learned counsel for the appellant, that Ashok Kumar disputed the correctness of the seniority list made on 23-12-1982 in his representations dated 10-1-1983 and 1-8-1983 which were duly considered and rejected. He allowed it to become final as he did not challenge the same till post of accountant became vacant. When it was rejected, he filed the writ petition in the High Court. There is a considerable delay in claiming his seniority over the appellant. It is true that the seniority list was prepared as early as on 23-12-1982 but no vacancy had arisen thereafter and, therefore, the mere rejection of the claim for seniority does not disentitle him to claim his seniority over the appellant for consideration by the respondent-Union.

5. When the aforesaid facts are taken into consideration, it would be obvious that the preparation of seniority list per se was illegal. Therefore, the mere fact that he did not challenge the seniority list, which was illegally prepared, till he was aggrieved for non-consideration of the claim to the post of accountant, his legitimate right to be considered cannot be denied. Under these circumstances, the delay is of no consequence for considering the claims of Ashok Kumar for the post of accountant.”

22. The question as to whether the determination of inter-se seniority would depend upon the filling up of the vacancies so far as the reserved categories are concerned, having regard to the roster points, in our opinion, is no longer res integra.

23. In **Ajit Singh v. State of Punjab**, (1999) 7 SCC 209, a five Judge Bench of this Court has laid down the law in the following terms:

“40. “It must be noted that whenever a reserved candidate goes for recruitment at the initial level (say Level 1), he is not going through the normal process of selection which is applied to a general candidate but gets appointment to a post reserved for his group. That is what is meant by “reservation”. That is the effect of “reservation”.

41. Now in a case where the reserved candidate has not opted to contest on his merit but has opted for the reserved post, if a roster is set at Level 1 for promotion of the reserved candidate at various roster points to Level 2, the reserved candidate, if he is otherwise at the end of the merit list, goes to Level 2 without competing with general candidates and he goes up by a large number of places. In a roster with 100 places, if the roster points are 8, 16, 24 etc. at each of these points the reserved candidate if he is at the end of the merit list, gets promotion to Level 2 by side-stepping several general candidates. That is the effect of the roster-point promotion.

42. It deserves to be noticed that the roster points fixed at Level 1 are not intended to determine any seniority at Level 1 between general candidates and the reserved candidates. This aspect we shall consider again when we come to Mervyn Continho v. Collector of Customs (1966) 3 SCR 600 lower down. The roster point merely becomes operative whenever a vacancy reserved at Level 2 becomes available. Once such vacancies are all filled, the roster has worked itself out. Thereafter other reserved candidates can be promoted only when a vacancy at the reserved points already filled arises. That was what was decided in R.K. Sabharwal v. State of Punjab (1995) 2 SCC 745.”

24. In **Ajit Singh (II)**, the decision of this Court in **R.K.**

Sabharwal case has, thus, been explained as under:

“P.S. Ghalaut v. State of Haryana [(1995) 5 SCC 625] relied upon by Dr. Chauhan, is a decision rendered by a two Judge bench. In that case Rule 13 of the Rules envisaged that the seniority inter se of members of the service shall be determined by the length of continuous service on any post in the service; provided further that in the case of two or more members appointed by direct recruitment, the order of merit determined by the Commission shall not be disturbed in fixing the seniority. Despite the said Rule, it was held as under:

“Take for instance Vacancies Nos. 1 and 6, as pointed out in the Chief Secretary’s letter have admittedly been reserved for Scheduled Castes. Suppose recruitment was made to fill up ten vacancies, three candidates from Scheduled Castes were selected on the basis of reserved quota. The question is whether the first candidate will be put in the quota allotted to the Scheduled Castes in the roster. Having been selected as a general candidate, though he is more meritorious than the second and third candidates, he will not get the placement in the roster, reserved for Scheduled Castes i.e. Nos. 1 and 6 points. Consequently candidates Nos. 2 and 3 will get the placement at Nos. 1 and 6 and the first candidate will get the placement in the order of merit along with the general candidates according to the order of merit maintained by the Selection Committee or the Public Service Commission. He cannot complain that having been selected in the merit, he must be placed in the placement reserved for Scheduled Castes at Point No. 1 in the roster. Equally, though general candidate is more meritorious in the order of merit prepared by the Public Service Commission or the Selection Committee, when the appointments are made and the vacancies are filled up according to the roster, necessarily and inevitably the reserved candidates though less meritorious in the order of merit maintained by the Public Service Commission would occupy the respective places assigned in the roster. Thereby

they steal a march over some of the general candidates and get seniority over the general candidates. This scheme is, therefore, constitutional, valid and is not arbitrary.”

We have not been able to persuade ourselves to the aforesaid view.”

25. It will be of interest to note that the hypothetical situation taken up by this Court in **P.S. Ghalaut** (supra) where two reserved category candidates were pitted against each other, was actually extracted by this Court in para 36 of the report in **Bimlesh Tanwar** (supra) and this Court recorded that the same was not correct. In para 40 of the report this Court eventually held as follows:-

“40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut does not lay down a good law.”

26. What was done in **Bimlesh Tanwar** (supra) was actually a declaration of law. Therefore, the same will have retrospective effect. In **P.V. George v. State of Kerala**, (2007) 3 SCC 557, this

Court held that *“the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically”*.

27. This Court was conscious of the fact, as could be seen from paragraph 19 of the report in **P.V. George** (supra), that when the doctrine of *stare decisis* is not adhered to, a change in the law may adversely affect the interest of the citizens. But still this Court held that the power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be exercised in the clearest possible term.

28. Therefore, it is clear that anything done as a consequence of the decision of this Court in **P.S. Ghalaut** (supra), cannot stand since this Court did not apply the doctrine of prospective overruling in **Bimlesh Tanwar** (supra) in express terms. It goes as follows:-

“(i) In Union of India v. Virpal Singh [(1995) 6 SCC 684], this Court upheld the stand taken by the Railways that reserved category candidates who got promotion at roster points would not be entitled to claim seniority at the promotional level as against senior general category candidates who got promoted at a later point of time to the same level. The Court held that the State was entitled to provide, what came to be known in popular terms as the “catch up rule” enabling the

senior general category candidates who got promoted later, to claim seniority over and above the roster point promotee who got promoted earlier.

(ii) The catch up rule formulated in *Virpal* was approved by a three member Bench in *Ajit Singh Januja v. State of Punjab* [(1996) 2 SCC 715]. This case came to be known as *Ajit Singh (I)*.

(iii) But, another three member Bench took a different view in *Jagdish Lal v. State of Haryana* [(1997) 6 SCC 538] and held that while the rights of the reserved candidates under Article 16(4) and 16(4-A) were fundamental rights, the right to promotion was a statutory right and that therefore, the roster point promotees have to be given seniority on the very same basis as those having continuous officiation in a post.

(iv) Since *Jagdish Lal* took a view contrary to the views expressed in *Virpal Singh* and *Ajit Singh (I)*, the State of Punjab filed Interlocutory Applications before this Court, seeking clarifications. These Interlocutory Applications were placed before a Constitution Bench comprising of 5 Judges, in view of the fact that two Benches of coordinate jurisdiction (both three member Benches) had taken diametrically opposite views. The decision rendered by the larger Bench of 5 Judges on these Applications came to be known as *Ajit Singh (II)*, in *Ajit Singh v. State of Punjab* [(1999) 7 SCC 209].

(v) Eventually, the Constitution Bench held in *Ajit Singh (II)* that the roster point promotees cannot count their seniority in the promoted category,

from the date of their continuous officiation in the promoted post, vis-a-vis the general category candidates who were senior to them in the lower category and who were later promoted. As a consequence, Virpal and Ajit Singh (I) were declared to have been decided correctly and Jagdish Lal was declared to be incorrect.”

29. Thus, the principle of law discernible from all the aforesaid decisions of this Court is that the roster system is only for the purpose of ensuring that the quantum of reservation is reflected in the recruitment process. It has nothing to do with the inter-se seniority among those recruited. To put it in other words, the roster points do not determine the seniority of the appointees who gain simultaneous appointments; that is to say, those who are appointed collectively on the same date or are deemed to be appointed on the same date, irrespective when they joined their posts. The position of law as discussed about could be said to be prevailing even while the High Court of Jammu & Kashmir decided by a Full Court Resolution to determine the seniority on the basis of roster points.

30. We are not inclined to carve out an exception for the 2003 appointees that is the petitioners herein before us. The High Court in our view rightly applied the principle of law explained by this Court in the case of **Bimlesh Tanwar** (supra).

31. There is one another important aspect of this matter, we need to take notice of. The High Court in its impugned judgment and order has observed that the appointments of the selected officers were made in terms of Rule 42 of the Jammu & Kashmir Civil Services (Judicial) Recruitment Rules 1967 vide the Government order dated 06.08.2003 that is much after the pronouncement of the judgment in the case of **Bimlesh Tanwar** (supra). It makes all the differences.

32. In the overall view of the matter, we are convinced that there is no jurisdictional infirmity or any other infirmity in the impugned judgment passed by the High Court warranting interference at our end

33. In the result, this petition fails and is hereby dismissed.

.....J.
(SURYA KANT)

.....J.
(J.B. PARDIWALA)

JUNE 27, 2022
NEW DELHI

**IN THE SUPREME COURT OF INDIA****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NOS. OF 2025****(@ SPECIAL LEAVE PETITION (CRIMINAL) NOS.8609-8614 OF 2024)****KANISHK SINHA & ANOTHER****...APPELLANTS****Versus****THE STATE OF WEST BENGAL
& ANOTHER****...RESPONDENTS****J U D G M E N T****SUDHANSHU DHULIA, J.**

1. Leave granted.
2. The appellants before this Court are husband and wife (appellant no.1 & 2, respectively), who are aggrieved by an order dated 27.06.2024 passed by the learned Single Judge of the Calcutta High Court by which the criminal revisions of the present appellants were dismissed. The appellants are accused in two

Signature Not Verified
Digitally signed by
Jayant Kumar Arora
Date: 2025.02.27
17:24:34 IST
Reason: []

different cases, the first registered as a First Information Report ('FIR') at police station Bhowanipur, Kolkata as FIR No.179 of

2010 dated 27.04.2010 under Sections 120B, 420, 467, 468, 469, 471 of the Indian Penal Code, 1860 ('IPC'), read with Section 66A (a)(b)(c) of the Information Technology Act, 2000 ('IT Act'). In the instant case, the complainant was Keyur Majumder. The second FIR which was initially moved as a complaint before the Ld. Magistrate, and the Ld. Magistrate in exercise of powers under Section 190 read with 156(3) of the Criminal Procedure Code, 1973 ('CrPC') directed registration of an FIR. The complainant in this case was Supriti Bandopadhyay, and the second FIR was registered as FIR No.298 of 2011 dated 08.06.2011 at police station Bhowanipur, Kolkata under Sections 466, 469, 471 read with 120B(ii) of IPC.

3. The nature of allegations in these two cases is similar against the appellants, relating to forgery, fraud, deception, cheating, damage caused to reputation, unlawful extraction of money, threat, misrepresentation and criminal conspiracy etc. In fact, six revisions were filed by the appellants before the Calcutta High Court regarding the filing of charge sheet, as well as against certain interim orders passed by the Lower Court. But that is not very relevant. What is relevant is the only point which has been raised by the appellants in their revisions

before the High Court, which was that not only are these FIRs motivated and false, and thus liable to be quashed, but also that the second FIR has been registered on the complaint which was filed before the Magistrate under Section 156(3) of CrPC, and it was not accompanied by an affidavit and therefore, the law as laid down by this Court in **Priyanka Srivastava vs. State of Uttar Pradesh (2015) 6 SCC 287** has been violated as all such complaints should now be accompanied by an affidavit according to **Priyanka Srivastava** (supra). The learned Single Judge of the High Court was of the view that the directions of this Court in the above case could only operate prospectively and will not have any retrospective application, and will thus not be applicable to the complaint lodged against the appellants in the year 2010-2011.

The appellant no.1, all the same, who argued in person before the High Court, emphasised before this Court and would argue that all the judgments of this Court are retrospective in nature and therefore it cannot be said that this would not be retrospective particularly when it has not been specifically stated in the judgment of **Priyanka Srivastava** (supra) that it will operate prospectively.

Now the law of prospective and retrospective operation is absolutely clear. Whereas a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpreted by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had *bona fide* done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many.

4. In **Priyanka Srivastava** (supra) this Court was seized with an issue where frivolous complaints were being filed before the Magistrate only to harass people and therefore, in order to check this trend, it was directed that all applications before the Court where Section 156(3) CrPC applications are made must be supported by an affidavit duly sworn by the applicant who

seeks to invoke the jurisdiction of the Magistrate. Such a step could only be prospective in nature, and this is clearly reflected from the very language used by the Learned Judges in **Priyanka Srivastava** (supra), where it has been said as under:

“30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.”

(Emphasis provided)

5. This Court in the above case then also issued directions that a copy of the judgment be sent to all the Chief Justices of the High Courts, who in turn will circulate the said copy to all the

Magistrates, so that they remain “*more vigilant and diligent while exercising the power under Section 156(3) CrPC*”.

It is necessary to mark the words in the above-quoted para 30 that “*...a stage has come in this country...*”, and thus, the above directions could only be prospective. This would signify that what the Court intended was that from now onward it would be necessary that an application would be accompanied by an affidavit.

6. We are of the opinion that the High Court was right in holding that the direction that a complaint will be accompanied by an affidavit, will be prospective in nature. We thus find no merit in these appeals and hence, the appeals stand dismissed.
7. We have been informed that the charge sheet has been filed in both the cases. In case charges have not been framed by the Court, then the appellants would be at liberty to move an application for their discharge, which shall be considered in accordance with law.
8. Interim order(s), if any, stand(s) vacated.

9. Pending application(s), if any, stand(s) disposed of.

.....J.
[SUDHANSHU DHULIA]

.....J.
[AHSANUDDIN AMANULLAH]

New Delhi
February 27, 2025.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1319 OF 2013

25073382

DIRECTORATE OF REVENUE INTELLIGENCE

...APPELLANT(S)

VERSUS

RAJ KUMAR ARORA & ORS.

...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 272 OF 2014

Certified to be true copy
S. N. Shrivastava
Assistant Registrar (Judl.)
..... 2025
Supreme Court of India

JUDGMENT

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts:

INDEX

A. FACTUAL MATRIX.....	3
i. Criminal Appeal No. 1319 of 2013.....	3
ii. Criminal Appeal No. 272 of 2014.....	16
B. SUBMISSIONS OF THE PARTIES.....	22
i. Submissions on behalf of the Appellant(s)	22
a. Criminal Appeal No. 1319 of 2013	22
b. Criminal Appeal No. 272 of 2014	26
ii. Submissions on behalf of the Respondent(s)	27
C. ISSUES FOR DETERMINATION.....	29
D. ANALYSIS	30
i. Whether an offence under Section 8(c) could be said to have been made out when an accused “deals with” psychotropic substances mentioned in the Schedule to the NDPS Act but not figuring in Schedule I of the Rules thereunder.	30
a. Object of the NDPS Act and the United Nations Convention on Psychotropic Substances, 1971.....	30
b. Relevant Statutory Provisions of the NDPS Act and its Rules	40
c. Analysing the treatment of substances mentioned in the Schedule to the Act and not in Schedule I of the Rules by previous decisions of this Court. ...	58
d. The provisions of the NDPS Act and its Rules are “in addition to” the D&C Act and the Rules made thereunder.	87
ii. Whether the decision in <i>Sanjeev v. Deshpande (supra)</i> should operate with prospective effect?	100

a.	An overruling decision generally operates retrospectively.....	100
b.	The intention to make the decision prospectively applicable or the application of the doctrine of "prospective overruling" must be express and clear.....	105
c.	The doctrine of "Prospective Overruling" and factors which may lead to the application thereof.	109
d.	It would be open for another bench to subsequently decide on the application of the doctrine of prospective overruling to a past decision.	131
e.	Applicability or non-applicability of doctrine of prospective overruling in criminal matters, so far.....	137
f.	Article 20(1) considerations on the retrospective applicability of the decision in <i>Sanjeev v. Deshpande (supra)</i>	149
iii.	The scope of Section 216 of the CrPC	172
a.	What is the meaning of the expression "alter" occurring in Section 216 CrPC.....	177
b.	Whether charges could be deleted or the accused be discharged under Section 216 CrPC.....	180
E.	CONCLUSION	185

1. Since the issues raised in both the captioned appeals are the same, those were taken up for hearing analogously and are being disposed by this common judgment and order.
2. These appeals arise from the Judgment and Order passed by the High Court of Delhi in Criminal Revision Petition No. 494 of 2007 dated 13.07.2011 and in Criminal M.C. No. 2335 of 2010 dated 20.03.2013 respectively, by which the High Court rejected the respective petitions having found no legal infirmity in the orders passed by the Trial Court arriving at the conclusion that no offence under Sections 8, 22 and 29, and under Section 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, the "NDPS Act"), respectively, could be said to have been made out since the psychotropic substance in question do not figure in Schedule I of the NDPS Rules, 1985. The Trial Court ultimately transferred the matter to the court of Metropolitan Magistrate with a direction to proceed in accordance with the provisions of the Drugs and Cosmetics Act, 1940 (hereinafter, the "D&C Act").

A. FACTUAL MATRIX

i. Criminal Appeal No. 1319 of 2013

3. On 27.09.2003, an officer of the Department of Revenue Intelligence Headquarter (hereinafter, the "DRI(HQ)") received an information that several

glass ampoules containing the injectable preparation of Buprenorphine were stored in an office premises located at 198, Office Complex, Jhandewalan Extn., Cycle Market, New Delhi. The further information was that the injections had been illegally manufactured and cleared by M/s. Win Drugs Ltd., Bhiwani Road, Jind, Haryana and that a few injections along with the raw materials of Buprenorphine could also be found at that location. Two teams of DRI(HQ) officers were deputed – one team to undertake the search of the premises in Delhi and another team who coordinated their action with the office of Central Excise Commissionerate, Rohtak (hereinafter, the “CEC”) for the purpose of search at the premises of Win Drugs Ltd. at Jind, Haryana.

4. On the same day, i.e., 27.09.2003, at around 08:15 pm, the DRI(HQ) officers visited the premises in Delhi with a search authorisation under Section 41 of the NDPS Act along with two witnesses. It is stated that upon entering the premises, Raj Kumar Arora (hereinafter, “respondent no. 1”) who was the proprietor of M/s Kanishka Cargo Service, was present in the office premises. The DRI(HQ) officers recovered 25 corrugated card board cartons which contained small packets, each having ten unlabelled glass ampoules with a water coloured liquid, along with several sheets of printed labels which read as “Buprenorphine Hydrochloride”. They also recovered one labelled glass ampoule containing the same coloured liquid from the table drawer of the respondent no. 1. Upon preparing a detailed inventory, it was stated that 1

labelled and 40,000 unlabelled glass ampoules containing Buprenorphine Hydrochloride which is a substance listed in the Schedule to the NDPS Act were recovered. Since the respondent no. 1 was unable to provide any permission or licence for the possession of the recovered glass ampoules, they were seized under the provisions of the NDPS Act. The samples were drawn and the test memo was prepared in the presence of the respondent no. 1 and the witnesses. On 27.09.2003, i.e., on the same day, the officers of CEC, Rohtak are said to have seized 23400 injections of Buprenorphine along with 100 grams of Buprenorphine in its powder form, from M/s Win Drugs Ltd at Jind, Haryana as well.

5. In response to the summons issued, the respondent no. 1 appeared and is said to have made a voluntary statement in writing dated 28.09.2003 which mentioned that during the course of his business as a customs clearing agent, he came in contact with one Mohd. Shebar Khan (hereinafter, "respondent no. 2") who handled the customs clearance of the drugs and medicines on behalf of Devang Bipin Parekh (hereinafter, "respondent no. 3") of M/s Sarvodiya Enterprises, Mumbai. The statement further revealed the fact that the respondents were collectively involved in the illegal manufacture, storage, transport, sale and purchase of Buprenorphine Hydrochloride along with one Naresh Mittal of Win Drugs Ltd.

6. On 28.09.2003, the respondent no. 1 was arrested for the alleged commission of the offence punishable under Sections 22 and 29 of the NDPS Act respectively and was remanded to judicial custody. Since Naresh Mittal of M/s Win Drugs Ltd. had failed to appear despite repeated summons, a complaint for non-compliance of summons was filed against him before the Court of ACMM, New Delhi. The court took cognizance of the alleged offence and also issued a non-bailable warrant for his arrest.

7. The respondent no. 2 was summoned and is said to have tendered a voluntary statement dated 13.11.2004. The respondent no. 2 stated that during the course of his import business, he came in contact with one person named Mohd. Abdul who showed him three ampoules of Buprenorphine and enquired whether the respondent no. 2 could procure one lakh ampoules of Buprenorphine manufactured by Neon Laboratories Ltd. or in the alternative, procure unlabelled drug ampoules of a similar size and shape having a red ring on the neck of the ampoules for him. Mohd. Abdul is said to have given an advance of Rs. 2,50,000. The respondent no. 2, thereafter, contacted the respondent no. 1 for the purpose of procuring the same and paid him the advance amount he had received along with three samples of the drug which he had obtained from Mohd. Abdul. Initially, 2,000 and 10,000 ampoules respectively, were procured and delivered. On 27.09.2003, the respondent no.1 informed the respondent no.2 that another consignment of 40,000 ampoules had been received by him

at his office. When the respondent no.2 tried to contact the respondent no. 1 at around 09:15 pm, on the same day, he came to know of the fact that the office premises of respondent no. 1 had been raided by a government agency. The respondent no. 2 further stated that upon complete delivery of one lakh ampoules, Mohd. Abdul had promised to give him an additional amount of Rs. 25,000. In light of the same, on 13.11.2003, the respondent no. 2 was also arrested for having committed the offence punishable under Sections 22 and 29 of the NDPS Act respectively and was remanded to judicial custody.

8. In the meanwhile, the DRI officers of the Mumbai Zonal Unit visited the premises of M/s Sarvodaya Enterprises, which is run by the respondent no. 3 and during the search recovered certain documents in the presence of witnesses. The respondent no. 3 was then summoned. He gave a voluntary statement dated 03.12.2003 stating that as a part of his business, his company had bought Buprenorphine in its powder form from M/s Pioneer Agro Industries, Mumbai and were selling the same to the manufacturers like M/s Win Drugs Ltd. He further stated that he knew the respondent no. 1 since he used to clear their pharmaceutical import consignments on a need basis. The respondent no. 3 further stated that he was the one who had directed the respondent no.1 to contact Naresh Mittal of M/s Win Drugs Ltd for the purchase of Buprenorphine injections and that he had also spoken to Naresh Mittal in that regard despite knowing that the respondent no. 1 did not possess any licence to deal with the

said psychotropic substance. The respondent no. 3 is also said to have intervened when the consignments were not being received in time from M/s Win Drugs Ltd and used to get the delivery to the respondent no. 1 expedited. In the transaction in question which involved the supply of one lakh ampoules to the respondent no. 1, the respondent no. 3 was to get Rs. 1 Lakh from M/s Win Drugs Ltd in addition to some amount from the respondent no.1, for his involvement. As a result, on 03.12.2003, the respondent no. 3 was also arrested for alleged commission of the offence punishable under Sections 22 and 29 of the NDPS Act respectively and was remanded to judicial custody.

9. The Chemical Examiner of the Central Revenue Control Laboratory, New Delhi, *vide* his report dated 20.11.2003 opined that, upon chemical analysis conducted by him, the samples were found to be of Buprenorphine which is a psychotropic substance under the NDPS Act. It is the case of the appellant that despite their best efforts, Naresh Mittal of M/s Win Drugs Ltd. could not be summoned and therefore, it was decided that the prosecution *qua* him and all other concerned persons would be considered as and when they would be available for enquiry.
10. On 25.03.2004, a criminal complaint as regards the offence punishable under Sections 22 and 29 of the NDPS Act respectively was filed against the respondents by one Mr. R. Roy (hereinafter, the "complainant"), an

intelligence officer of the Directorate of Revenue Intelligence, New Delhi, (hereinafter, the "appellant") before the Special Court for NDPS cases, New Delhi.

11. On 03.02.2005, the Special Court observed that Buprenorphine is a psychotropic substance as per the Schedule to the NDPS Act and its commercial quantity is fixed at 20 gms. The test memo as regards the present seizure indicated that the contents of each of the ampoules varied between 0.23 mg to 0.34 mg. On a consideration of the above and the attendant circumstances, including that the respondent no. 1 did not possess any permission or licence for dealing in the substance and that all the respondents had conceded to their involvement in the crime, the Special Judge held that a *prima facie* contravention of Section 22 along with a case of conspiracy under Section 29 of the NDPS Act was made out. The Special Judge was also *prima facie* of the view that meticulous examination of the evidence is not required to be assessed at the stage of framing of charge and a mere strong suspicion of involvement in the crime is sufficient. Stating so, charge was directed to be framed. The charge was formally framed by the Special Judge on 08.02.2005.
12. The respondents applied for bail before the Special Judge and the same was declined. However, the High Court *vide* a common Judgment and Order dated 11.01.2005 granted bail to the respondent no. 3 along with several others. The

respondent nos. 1 and 2 respectively, had also moved the High Court for bail and *vide* a common Judgment and Order dated 22.08.2005, the High Court stated that no offence under the NDPS Act was made out and directed that the respondent nos. 1 and 2 be released on bail upon furnishing a personal bond in the sum of Rs. 25,000 with one surety of the like amount to the satisfaction of the concerned trial court. The High Court in its common Judgement and Order dated 22.08.2005 had framed two questions of law for the purpose of considering the plea for bail – (a) Whether Buprenorphine Hydrochloride is a “psychotropic substance” within the meaning of the NDPS Act?, and (b) If yes, whether Buprenorphine Hydrochloride is a “psychotropic substance” to which Chapter VII of the Narcotic Drugs and Psychotropic Substances Rules, 1985 (hereinafter, the “NDPS Rules”) apply and to what effect? The first question was answered in the affirmative, however, on the second question, it was concluded that since Buprenorphine Hydrochloride is a psychotropic substance not included under Schedule I of the NDPS Rules, its manufacture, possession, sale and transport etc. would neither be prohibited nor regulated by the NDPS Rules and consequently by the NDPS Act. It was observed that an examination of Schedule H of the Drugs and Cosmetics Rules, 1940 (hereinafter, the “D&C Rules”) made it clear that Buprenorphine Hydrochloride was listed therein as a “Prescription Drug” and therefore, the offence would fall within the rigours of the D&C Act and its Rules.

13. The appellant had preferred a petition for Special Leave to Appeal against both the orders of the High Court granting bail to the respondents. *Vide* order dated 31.03.2006, this Court declined to interfere with the grant of bail, however, made it clear that the observations of the High Court that Buprenorphine Hydrochloride would not be covered under the NDPS Act and that no offence under the NDPS Act and its rules was made out, would not have any persuasive effect when the matter would be finally considered before the Special Judge on merits.
14. The respondents thereafter preferred an application under Section 216 of the Code of Criminal Procedure, 1973 (hereinafter, the "CrPC") before the Special Judge for amendment/alteration of charge. Before filing the application under Section 216 CrPC, the respondent no. 3 had filed a Criminal Revision Petition No. 204 of 2005 before the High Court challenging the order dated 03.02.2005 and 08.02.2005 respectively, which framed charge against the respondents herein. *Vide* judgment and order dated 01.08.2006, the High Court disposed of the petition by observing that the application under Section 216 pending before the Special Judge shall be decided first before the matter is proceeded with. The relevant observations are as follows:

"This revision petition is directed against the order on charge dated 03.02.2005 as well as the formal charge framed on 08.02.2005 against the petitioner under Section 29 of the Narcotic Drugs And Psychotropic Substances Act, 1985. Mr. Sud, the learned Senior counsel for the petitioner has pointed out that the

main issue involved in the present case is whether Buprenorphine Hydrochloride I.P. would be a psychotropic substance covered under the NDPS Act and Rules. According to Mr. Sud, this matter has been considered by this Court in the case of R Gupta v State: 123 (2005) DLT 55. This decision came after the order which is impugned in the present proceedings was passed. Mr. Sud, also submitted that he had moved an application under Section 216 of Code of Criminal Procedure 1973 for amendment/alteration of the charge. That application, I have been told, is pending before the learned Additional Sessions Judge.

In these circumstances it would be appropriate if the application under Section 216 of the Code of Criminal Procedure which has been filed by the petitioner is disposed of taking into account, inter alia, the said decision of this Court. While disposing of the application under Section 216 Code of Criminal Procedure, the learned Sessions Courts shall not be influenced by what has been held in the impugned order and shall consider the entire issue afresh. The Learned Sessions Court shall decide the application under Section 216 Code of Criminal Procedure first before proceeding further with the matter. It is, of course, goes without saying that not only the counsel for the petitioner but the counsel for the State shall also be heard on all submissions. In view of above, terms this revision petition stands disposed of."

(Emphasis supplied)

15. The Special Judge heard the submissions of the counsel with respect to the Section 216 CrPC application made before him. *Vide* order dated 30.11.2006, the Special Judge echoed the reasoning adopted by the High Court while granting bail to the respondents and also arrived at the conclusion that the respondents are to be tried under the D&C Act and the Rules thereunder. The Special Judge allowed the application filed under Section 216 CrPC taking the view that since the offence under the NDPS Act was not made out, the file be

sent to the ACMM, New Delhi for further proceedings. The relevant observations are as thus:

"12. I have heard the Ld. Counsel for the parties at length. The Ld. Counsel for the DRI also has not made out any other arguments which have been already dealt in the Hon'ble High Court in passing the judgment. Moreso, the accused has placed on record one order passed by Sh. N. K. Gupta, Special Judge in the matter, Manoj Kumar Gupta Versus State of NCT and said discussed above, since offence is made out under D & C Act which are triable by Ld. MM and not by the Court of Sessions. Accordingly, the matter was remanded back to Ld. ACMM to deal with the judgment in accordance with law. Since Ld. Counsel for the DRI could not place any other material on record to come out with a different view that Buprenorphine Hydrochloride is covered under NDPS Act or Rule. It remains a substance to be dealt under D & C Act or Rules, Previous case of Manoj Kumar Gupta Versus State of NCT with similar allegations were ordered to be charged and tried under D & C Act and Rules and so it has to face the same consequences and not to be dealt differently.

13. In these circumstance of the matter, I allow the application of the accused U/s 216 of Cr. P.C. and say that the charge framed by my Ld. Predecessor dated 08.02.2005 for the offence under NDPS Act is not made out against them and it has to be a case under D & C Act which are triable by Ld. MM and not by the court of Sessions. Accordingly, let the file be sent to Ld. ACCMM, New Delhi for further proceeding in accordance with law by herself or by assigning it to any other court of competent jurisdiction. The accused is directed to appear before Ld. ACMM on 11.12.2006. The file be sent immediately to the said Court."

16. Aggrieved by the aforesaid order dated 30.11.2006 passed by the Special Judge, the appellant preferred Criminal Revision Petition No. 494 of 2007. Vide judgment and order dated 13.07.2011, the High Court dismissed the revision petition. The High Court followed the rationale adopted by this Court in *State*

of *Uttanchal v. Rajesh Kumar Gupta* reported in (2007) 1 SCC 355 wherein it was observed that if any particular drug does not find mention in the Schedule I appended to the NDPS Rules, then the provisions of Section 8 of the NDPS Act would have no application whatsoever. On the question of the respondents being discharged under Section 216 CrPC, the High Court remarked that it would not be right to say that the Special Judge had discharged the respondents. The matter was accordingly remitted to the Metropolitan Magistrate to proceed in accordance with the provisions of the D&C Act. The relevant observations have been reproduced below:

"17 [...] I am not in agreement with learned counsel for the Petitioner that by interpreting the Statute and the Rules, a penal offence be made out and the Respondents should be tried thereof. Thus, I am of the considered view that the possession and transportation intra country of Buprenorphine Hydrochloride would not be an offence under the Act and hence not punishable under Section 22 and 29 of the Act and the learned Trial Court had rightly remanded the matter to the learned Metropolitan Magistrate holding that no case for offence under the NDPS Act was made out and the learned MM would examine the same in the light of the provisions of D&C Act."

xxx

xxx

xxx

25. There is no denying that the above decision was rendered in the context of an order granting bail and when the Supreme Court was considering as to whether it should exercise its jurisdiction under Article 136 of the Constitution of India to interfere with the order passed by the High Court. But that does not enable us to detract from the position that the Supreme Court, while considering the question, did examine the relevant provisions of the NDPS Act and the NDPS Rules and came to the conclusion that if the drugs did not find place in Schedule-I appended to the Rules, the provisions of Section 8 of the NDPS Act would have no

application whatsoever. This, of course, was in the context of phenobarbitone which was also a Schedule 'H' drug under the Drugs and Cosmetics Rules, 1945. Mr Malhotra, as pointed out above, wanted us to ignore this decision because, according to him, it did not lay down the law or settle the issue inasmuch as the Supreme Court was only concerned with a bail order and consequently was required to take a prima facie view. We are not impressed by this argument advanced by Mr Malhotra. The aforementioned detailed narration concerning the said decision indicates that the Supreme Court had specifically gone into the issue and had interpreted the provisions of the NDPS Act as well as the NDPS Rules. Mr Malhotra, the learned ASG, is asking us to shut our eyes to the clear dictum of the Supreme Court which is before us in black and white. We cannot do that. The Constitutional scheme of things which sets out the judicial hierarchy does not permit us to do that. Mr Malhotra submitted that the observations in Rajesh Kumar Gupta (supra) are in the nature of obiter dicta and do not constitute the ratio of the said decision [...].

xxx

xxx

xxx

28. From these decisions, it is clear that, in the first place, the observations with regard to the provisions of the NDPS Act and the NDPS Rules in Rajesh Kumar Gupta (supra) cannot be construed as obiter dicta. This is so because the discussion and conclusion with regard to the said provisions as appearing in Rajesh Kumar Gupta (supra) cannot be regarded as unnecessary to the decision.

29. Secondly, even if we assume for the sake of argument that the observations are in the nature of obiter dicta, they are normally binding on the High Courts in the absence of any direct pronouncement on that question by the Supreme Court. There is no other direct pronouncement of the Supreme Court on this issue and, therefore, even if the observations are regarded as obiter dictum, they would be binding on this Court.

30. Thirdly, apart from this, even if it is assumed that the observations of the Supreme Court in Rajesh Kumar Gupta (supra) are not binding on us, the said observations will, in the least, be required to be construed as having considerable weight and of great persuasive value. We are in full agreement with the observations of the Supreme Court and are indeed persuaded by the line of thought adopted in the said decision in Rajesh Kumar Gupta (supra.). Thus, viewed from any angle, the submission of Mr Malhotra to ignore the decision of the Supreme Court in Rajesh Kumar Gupta (supra), deserves rejection.

xxx

xxx

xxx

35. Till the matter is resolved by the larger bench of the Hon'ble Supreme Court this court is bound by the decision rendered in State of Uttaranchal (supra) and Rajesh Sharma (supra). Thus, I find no infirmity in the impugned order on this count.

36. I also do not find any merit in the contention of the learned counsel for the Petitioner that the Learned Trial Court erred in discharging the Respondents on an application under Section 216 Cr.P.C. Firstly the impugned order was not passed as an order in review but on an application under Section 216 Cr.P.C. duly permitted by this Court. Moreover the Respondents have not been discharged but the matter has been remanded to the Learned Metropolitan Magistrate to proceed in accordance with the provisions of D & C Act and Rules."

(Emphasis supplied)

17. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

ii. Criminal Appeal No. 272 of 2014

18. On 07.10.2004, the Delhi Zonal Unit of the Narcotics Control Bureau (hereinafter, the "NCB") received an information from the Ahmedabad Zonal

Unit that they had recovered and seized 50,000 ampoules of Buprenorphine and during the course of their investigation it was revealed that a huge quantity of these ampoules was also supplied by M/s Rusan Health Care Ltd. to their stockists in Delhi. One Monish Nayyer the proprietor of M/s Belsons was summoned in this regard. M/s Belsons had originally distributed the said ampoules to M/s Rusan Health Care Ltd. In his statement, he disclosed that his firm had a drug licence and therefore, they had received large quantities of the said psychotropic substance from their suppliers out of which the major chunk was sold to one M/s International Drugs. Sajesh Sharma (hereinafter, the "respondent no. 1" had taken delivery of the substance on behalf of M/s International Drugs. Pursuant to this information, summons were issued to the respondent no. 1 who admitted that his firm was selling the ampoules of Buprenorphine Hydrochloride/bunogesic injections after purchasing them from M/s Belsons with a valid invoice. The respondent no. 1 then stated that he had sold 2,50,400 injections to a person named Shakeel without an invoice or consignment note as required under Rule 67 of the NDPS Rules and that he was not aware whether Shakeel had a valid drug licence or permission in accordance with law. In the absence of any further information on Shakeel, it is the case of the appellant that no further action could be taken against him. However, on 09.10.2004, the respondent no. 1 was arrested and remanded to judicial custody.

19. On 02.03.2005, the appellant through its Intelligence Officer filed a complaint against the respondent no. 1 under Sections 8(c) and 22(c) of the NDPS Act respectively and on 04.05.2005, upon a *prima facie* case being made against the accused, a charge for the offence under Section 22(c) was framed. On 28.11.2006, in the midst of the trial and during the stage of recording evidence, the respondent filed an application under Section 216 CrPC drawing the attention of the Special Judge to the decision rendered by the Delhi High Court in *Rajender Gupta v. State* reported in 2005 SCC OnLine Del 873 which held that dealing in substances mentioned in the Schedule to the NDPS Act and not mentioned in Schedule I of the NDPS Rules would not constitute an offence under the NDPS Act. As a consequence, the respondent no. 1 prayed that the charge be altered and the case be remitted to the appropriate court for trial under the D&C Act.

20. On 06.07.2009, the appellant moved an application before the Special Judge for stay of the proceedings since the matter on this issue was sub-judice before this Court by way of an SLP and also that the decision of the Delhi High Court in *Rajender Gupta (supra)* was challenged in appeal. Since this application was not being heard, the appellant also preferred a petition before the High Court seeking stay of the further proceedings. *Vide* order dated 16.09.2009, the High

Court directed the Special Judge to hear and dispose of the said application in the first instance before proceeding with the main matter.

21. *Vide* order dated 17.04.2010, the Special Judge observed that the judgement rendered in *Rajender Gupta (supra)* was not stayed by this Court in appeal. In fact, the same was even approved by this Court in *Rajesh Kumar Gupta (supra)*. Therefore, the application dated 06.07.2009 made by the appellant was rejected. In the same breath, the Special Judge held that Buprenorphine Hydrochloride is a Schedule "H" drug under the D&C Act read with its Rules. Despite it being a psychotropic substance under the NDPS Act, it was not included in Schedule I of the NDPS Rules. That being the case, dealing in the said substance is not prohibited under the NDPS Act and the offence under Sections 8 and 22 of the NDPS Act respectively, were not made out. However, it was observed that the respondent no. 1 was involved in the illegal sale of the said substance since no record had been maintained in that regard. In such a scenario, the case was remanded to the Court of the Metropolitan Magistrate, Delhi to deal with in accordance with law. The relevant observations of the Special Judge are reproduced hereinbelow:

"19. There is no order of the stay of proceedings under the NDPS Act in this case by the Apex Court or in any other case on this issue. The operation of the judgment in Rajender Gupta's case supra has not been stayed by the Supreme Court. Further Rajender Gupta's decision had been considered and dealt with by the

Supreme Court in Rajesh Kumar Gupta case supra where the Supreme Court has specifically approved of the same. In that case the Supreme Court had made observations with regard to the legal question. The Supreme Court has given its conclusive verdict thereon. Keeping this view in the matter I do not find any merit in the application. Same is accordingly dismissed.

xxx

xxx

xxx

27. Section 36 of the Act provides for constitution of special courts for providing speedy trial of offences under NDPS Act. The Special Courts are authorised to take cognizance of the case without its commitment by a Magistrate. The offences committed under NDPS Act are to be tried by the court of sessions. Section 80 of the Act provides that the provisions of this Act or the rules made thereunder shall be in addition and not in derogation of, the Drugs and Cosmetics Act 1940 or the Rules made thereunder. The cases under Drugs and Cosmetics Act are triable by the Court of Metropolitan Magistrate. The provisions of the Code of Criminal Procedure are applicable besides the provisions contained in the NDPS Act. Section 228 of the code of Criminal Procedure provides that if, after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence which is not exclusively triable by the Court of Sessions, he may transfer 'the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for trial in warrant cases. Section 32 of the Drugs and Cosmetics Act, 1940 provides that even if the complaint is not filed by the Drug Inspector, the cognizance against the accused is not bad. The prosecution can be launched by any Gazetted Officer of the Central Government authorised in writing in this behalf by the Central Government or a person aggrieved.

28. As indicated above, Buprenorphine Hydrochloride is a Schedule 'H' drug under the Drugs and Cosmetic Act and Rules and though it is a psychotropic substance under the NDPS Act, it is not included in Schedule I to the NDPS Rules. That being the case, its manufacture, possession or sale is not prohibited. As such, there is no contravention of the provisions of the NDPS Rules. Consequently, the offence under Section 8 of the NDPS Act

is not made out. Obviously, punishment under Section 22 of the NDPS Act is also not attracted.

29. In the present case, the accused has not maintained any record by way of consignment/ Form VI. He is involved in illegal sale of Buprenorphine Hydrochloride, a Schedule 'H' drug. As per CRCL report, the samples gave positive for the test of the Buprenorphine. Thus it being Schedule 'H' drug, it would fall within the rigors of Drugs and Cosmetics Act and Rules.

30. The offences under Drugs and Cosmetics Act and Rules are triable by the court of Metropolitan Magistrate and not by the Special Hon'ble or Court of Sessions. As such this case is remanded to Ld Chief Metropolitan Magistrate, Delhi to deal with the case in accordance with law. Ld CMM may also assign the case to any other Metropolitan Magistrate as may deem fit. It is made clear that question of limitation would not stand in the present case.

Parties are directed to appear before Ld CMM on 07.05.2010."

(Emphasis supplied)

22. Aggrieved by the aforesaid order, the appellant preferred a Criminal M.C. No. 2335 of 2010 under Section 482 of the CrPC before the High Court. However, vide impugned Judgement and Order dated 20.03.2013, the High Court dismissed the petition being devoid of any merit and observed as thus:

"14. It is true that in Rajinder Gupta the learned Single Judge had taken the view while dealing with the bail application. The reasoning, however, as stated by me earlier fully applies even while dealing with the question whether the person is guilty for the offence punishable under Section 22 of the NDPS Act.

15. In this view, I also find support from another judgment of the Coordinate Bench of this Court in *DRI v. Raj Kumar Arora & Anr.* where relying on *Rajinder Gupta* and *Rajesh Kumar Gupta*, the learned Single Judge of this Court held that a person found in possession of Buprenorphine Hydrochloride will not be guilty under Section 22 of the NDPS Act.

16. In view of the foregoing discussion, the Petition is devoid of any merit; the same is accordingly dismissed.

17. Pending Applications stand disposed of."

(Emphasis supplied)

23. In such circumstance referred to above, the appellant is here before this Court with the present appeal.

B. SUBMISSIONS OF THE PARTIES

i. Submissions on behalf of the Appellant(s)

a. Criminal Appeal No. 1319 of 2013

24. Mr. Vikramjit Banerjee, the learned Additional Solicitor General appearing on behalf of the appellant, submitted that, in the present case, there was a recovery of 40,001 injections of buprenorphine, which is a psychotropic substance mentioned in the Schedule to the NDPS Act. Therefore, the Respondent could be said to have contravened section 8(c) of the NDPS Act which prohibits the production, manufacturing, possession, selling,

purchasing, transporting, warehousing, using, consuming, importing inter-State, exporting inter-State, importing into India, exporting from India or transshipment of any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder.

25. It was submitted that the respondent no. 3 and respondent nos. 1 and 2 respectively were granted bail by the High Court *vide* its orders dated 11.01.2005 and 22.08.2005 respectively. However, in doing so, the High Court had observed that Buprenorphine Hydrochloride is beyond the pale of Chapter VII of the NDPS Rules and owing to it being a Schedule H drug under the D&C Act and its Rules, the offence under Section 8 of the NDPS Act would not be made out. Consequently, it was observed that the accused cannot be punished under Sections 22 and 29 of the NDPS Act respectively. Being aggrieved by the aforesaid observation made by the High Court, the appellant filed a Special Leave Petition against both the orders granting bail to the respondents and this Court *vide* its order dated 31.03.2006 had clarified and directed that the observations made by the High Court shall not have any binding effect when the matter is finally considered before the Special Judge on merits.

26. It was further submitted that the High Court committed an error in placing reliance on the decision in *State of Uttaranchal vs. Rajesh Kumar Gupta* reported in 2007 (1) SCC 355 as the said decision is not applicable to the facts of the present case. In the said case, the accused who possessed an Ayurveda Shashtri Degree was running a clinic while being assisted by eight other medical practitioners who were Allopathic and Ayurvedic doctors. A total of 7 medicines were seized and all of them were mentioned in Schedules G & H of the D&C Rules and the same were said to be used for medical purposes. However, in the present case, the contraband found in the illegal possession of the respondent no. 1 was without any label. Furthermore, the respondents are neither registered medical practitioners nor were they able to produce any document, permit or license to deal with said substances or medicines.
27. It was vehemently submitted that the High Court had erred in holding that Rules 53 and 64 of the NDPS Rules respectively, only pertain to the psychotropic substances mentioned in Schedule I to the NDPS Rules and since Buprenorphine Hydrochloride is a psychotropic substance mentioned in the Schedule to the NDPS Act but not in Schedule I to the NDPS Rules, the offence under the NDPS Act would not be made out. It was argued that the said observation was contrary to the subsequent judgement passed by this Court in *Union of India & Anr. Vs. Sanjeev V. Deshpande* reported in 2014 13 SCC 1,

wherein it has been clearly held that the prohibition under 8 of the NDPS Act is attracted in respect of the psychotropic substances listed in Schedule to the NDPS Act as well as Schedule I to the NDPS Rules framed under the Act. It was further held that the NDPS Act does not contemplate the framing of rules for prohibiting activities involving drugs and psychotropic substances for the reason that Section 8(c) of the NDPS Act already prohibits such activities.

28. As regards the issue of prospective overruling, the counsel submitted that the decision of this Court in *Sanjeev V. Deshpande (supra)* overruled the decision in *Rajesh Kumar Gupta (supra)* without a specific declaration that the same was prospectively overruled. In the absence of such a declaration, the interpretation of law in *Sanjeev V. Deshpande (supra)* must be held to be retrospectively applicable to all cases, including those which have been pending before different courts.
29. It was then submitted that Section 80 of the NDPS Act provides that the provisions of the NDPS Act and Rules made thereunder, shall be in addition to, and not in derogation of the D&C Act, 1940 or the Rules made thereunder. Therefore, the High Court wrongly held that the psychotropic substance in the present case is governed exclusively by the D&C Act without attracting an offence under the NDPS Act.

30. In the last, the learned counsel submitted that subsequent to bail being granted, the respondents, as a clever device, filed an application under section 216 of the CrPC, seeking alteration of charges. The Special Judge, in complete disregard to the direction passed by this Court, allowed the application and held that the offence under the NDPS Act is not made out *qua* all the respondents, and that the case rather pertains to the D&C Act. Such an order could not be said to be in tune with the judgement rendered by this Court in *K. Ravi vs. State of Tamil Nadu & Anr.* reported in (2024) SCC OnLine SC 2283, wherein it was specifically held that Section 216 of the CrPC does not entitle the accused to file a fresh application seeking discharge, once the charges have been framed by the Court. It was further stated therein that an application under Section 216 CrPC is sometimes filed due to the ignorance of law and also with an aim to deliberately delay the trial proceedings. In the present case, the application filed under Section 216 CrPC was absolutely misconceived and was with a sole intent to derail the trial proceedings.

b. Criminal Appeal No. 272 of 2014

31. Mr. Arvind Kumar Sharma, the learned counsel appearing on behalf of the appellant herein adopted the submissions canvassed by the learned ASG. In addition, the counsel submitted that there is nothing to indicate that Rule 64 is the "governing rule" under Chapter VII of the NDPS Rules and since Rule 64

pertains only to Schedule I substances, all the other rules must also necessarily apply to Schedule I substances. The language of Rules 66 and 67 respectively, is unambiguous and they clearly apply to "any psychotropic substance" which cannot be read to exclude the substances which only find mention in the Schedule to the NDPS Act. Furthermore, Rules 65 and 66 respectively, adopt the provisions of the D&C Rules rather than excluding it. Therefore, the resultant effect must be that the contravention of the D&C Rules would *ipso facto* tantamount to a violation of Rules 65 and 66 of the NDPS Rules respectively, thereby attracting punishment under the NDPS Act.

32. It was submitted that certain drugs are regulated by both the NDPS Act and the D&C Act simultaneously since they can be used as both psychotropic substances as well as medicinal drugs in view of their narcotic properties. This does not necessarily mean that an accused would be absolved of his guilt under the NDPS Act once the substance finds mention under the D&C Rules.

33. In the last, both the counsels prayed that the impugned orders of the High Court be set aside and the appeals be allowed.

ii. Submissions on behalf of the Respondent(s)

34. Mr. Yash Pal Dhingra, the learned counsel appearing on behalf of the respondents submitted that the drug/substance in question is covered by the

exception to Section 8 of the NDPS Act i.e., non-applicability of the prohibition in case the substance is to be used for "medical or scientific purposes". Furthermore, he argued that an offence under Section 8 cannot be said to have been committed unless the substance also finds mention under Schedule I of the NDPS Rules. To fortify his contention, the learned counsel placed reliance on the decisions of the Delhi High Court in *Rajender Gupta & Ors. v. State* reported in 2005 SCC OnLine Del 873 and *Rajesh Sharma v. Union of India* reported in 2009 SCC OnLine Del 1330 along with the decision of this Court in *Rajesh Kumar Gupta (supra)*.

35. The counsel vehemently submitted that the decision in *Sanjeev V. Deshpande (supra)* must strictly be held to be prospectively applicable. If not, it would serve to cause immense prejudice to the respondents who have already been discharged by the Special Judge.
36. It was submitted that the decision of the Delhi High Court in *Rajesh Sharma (supra)* cannot be said to be inapplicable solely because it was rendered in the context of a bail application. It was submitted that while dealing with an application for bail under the NDPS Act, the Court must get over the rigour contained in Section 37(1)(b)(ii) of the NDPS Act. Therefore, only after giving an opportunity to the Public Prosecutor and recording a satisfaction to the effect that there are reasonable grounds for believing that the accused is not guilty of

such offence, a decision to grant bail is arrived at. Hence, the findings rendered in a bail application are also extremely relevant while deciding the question whether an offence under Section 8 of the NDPS Act is made out or not.

37. In the last, the counsel submitted that there being no merit in the appeals, those may be dismissed.

C. ISSUES FOR DETERMINATION

38. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

- I. Whether the production, manufacture, possession, sale, purchase, transport, warehouse, use, consumption, import inter-State, export inter-State, import into India, export from India or transshipment of a psychotropic substance which is listed under the Schedule to the NDPS Act but not mentioned under Schedule I of the NDPS Rules would constitute an offence under Section 8(c) of the NDPS Act?
- II. Whether the decision of this Court in *Sanjeev V. Deshpande (supra)* must operate with prospective effect?
- III. Once, the charge has been framed by a competent court under Section 228 of the CrPC, can an accused thereafter seek for discharge/deletion of a particular offence from the charge under Section 216 CrPC?

D. ANALYSIS

i. Whether an offence under Section 8(c) could be said to have been made out when an accused "deals with" psychotropic substances mentioned in the Schedule to the NDPS Act but not figuring in Schedule I of the Rules thereunder.

a. Object of the NDPS Act and the United Nations Convention on Psychotropic Substances, 1971.

39. Before we advert to the rival submissions canvassed on either side, it would be apposite to first look into the object and history behind the enactment of the NDPS Act and its Rules along with the broad scheme of the United Nations Convention on Psychotropic Substances, 1971.

40. As per its Preamble, the NDPS Act, 1985 seeks to consolidate and amend the law relating to narcotic drugs, make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances and implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances, amongst others. This Court in *State of Rajasthan v. Udai Lal* reported in (2008) 11 SCC 408 elaborated that the NDPS Act is a special Act which has been enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances and stated as thus:

"10. [...] Before analysing the same, it is relevant to mention that in order to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances, Parliament enacted the NDPS Act in the year 1985. This is a special Act and it has been enacted with a view to make stringent provisions for the control and regulation of operations relating to the narcotic drugs and psychotropic substances [...]"

(Emphasis supplied)

41. Another decision of this Court in *Hira Singh v. Union of India* reported in (2020) 20 SCC 272 opined that while determining the "small or commercial quantity" of the narcotic drug or psychotropic substance in cases of seizure of a mixture of narcotic drugs or psychotropic substances with one or more neutral substances, the quantity of the neutral substance(s) is not to be excluded and is to be taken into consideration along with the actual content by weight of the offending drug. While declaring so, the Court also discussed the object of the NDPS Act and highlighted that the enactment was intended to be a deterrent against the use of narcotic drugs and psychotropic substances. The relevant observations are reproduced below:

"10. [...] As per the Preamble of the NDPS Act, 1985, it is an Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operation relating to narcotic drugs and psychotropic substances. To provide for forfeiture of the property derived from or use in illicit traffic in Narcotic Drugs and Psychotropic Substance. The

Statement of Objects and Reasons and the Preamble of the NDPS Act imply that the Act is required to act as a deterrent and the provisions must be stringent enough to ensure that the same act as deterrents.

xxx

xxx

xxx

10.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was kept on the traffic of dangerous drugs by enforcing the Opium Act, 1857 the Opium Act, 1875 and the Dangerous Drugs Act, 1930. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice. Therefore, in order to remove such deficiencies and difficulties, there was urgent need for the enactment of a comprehensive legislation on narcotic drugs and psychotropic substances, which led to enactment of the NDPS Act. As observed hereinabove, the Act is a special law and has a laudable purpose to serve and is intended to combat the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones must be out. The punishment part in drug trafficking is an important one but its preventive part is more important. Therefore, prevention of illicit traffic in the Narcotic Drugs and Psychotropic Substances Act, 1985 came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the courts will have to safeguard the life and liberty of the innocent persons. Therefore, the provisions of the NDPS Act are required to be interpreted keeping in mind the object and purpose of the NDPS Act; impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and Preamble of the Act [...]."

(Emphasis supplied)

42. There exist three Conventions (collectively referred to as the "International Drug Control Conventions") under the auspices of the United Nations which form the current normative framework for the control of narcotic drugs, psychotropic substances and precursor chemicals. They are :- The Single Convention on Narcotic Drugs, 1961; The Convention on Psychotropic Substances of 1971; and the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. India has acceded to and is therefore, a party to the abovementioned International Drug Control Convention framework.
43. The Preamble to the Convention on Psychotropic Substances, 1971 (hereinafter, the "Convention"), elucidates that the Convention was adopted keeping in mind the primary concern as regards the health and welfare of mankind along with the public health and social problems which arise as a result of abuse of certain psychotropic substances. It called for a collective and determinative action from all States to prevent and combat the abuse of such substances and the rise in illicit trade thereof. Rigorous measures were considered necessary to restrict the use of psychotropic substances to legitimate purposes while simultaneously acknowledging that their use for medical and scientific purposes must not be unduly restricted or curtailed. The Convention is annexed with four Schedules containing controlled psychotropic substances,

where arguably, Schedule I substances are the most restricted while Schedule IV substances are the least restricted.

44. Article 1(e) of the Convention defines a "psychotropic substance" as any substance, natural or synthetic, or any natural material in Schedules I, II, III or IV of the Convention. Article 4 provides that, as regards the substances other than those mentioned in Schedule I i.e., in Schedule II, II and IV respectively, the States may permit – (a) the carrying by international travellers of small quantities of lawfully obtained preparations for personal use; (b) the use of such psychotropic substances in industry for the manufacture of non-psychotropic substances or products subject to the application of control measures until the psychotropic substances come to be in such a condition that they will not be abused or recovered in practice; and (c) the use of such psychotropic substances for the capture of animals by specifically authorised persons subject to the application of control measures. Article 5, in addition, states that the manufacture, export, import, distribution, stocking, trade, use and possession, of substances in Schedules II, III and IV respectively, must be limited to medical and scientific purposes, except for those purposes already enumerated under Article 4. Furthermore, Article 5 states that it would be desirable if States

do not permit the possession of substances mentioned in Schedules II, III and IV respectively, except under legal authority.

45. As per Article 8, the manufacture of, trade in, and distribution of substances listed in Schedules II, III and IV respectively, must also be under a licence or other similar control measures, provided that the requirements of licencing or other control measures need not apply to persons who are duly authorised to perform or are performing therapeutic or scientific functions. Article 9 states that the substances in Schedules II, III and IV respectively, shall be supplied or dispensed for use by individuals only pursuant to a medical prescription except when being lawfully obtained, used, dispensed or administered in the duly authorised exercise of therapeutic or scientific functions.
46. In so far as the substances mentioned in Schedule I are concerned, Articles 4 and 7 respectively state that their use shall be prohibited except for scientific and very limited medical purposes, by duly authorized persons in medical or scientific establishments, which are either directly under the control of the government or specifically approved by them. Such persons performing medical or scientific functions must be required to maintain records concerning the acquisition of the substances and the details of their use which must be

preserved for at least two years after the last use recorded therein. States must also require that the manufacture, trade, distribution and possession of Schedule I substances be under a special licence or prior authorization and be closely supervised. The quantity of Schedule I substances supplied to a duly authorised person must also be restricted to such level as required for his authorized purpose. The export and import of Schedule I substances shall be prohibited except when both the exporter and importer are the competent authorities or agencies of the exporting or importing country, or other persons or enterprises which are specifically authorised for that purpose. During the export and import as enumerated above, the authorities or persons specifically authorized must have export and import authorizations for the substances mentioned in Schedule I.

47. Article 11 elaborates on record-keeping and provides that – (a) In respect of substances in Schedule I, manufacturers and all other authorised persons under Article 7 shall maintain records indicating the details of the quantity manufactured, the quantity held in stock and, for each acquisition and disposal, the details of the quantity, date, supplier and recipient; (b) In respect of substances in Schedules II and III respectively, manufacturers, wholesale distributors, exporters and importers must keep records showing details of the quantity manufactured and, for each acquisition and disposal, details of the

quantity, date, supplier and recipient; (c) In respect of substances mentioned in Schedule II, retail distributors, institutions for hospitalization and care, and scientific institutions must keep records showing for each acquisition and disposal, details of the quantity, date, supplier and recipient; (d) Information regarding the acquisition and disposal of substances in Schedule III by retail distributors, institutions for hospitalization and care, and scientific institutions must be made readily available through appropriate methods and by taking into account the professional and trade practices of the respective States; and (e) In respect of substances in Schedule IV, manufacturers, exporters and importers must keep records indicating the quantity manufactured, exported and imported.

48. Article 12 elaborates on the provisions relating to international trade and states that every State permitting the export or import of substances in Schedules I or II respectively, shall require a separate import or export authorization which shall state the international non-proprietary name or the designation of the substance in the Schedule, the quantity to be exported or imported, the pharmaceutical form, the name and address of the exporter and importer, and the period within which the export or import must be effected. Additionally, the export authorization shall also state the number and date of the import authorization and the authority by whom it has been issued. Before an export

authorization is issued, the States shall require an import authorization issued by the competent authority of the importing country or region which certifies that the importing of the substance(s) referred to therein is approved and such an authorization shall be produced by the person or establishment while applying for the export authorization. A copy of the export authorisation is to accompany each consignment and the government issuing the export authorisation shall also send a copy to the government of the importing country or region. When the importation has been effected, the government of the importing country or region shall then return the export authorization to the government of the exporting country or region, with an endorsement certifying the amount of the substance which has actually been imported.

49. With respect to the export of substances mentioned in Schedule III, Article 12 states that exporters must draw up a declaration in triplicate, on a form, which contains information including the name and address of the exporter and importer, the international non-proprietary name or the designation of the substance in the Schedule, the quantity and the pharmaceutical form in which the substance is exported, the name of the preparation, if any, and the date of despatch. Exporters must furnish two copies of the declaration to the competent authorities of their country or region and attach the third copy to their consignment. Thereafter, the State from whose territory a Schedule III

substance has been exported, shall not later than 90 days after the date of despatch, send to the competent authorities of the importing country or region, one copy of the declaration received from the exporter by registered mail with return of receipt requested. The States may also require that after the consignment has been received, the importer shall transmit the copy of the declaration accompanying the consignment which has been duly endorsed stating the quantities received and the date of the receipt, to the competent authorities of the importing country or region.

50. On a conspectus of the aforementioned Articles of the Convention, it can be seen that the substances mentioned in Schedules I, II, III and IV respectively are subject to different treatment and restrictions on their manufacture, use, possession, import and export, amongst others. While Schedule I substances are to be used for limited purposes by the authorized persons under a special licence or prior authorization, the substances mentioned under Schedule II, III and IV respectively, are used for a comparatively wider range of purposes by the licence holders and its supply is allowed to be made pursuant to a medical prescription. Therefore, it cannot be stated that the substances other than the Schedule I substances are completely unregulated or allowed to be dealt with in any manner whatsoever. These substances also have the potential to be

misused or abused and hence are subject to certain restrictions and procedural requirements albeit not up to the standards as strict as the Schedule I substances.

51. On a closer look at the substances mentioned in the Schedules to the Convention, it is evident that Buprenorphine and its salt Buprenorphine Hydrochloride is listed under Schedule III. Therefore, according to the scheme of the Convention, the manufacture, distribution, stocking, and possession of Buprenorphine and its salt Buprenorphine Hydrochloride shall be limited to medical and scientific purposes in addition to the limited purposes as provided in Article 4. The Convention casts a mandate upon States that the manufacture of, trade in and distribution of Buprenorphine and its salt Buprenorphine Hydrochloride be under a licence or other similar control measure. The only exception being that such a licence or other control measure need not necessarily apply to persons who are duly authorised to perform therapeutic or scientific functions.

b. Relevant Statutory Provisions of the NDPS Act and its Rules

52. Section 2(xxiii) of the NDPS Act defines a "Psychotropic substance" as –

"any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule"

A bare reading of the definition would indicate that all items listed in the Schedule to the Act along with its salts and preparations come within the purview of a "psychotropic substance" under the NDPS Act.

53. Section 8 of the NDPS Act prohibits certain operations and reads as thus:

8. Prohibition of certain operations.— No person shall -

*(a) cultivate any coca plant or gather any portion of coca plant;
or*

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.

(Emphasis supplied)

54. The mandate under Section 8 is that no person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship (hereinafter collectively referred to as "deal in/dealing in") any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder. In a case where any such provision imposes any requirement by way of licence, permit or authorisation, the narcotic drugs and psychotropic substances must also be dealt in accordance with the terms and conditions of such licence, permit or authorisation. The term "psychotropic substance" mentioned in Section 8 must be seen in light of Section 2(xxiii) which refers to the Schedule to the Act and all the psychotropic substances mentioned therein. Additionally, to bring a case within the exception carved out under Section 8, each of the conditions specified therein must be satisfied. In other words, for the accused to take the plea that his dealing in the narcotic drug or psychotropic substance does not constitute an offence under Section 8, it must be proved that the drug or substance was being dealt with (a) for medical or scientific purposes AND; (b) in the manner and to the extent provided by the provisions of the NDPS Act or the NDPS Rules or the orders made thereunder AND; (c) in accordance with the terms and conditions of the licence, permit or authorisation, if any.

55. It is just not enough to prove or establish that the narcotic drug or psychotropic substance is capable of being used for a medical or scientific purpose. That would give unnecessary leeway to persons to indiscriminately deal with narcotic drugs and psychotropic substances under the garb that they could also be potentially used for medical or scientific purposes. Moreover, several of these drugs and substances are inherently of such a nature that they have widespread medicinal and scientific applications. Therefore, an expansive interpretation of the exception that the mere potential for usage of the narcotic drug or psychotropic substance, for medical or scientific purpose, is sufficient would run counter to the object of the Act which seeks to act as a deterrent to the widespread dealing in narcotic drugs and psychotropic substances. What must, therefore, be proved to take the benefit of the exception is that the narcotic drug or psychotropic substances was being dealt in for a specified and real medical or scientific purpose, in the manner and to the extent provided by the provisions of the Act, the rules and orders made thereunder and, in case such provisions imposes any requirement by way of licence, permit or authorisation, in accordance with the terms and conditions of such licence, permit or authorisation.

56. Therefore, if any psychotropic substance mentioned in the Schedule to the Act is being dealt with for a purpose other than medical or scientific purposes, an

offence under Section 8(c) of the NDPS Act would be made out. Furthermore, if any psychotropic substance mentioned in the Schedule to the Act is being dealt with for a medical or scientific purpose, but not in accordance with other provisions of the Act, rules, orders or, the terms and conditions of the licence, permit or authorisations, if any, then also, an offence under Section 8(c) of the NDPS Act could be said to have been made out. It is only when the exception is complied with entirely or wholly, that an accused can lay claim to the benefit provided under the said provision.

57. Section 9 of the NDPS Act empowers the Central Government to permit and regulate certain activities subject to the provisions of Section 8. The same reads thus:

"9. Power of Central Government to permit, control and regulate.—

(1) Subject to the provisions of section 8, the Central Government may, by rules—

(a) permit and regulate -

xxx

xxx

xxx

(vi) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;

(vii) the import into India and export from India and transshipment of narcotic drugs and psychotropic substances;

(b) prescribe any other matter requisite to render effective the control of the Central Government over any of the matters specified in clause (a).

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

xxx

xxx

xxx

(i) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licences or permits may be granted and the fees that may be charged therefor;

(j) prescribe the ports and other places at which any kind of narcotic drugs or psychotropic substances may be imported into India or exported from India or transhipped; the forms and conditions of certificates, authorisations or permits, as the case may be, for such import, export or transshipment; the authorities by which such certificates, authorisations or permits may be granted and the fees that may be charged therefor."

58. Section 76 of the NDPS Act also empowers the Central Government to make rules for carrying out the purposes of the NDPS Act and reads thus:

"76. Power of Central Government to make rules.—

(1) Subject to the other provisions of this Act, the Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

xxx

xxx

xxx

(e) the conditions and the manner in which narcotic drugs and psychotropic substances may be supplied for medical necessity to the addicts registered with the Central Government and to others under sub-section (1) of section 71;

xxx

xxx

xxx

(h) any other matter which is to be, or may be, prescribed."

59. The NDPS Rules, 1985, have been brought into being by the Central Government in exercise of its powers under Sections 9 and 76 of the NDPS Act, respectively referred to above. However, what must necessarily be kept in mind is that the power conferred upon the Central Government under Sections 9 and 76 of the NDPS Act, respectively, is subject to Section 8 and this is evident by the use of the phrase "*subject to the provisions of Section 8*" and "*subject to the other provisions of the Act*" in both the provisions. Therefore, the NDPS rules must not be understood as laying down standards different from or inconsistent with the substantive provisions of the NDPS Act, especially Section 8 and the Schedule to the NDPS Act. The underlying object of the NDPS rules is to "*permit and regulate*" certain activities for carrying out the purposes of the NDPS Act and not to "*prohibit*" those activities.

60. Rule 2(k) of the NDPS Rules, 1985, states that — "*words and expressions used herein and not defined, but defined in the Act shall have the meanings respectively assigned to them in the Act.*". Therefore, any reference to "*psychotropic substances*" under the NDPS Rules must relate to the definition provided under Section 2(xxiii) of the NDPS Act, which consists of the entire list of psychotropic substances enumerated under the Schedule to the Act. Chapter VI of the NDPS rules relate to the import, export and transshipment of narcotic drugs and psychotropic substances and Chapter VII deals with the

manufacture, sale, purchase, consumption, use, possession and transport of psychotropic substances. Chapter VIIA details certain special provisions regarding the manufacture, possession, transport, import-export, purchase and consumption of narcotic drugs and psychotropic substances for medical, scientific and training purposes. It would be apposite to mention at this stage that the NDPS rules have undergone some significant changes over the years. However, our inquiry would be limited to the version of the NDPS Rules as it existed during the time the offence is alleged to have been committed in the present case i.e., as on 27.09.2003.

61. Chapters VI and VII respectively, contain Rules 53 to 63 and 64 to 67 respectively. Under Chapter VI, Rule 53 provides for a general prohibition and states that subject to the other provisions of this Chapter, the import into and export out of India of the narcotic drugs and psychotropic substances specified in "Schedule I appended to the Rules" is prohibited. However, an exception to this general rule was carved out under its first proviso by stating that nothing in this rule shall apply in case "the drug substance" is imported into or exported out of India subject to an import certificate or export authorisation issued under the provision of this Chapter and for the purpose mentioned under Chapter VIIA. The expression "the drug substance" mentioned in the proviso must naturally be read to mean a "Schedule I substance" since the language of Rule

53 is phrased such that it alludes to a Schedule I substance only. Therefore, in short, the import and export of narcotic drugs and psychotropic substances specifically mentioned under Schedule I of the Rules is generally disallowed provided that person may import and export them, with a valid import certificate or export authorisation, for the limited purposes mentioned under Chapter VIIA.

62. Rule 55 on the 'Application for an Import Certificate' provides that, subject to Rule 53 as enumerated above, no narcotic drug or psychotropic substance specified in the "Schedule of the Act" shall be imported into India without an import certificate, in respect of the consignment, issued by the issuing authority, as per the form appended to the Rules. Rule 57 on 'Transit' states that subject to the provisions of Section 79 of the NDPS Act and Rule 53, no consignment of any narcotic drug or psychotropic substance specified in the "Schedule of the Act" shall be allowed to be transited through India unless such consignment is accompanied by a valid export authorisation in this behalf issued by the Government of the exporting country. Rule 58 relating to the 'Application for Export Authorisation' provides that, subject to Rules 53 and 53A, no narcotic drugs or psychotropic substances specified in the "Schedule of the Act" shall be exported out of India without an export authorisation in respect of the consignment, issued by the issuing authority in the requisite form

appended to the Rules. Rule 60 relating to 'Transshipment' provides that, subject to the provisions of Section 79 of the NDPS Act and Rule 53, no consignment of narcotic drug or psychotropic substance specified in the "Schedule to the Act" shall be allowed to be transhipped at any port in India save with the permission of the Collector of Customs. Rule 61 on the 'Procedure for Transshipment' states that while allowing any consignment of narcotic drug or psychotropic substance specified in the "Schedule to the Act" to be transhipped, the Collector of Customs shall *inter alia* satisfy himself that the consignment is accompanied by a valid export authorisation issued by the exporting country.

63. What is discernible from the aforementioned rules under Chapter VI is that the import into and export out of India of all psychotropic substances (as listed in the Schedule to the Act) must be accompanied by a valid import certificate and export authorisation issued by the issuing authority in India. As regards the transit and transshipment of any psychotropic substance (as listed in the Schedule to the Act) in India, a valid export authorisation issued by the exporting country is a requisite. On the other hand, what Rule 53 seeks to achieve is to restrict the import and export of substances enumerated in Schedule I of the Rules to a pre-determined set of purposes as explained under Chapter VIIA, despite having obtained an import certificate or export authorisation under the other rules of this Chapter. This provision i.e., Rule 53

relating to the Schedule I substances must not be flouted and this is especially evident through the phrase "*subject to Rule 53*" featuring in almost every rule under this Chapter. It is therefore, clear that, as far as import or export is concerned, the substances mentioned in Schedule I appended to the Rules are more strictly regulated or restricted in comparison to the larger list of psychotropic substances mentioned in the Schedule to the Act. However, this is not to say that the psychotropic substances mentioned only in the Schedule to the Act are unregulated. Furthermore, it also cannot be said that the substances mentioned in Schedule I of the NDPS Rules are absolutely prohibited from being imported or exported as per Section 8 of the NDPS Act since they are clearly allowed to be validly imported and exported for the limited purposes enumerated under Chapter VIIA.

64. Under Chapter VII, Rule 64 on 'General Prohibition' states that no person shall manufacture, possess, transport, import inter-State, export inter-State, sell, purchase, consume or use any of the "psychotropic substances specified under Schedule I" of the Rules. Rule 65 relating to the 'Manufacture of psychotropic substances', under sub-rule (1), provides that, subject to the provisions of sub-rule (2), the manufacture of any of the psychotropic substances other than those specified in Schedule I (i.e., those mentioned only under the Schedule to the Act) shall be in accordance with the conditions of a licence granted under the

Drugs and Cosmetics Rules, 1945 framed under the Drugs and Cosmetics Act, 1940, by an authority in charge of Drugs Control in a State appointed by the State Government in this behalf. Sub-rule (2) states that the authority in charge of drugs control in a State/the Licensing Authority shall consult the Drugs Controller (India) with regard to the assessed annual requirements of each of the psychotropic substance (which has been referred to in sub-rule (1) i.e., the substances mentioned only under the Schedule to the Act) in bulk form in the country and after taking into account the requirement of such psychotropic substances in the State, as also the quantity of such substance required for supply to other manufacturers outside the State and the quantity of such substance required for reasonable inventory to be held by a manufacturer, the authority in charge of drugs control in a State/the Licensing Authority shall specify, by order, a limit to the quantity of such substance which may be manufactured by the manufacturer in the State. Sub-rule (3) provides that the specific quantity which may be manufactured by a specific licensee in a year shall be intimated by the Licensing Authority to the licensee at the time of issuing the licence. Then, there are two provisos to Rule 65 sub-rule (3) which were inserted *vide* notification dated 25th June, 1997 w.e.f 27.06.1997. Through the first proviso, an exception has been carved out under the Rule by stating that nothing contained in this rule shall apply in case the "psychotropic substances specified in Schedule I" are manufactured, possessed, transported,

imported inter-State, exported inter-State, sold, purchased, consumed or used subject to other provisions of this Chapter which apply to psychotropic substances which are not included in Schedule I and for the purposes mentioned in Chapter VIIA. The second proviso contemplates that the authority in charge of drugs control in a State shall consult the Narcotics Commissioner before issuing a licence under Rule 65 in respect of psychotropic substances included in "Schedule I appended to the Rules" and Schedule III appended to the Rules as well.

65. What can be discerned from the Rules 64 and 65 respectively, elaborated hereinabove is that: *First*, the manufacture of all psychotropic substances (as listed in the Schedule to the Act) must be in accordance with the conditions prescribed in the licence granted under the D&C Rules and the permissible quantity to be manufactured would be intimated to the licensee at the time the licence is issued. Notwithstanding the prohibition to deal in psychotropic substances contained in Section 8(c) of the NDPS Act, the manufacture thereof is permitted subject to compliance with the D&C Act and its Rules. *Secondly*, there is a general rule absolutely prohibiting the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of any of the psychotropic substances which find mention in Schedule I appended to the Rules. However, the above activities can be done *vis-à-vis* the

substances mentioned in Schedule I appended to the Rules if their manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use is in accordance with other provisions of the Chapter which generally apply to all psychotropic substances (as listed in the Schedule to the Act) and for the limited purposes mentioned under Chapter VIIA. In other words, Schedule I substances can also be dealt in, in due compliance with the rules applicable generally to all the psychotropic substances but specifically only for the purposes mentioned under Chapter VIIA. However, while issuing a licence of manufacture with respect to the Schedule I substances, the Licensing Authority shall consult the Narcotics Commissioner. Therefore, Rules 64 and 65 respectively, permit the manufacture of psychotropic substances mentioned under Schedule I of the Rules however subject to certain provisions and purposes. This can be culled out from a holistic reading of Rules 64 and 65 respectively, and the two provisos which follow Rule 65(3). *Thirdly*, the manufacture of all psychotropic substances (as listed in the Schedule to the Act), and those mentioned under Schedule I of the Rules specifically for the purposes elaborated under Chapter VIIA, in violation of the conditions of licence of manufacture issued under the D&C Act would amount to a contravention of Rule 65 of the NDPS Rules and thereby Section 8 of the NDPS Act itself. Therefore, when such a contravention of the conditions of licence occurs, it cannot be said that an offence under the NDPS Act would not be made

out and that the contravention would be solely covered by the D&C regime. Due to the operation of Rule 65, violation of any of the conditions of licence under the D&C Act read with its Rules would *ipso facto* tantamount to a violation of the NDPS Act read with its Rules as well.

66. Rule 66 on 'Possession etc. of psychotropic substances' states that no person shall possess any psychotropic substance (as listed in the Schedule to the Act) for any of the purposes covered by the D&C Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these rules. Therefore, what is being conveyed herein is that as far as substances mentioned under Schedule I are concerned, they can be possessed only for the purposes mentioned under Chapter VIIA, and as far as the other substances not being Schedule I substances but which are listed in the Schedule to the Act are concerned, they can be possessed for the purposes mentioned under Chapter VIIA and also for other purposes which necessarily fall under the broader considerations of medical or scientific purposes as mentioned under Section 8 of the NDPS Act. This compliance is in addition to the accused persons possessing the said substances in accordance with the purposes elaborated under the D&C Rules and the requirements thereunder. Sub-rule (2), however, allows any research institution or a hospital or a dispensary maintained or supported by the Government or local body or by charity or voluntary

subscription, which is not normally authorised to possess the psychotropic substances under the D&C Rules, or any person who is not so authorised under the D&C Rules, to possess a reasonable quantity of such substance as may be necessary for their genuine scientific or medical requirements or both, for such period as is deemed necessary by the said research institution or hospital or dispensary or person, as the case may be. In case, of an individual person, possessing the substance for his personal medical use, the quantity shall not exceed one 100 dosage units at a time. The research institution, hospital and dispensary referred to herein shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession.

67. Rule 67 on 'Transport of psychotropic substance' provides that, subject to the provisions of Rule 64, no consignment of psychotropic substance shall be transported, imported inter-State or exported inter-State unless such a consignment is accompanied by a consignment note appended to the Rules and in the manner provided under the Rules. The consignor and consignee must keep the consignment note for a period of two years and the said note may be inspected at any time by an officer authorised in this behalf by the Central Government. This Rule would again apply to all psychotropic substances (as mentioned under the Schedule to the Act).

68. At this stage, it may be observed that it was *vide* a notification dated 25th June, 1997 that Chapter VIIA containing Rule 67A came to be inserted in the NDPS Rules. Chapter VIIA states that, notwithstanding anything contained in the foregoing provisions of these Rules, a narcotic drug or psychotropic substance may be used for - (i) scientific requirements including analytical requirements of any Government laboratory or any research institution in India or abroad; or (ii) very limited medical requirements of a foreigner by a duly authorised person of a hospital or any other establishment of the Government especially approved by that foreign Government; or (iii) the purpose of de-addiction of drug addicts by the Government or local body or by an approved charity or voluntary organisation or by such other institution as may be approved by the Central Government. The persons performing medical or scientific functions as mentioned hereinabove shall maintain records concerning the acquisition of the substance and the details of their use in Form 7 of these rules and such records are to be preserved for at least two years. Furthermore, a narcotic drug or psychotropic substance may be supplied or dispensed for use to a foreigner pursuant to a medical prescription only from authorised licensed pharmacists or other authorised retail distributors designated by authorities responsible for public health.

69. Upon a meticulous analysis of the NDPS rules relating to psychotropic substances and analysing the purposes for which they are to be dealt in, along with the requirements and procedures to be complied with for each kind of dealing in the psychotropic substances, an underlying idea resonates throughout these rules i.e., that any dealing in the psychotropic substances mentioned under Schedule I of the Rules must strictly be in accordance with the NDPS Rules AND ONLY for the purposes enumerated under Chapter VIIA of the NDPS Rules. The substances not finding a mention under Schedule I of the Rules but listed in the Schedule to the Act must also meet with the requirements cast upon by the NDPS Rules. The difference as regards these substances however is that while they may be dealt with for the purposes enumerated under Chapter VIIA of the NDPS Rules, they can also be dealt with for other purposes, provided that those purposes strictly fall under the larger umbrella of "medical or scientific purposes" as provided for in Section 8 of the NDPS Act. Whether the accused has dealt with it within the confines of the expression "medical or scientific purposes" must obviously be determined on the facts and circumstances of each case. It can therefore be said that the substances under Schedule I to the Rules are more strictly restricted compared to the remaining psychotropic substances under the Schedule to the Act which are restricted more moderately in comparison. On this aspect, our scheme is more or less similar to the scheme of the Convention on Psychotropic substances, 1971. The

different levels in restriction could be seen as the primary reason behind providing two different schedules, i.e., one under the Act and another under the Rules. Moreover, the Schedule to the Act can be considered as a superset of all psychotropic substances wherein those substances mentioned under Schedule I of the Rules form a small, more restricted subset of the larger superset.

c. Analysing the treatment of substances mentioned in the Schedule to the Act and not in Schedule I of the Rules by previous decisions of this Court.

70. It is evident from the decision of this Court in *Hussain v. State of Kerala* reported in (2000) 8 SCC 139 that "Buprenorphine" being listed under the Schedule to the NDPS Act and not under Schedule I of the NDPS Rules, would be a psychotropic substance under the NDPS regime, to which Section 8 of the NDPS Act would apply. The appellant therein was found in possession of 6 ampoules of "Buprenorphine tidigesic" each containing 2ml. The defence that he put forth to justify his possession was that he was regularly using it under medical advice with a valid prescription. Despite such defence put forward by the appellant, the Trial Court convicted him under Section 21 of the NDPS Act which relates to the contravention of the law in respect of "manufactured drugs and preparations" since the District Medical Officer had opined that "Buprenorphine tidigesic" is a manufactured drug. He was sentenced to

undergo rigorous imprisonment for a period of 10 years along with payment of fine. On appeal, the High Court affirmed the conviction and sentence. However, this Court opined that the prosecution had, *first*, failed to prove that the substance in question was a 'manufactured drug' falling within the definition given under Section 2(xi) of the NDPS Act. Instead, it was observed that "Buprenorphine" is a substance listed under Item 92 of the Schedule to the Act and is therefore, a psychotropic substance. *Secondly*, this Court proceeded to examine whether the possession of the said substance would constitute an offence under Section 8 of the NDPS Act. Upon examining Rule 66 of the NDPS Rules, it was held that a person is permitted to keep in his possession, for his personal medical use, a psychotropic substance up to 100 dosage units at a time and the 6 ampoules possessed by the appellant therein could not be said to exceed the said limit of 100 dosage units. It was declared that, in such circumstances, the conviction and sentence imposed on the appellant was without the sanction of law and as a consequence, the judgment of the High Court as well as the Sessions Court was set aside. The relevant observations made by this Court are reproduced hereinbelow:

"7. It is unnecessary for us to consider whether the said substance is a narcotic drug as defined in the Act, for, it is easily discernible from Item 92 of the Schedule to the Act (which is a list of psychotropic substances) that "Buprenorphine" is a psychotropic substance. We may point out that the aforesaid Item 92 had been added to the list of psychotropic substances by the notification dated 26-10-1992. The offence in this case is alleged to have been committed on 25-6-1994. We have therefore, no doubt that the

substance recovered from the appellant is a psychotropic substance.

8. If it was "psychotropic substance" possession of the same would amount to an offence only if it was in contravention of Section 8 of the Act. That section shows that no person shall possess any psychotropic substance except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the Rules or orders made thereunder.

9. Section 9 of the Act empowers the Central Government to permit, control and regulate the cultivation, production, possession etc. of psychotropic substances. Rules have been formulated by the Central Government under that power. Rule 66 falling under Chapter VII of the Rules is important and hence the same is extracted below:

"66. Possession, etc., of psychotropic substances.—(1) No person shall possess any psychotropic substance for any of the purposes covered by the 1945 Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these Rules.

(2) Notwithstanding anything contained in sub-rule (1), any research institution, or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorised to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorised under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person:

Provided that where such psychotropic substance is in possession of an individual for his personal medical use

the quantity thereof shall not exceed one hundred dosage units at a time.

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession."

10. The proviso to sub-rule (2) is very evident that a person is permitted to keep in his possession for his personal medical use the psychotropic substance up to one hundred dosage at a time.

11. We are not disposed to think that 6 ampoules would cross the above limit and there is no attempt made either through DW 1 (Doctor) or through Court Witness 1 (DMO) that 100 dosage would be below the 6 ampoules recovered from him.

12. It is unfortunate that the aforesaid points have not been put forward before the trial court or the High Court. We feel that the conviction and sentence imposed on this appellant were without the sanction of law. The appellant is unlawfully deprived of his personal liberty for such a long period of 5 years on account of overlooking the aforesaid facts and the legal position.

13. We, therefore, allow this appeal and quash the judgment of the High Court as well as the Sessions Court. We acquit the appellant and direct him to be set at liberty forthwith. In this case, we are not considering the question of awarding compensation to the appellant but he is free to resort to his remedies under law for that purpose."

(Emphasis supplied)

71. Therefore, the dictum as laid in *Hussain (supra)* is that "Buprenorphine tidigesic" is a psychotropic substance to which the rigours of Section 8 of the NDPS Act and Rule 66 of the NDPS Rules would apply, however, as the

accused was found to be in possession of less than 100 dosage units of the substance, with a valid medical prescription, for his personal medical use, he was held to have not committed an offence under Section 8 of the NDPS Act as there was no violation of Rule 66.

72. In yet another decision of this Court in *Ouseph alias Thankachan v. State of Kerala* reported in (2004) 4 SCC 446, it was declared that "Buprenorphine" is a psychotropic substance and if an accused is found in possession of the same, his case would have to be examined through the rigours of Sections 8 and 22 of the NDPS Act read with Rule 66 of the NDPS Rules respectively. The appellant therein was found to be in possession of 110 ampoules of Buprenorphine. He stood convicted under Section 22 of the NDPS Act and was sentenced to ten years of rigorous imprisonment along with fine. The High Court dismissed the appeal challenging the order of conviction and sentence. This Court considered the alternate argument canvassed under Section 27 of the NDPS Act which provides that whoever, in contravention of any provision of this Act, possesses any psychotropic substance, "which is proved to have been intended for his personal consumption and not for sale or distribution" shall be punishable for a term which may extend to 6 months or fine or both. To consider the applicability of the aforesaid provision, it had to be determined whether the substance was in a "small quantity" and if so, whether it was

intended for personal consumption. Answering both the questions in the affirmative, it was held that the offence proved to have been committed by the appellant would fall under Section 27 of the Act and accordingly, the conviction of the appellant therein was altered. The relevant observations made by this Court are reproduced as thus:

"5. Though the investigating agency thought that the article recovered from the appellant was a narcotic substance, it is in fact a psychotropic substance. This is clearly discernible from Item 92 of the Schedule of the NDPS Act. If it is a psychotropic substance, possession of it would become an offence only if it was in contravention of the Rules prescribed. Under Rule 66 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 any person may possess a reasonable quantity of psychotropic substance "as may be necessary for their genuine scientific requirements or genuine medical requirements". This is subject to the limitation contained in the proviso that he is in possession of the said substance for his personal medical use, the quantity thereof shall not exceed one hundred dosage units at a time.

6. Some arguments have been advanced before us to show that in the absence of any quantification of a dosage 110 ampoules recovered from the appellant cannot be held to be in excess of the aforesaid limit indicated in Rule 66. We would have certainly considered the said arguments seriously if the appellant had thought it fit to adopt such a line of defence in the trial court or before the High Court. Unfortunately, it has not been done.

7. In any case we are inclined to consider another argument advanced before us by the learned counsel for the appellant based on Section 27 of the NDPS Act. It says that whoever, in contravention of any provision of this Act, possesses any psychotropic substance, "which is proved to have been intended for his personal consumption and not for sale or distribution" shall be punishable for a term which may extend to six months or with fine or with both [unless the substance is not one falling under clause (a) of Section 27].

8. The question to be considered by us is whether the psychotropic substance was in a small quantity and if so, whether it was intended for personal consumption. The words "small quantity" have been specified by the Central Government by the notification dated 23-7-1996. Learned counsel for the State has brought to our notice that as per the said notification small quantity has been specified as 1 gram. If so, the quantity recovered from the appellant is far below the limit of small quantity specified in the notification issued by the Central Government. It is admitted that each ampoule contained only 2 ml and each ml contains only .3 mg. This means the total quantity found in the possession of the appellant was only 66 mg. This is less than 1/10th of the limit of small quantity specified under the notification.

9. Then the next question is whether this substance was possessed by him for personal consumption. As the accused had adopted a defence of repudiating the allegation against him, it may look that he cannot rely upon the alternative contention that it was possessed by him for personal consumption. It is too harsh to deny the accused-appellant a right to resort to the alternative contention. Merely because on legal advice, he has chosen one line of defence he cannot be precluded from reaching other defence available to him, particularly since the consequences visiting him are very serious. If the fact situation is sufficient for the court to satisfy that the small quantity in his possession was for personal consumption, he should not be denied the benefit of Section 27 of the NDPS Act.

10. In the aforesaid context we notice a significant factual aspect that along with the small quantity of psychotropic substance recovered, two syringes were also recovered from him by the police. That aspect reflects that he only wanted to use buprenorphine (Tidigesic) for his personal consumption and not for trading purposes. The burden on the accused in this respect need not be discharged in the (sic this) manner and the prosecution is to prove the case beyond a reasonable doubt. It is enough that he satisfies the judicial mind by a preponderance of probability.

11. On account of the aforesaid fact situation, we are inclined to believe that the small quantity of buprenorphine (Tidigesic) was in the possession of the appellant for his personal consumption and,

therefore, the offence committed by him would fall under Section 27 of the NDPS Act.

12. We, therefore, alter the conviction of the appellant to Section 27 of the Act. We sentence him to the maximum provided under Section 27(b) of the NDPS Act, which is imprisonment for six months. He is already in jail for nearly six years by now. It is not necessary for us to say that he has been in jail far beyond the sentence imposed by us. We, therefore, direct the jail authorities to release him from jail forthwith unless required in any other case. The appeal is disposed of in the abovesaid terms."

(Emphasis supplied)

73. In *Ravindran alias John and Anr. v. Superintendent of Customs* reported in (2007) 6 SCC 410 the two appellants along with one another accused named Hir Lal were convicted for the offence under Section 8(c) read with Sections 22 and 29 of the NDPS Act respectively and were sentenced to undergo rigorous imprisonment for 10 years along with fine, in relation to the possession, transport and sale of diazepam (which is also a substance listed under the Schedule to the Act and not in Schedule I of the Rules) weighing 1.53 kgs. On appeal, the High Court affirmed the conviction of the appellants but acquitted Hir Lal against whom it found no satisfactory evidence to prove the charges. While dismissing the appeal so far as one of the accused was concerned and allowing the appeal against conviction of the other, this Court observed that Section 8 along with Section 22(c) of the NDPS Act would be attracted even while the substance in question was Diazepam which is listed as Sl. No. 43

under the Schedule to the NDPS Act and absent in Schedule I of the NDPS Rules. The relevant observations are as thus:

"15. It was lastly urged that though the Chemical Analyst had reported the presence of diazepam, he had not given particulars as to the proportion in which its components were found. Counsel for the appellant placing reliance on the judgment of this Court reported in Amarsingh Ramjibhai Barot v. State of Gujarat [(2005) 7 SCC 550 : 2005 SCC (Cri) 1704] submitted that this may have a bearing on the question of sentence. In the instant case, we are concerned with diazepam. According to the notification 20 grams of diazepam is considered to be small quantity. Any quantity in excess of 500 grams is commercial quantity. In the instant case 1.528 kilograms of diazepam was found. In these facts the case is clearly covered by Section 22(c) of the Act. We, therefore, find no merit in any of the submissions urged on behalf of the appellant Ravindran. His appeal fails and is, therefore, dismissed."

(Emphasis supplied)

74. In *Rajesh Kumar Gupta (supra)* this Court considered the plea of the State to cancel the bail granted to the accused therein. In the said case, the premises of the two clinics run by the respondent claiming to be a Ayurvedacharya was raided. In the search, 70kg of pure Phenobarbitone was recovered and seized. It was further found out that huge quantities of Phenobarbitone was being sold to the patients in both his clinics over a period of several years. Therefore, the respondent was charged under Section 8 read with Section 22 of the NDPS Act. While the Special Judge had refused to grant bail, the High Court allowed the bail application and released the accused on bail. Agreeing with the High Court, this Court held that *prima facie* the provisions of the Act were not found to be

applicable in a case wherein the psychotropic substance in question was only mentioned under the Schedule to the NDPS Act and not under Schedule I of the NDPS Rules.

75. While declining to interfere with the grant of bail, this Court in *Rajesh Kumar Gupta (supra)* expounded the law on several aspects:

- i. *First*, that the use of the psychotropic substance or contraband for medical or scientific purposes is excluded from the purview of operation of Section 8 of the NDPS Act. However, that such dealing in the substance for medical or scientific purposes must also be in the manner and to the extent provided by the provisions of the NDPS Act or rules or orders made thereunder. The exception contained in Section 8 of the NDPS Act must be judged on the touchstone of whether the drugs are used for medicinal or scientific purposes and whether they come within the purview of the regulatory provisions contained in Chapters VI and VII of the NDPS Rules. Therefore, in the facts and circumstances of the case, once the drugs are said to be used for medicinal purposes and found to be beyond the pale of the rules contained in Chapters VI and VII of the NDPS Rules (owing to the substance in question not figuring in Schedule I of the Rules), the exception contained under Section 8 would

kick in and no offence could be said to have been made out. The relevant observations are reproduced hereinbelow:

"18. Chapter III of the 1985 Act, however, provides for prohibition, control and regulation. Section 8 provides for prohibition of certain operations in terms whereof no person shall make any cultivation of the plants mentioned in clauses (a) and (b) thereof or, inter alia, produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance. The said provision contains an exception which takes within its fold all the classes of cases preceding thereto. Use of the contraband for medical or scientific purposes is, therefore, excluded from the purview of the operation thereof. However, such exception carved out under the 1985 Act specifically refers to the manner and to the extent provided by the provisions of the 1985 Act or the rules or orders made thereunder.

19. It has not been brought to our notice that the 1985 Act provides for the manner and extent of possession of the contraband. The rules framed under Section 9 of the 1985 Act read with Section 76 thereof, however, provide for both the manner and the extent, inter alia, of production, manufacture, possession, sale, purchase, transport, etc. of the contraband [...]"

xxx

xxx

xxx

21. The respondent admittedly possesses an Ayurveda Shastri degree. It is stated that by reason of a notification issued by the State of Uttar Pradesh dated 24-2-2003, the practitioners of ayurvedic system of medicines are authorised to prescribe allopathic medicines also. The respondent runs a clinic commonly known as "Neeraj Clinic". He is said to be assisted by eight other medical practitioners being allopathic and ayurvedic doctors. It is also not in dispute that only seven medicines were seized and they are mentioned in Schedules G and H of the Drugs and Cosmetics Rules [...]

xxx

xxx

xxx

23. In view of the fact that all the drugs, Items 1, 2, 3, 4, 6 and 7 being allopathic drugs mentioned in Schedules G and H of the Drugs and Cosmetics Rules indisputably are used for medicinal purposes. Once the drugs are said to be used for medicinal purposes, it cannot be denied that they are acknowledged to be the drugs which would come within the purview of description of the expression "medicinal purposes".

24. The exceptions contained in Section 8 of the 1985 Act must be judged on the touchstone of:

- (i) whether drugs are used for medicinal purposes;
- (ii) whether they come within the purview of the regulatory provisions contained in Chapters VI and VII of the 1985 Rules.

(Emphasis supplied)

- ii. *Secondly*, it was held that Rules 53 and 64 of the NDPS Rules respectively, contain a genus and the other provisions following the same under the said Chapter are species thereof. Both the rules were said to contain a general prohibition as regard the narcotic drugs and psychotropic substances specified in Schedule I of the NDPS Rules. Therefore, the reference to "psychotropic substances" in the other rules following in Chapters VI and VII of the NDPS Rules respectively were also said to be construed as a reference to the Schedule I psychotropic substances under the NDPS Rules and not the larger list of substances mentioned in the Schedule to the Act itself. Hence, if the said psychotropic substances do not find a place in Schedule I appended to the NDPS Rules, the provisions of Section 8 of the NDPS Act would

have no application whatsoever. The relevant observations are reproduced hereinbelow:

19 [...] Chapter VI of the 1985 Rules provides for import, export and trans-shipment of narcotic drugs and psychotropic substances. Rule 53 contains general prohibition in terms whereof the import and export out of India of the narcotic drugs and psychotropic substances specified in Schedule I appended thereto is prohibited. Such prohibition, however, is subject to the other provisions of the said Chapter. Rule 63 to which our attention has been drawn specifically prohibits import and export of consignments through a post office box but keeping in view the general prohibition contained in Rule 53 the same must be held to apply only to those drugs and psychotropic substances which are mentioned in Schedule I of the Rules and not under the 1985 Act. Similarly, Chapter VII provides for psychotropic substances. Rule 64 provides for general prohibition. Rules 53 and 64, thus, contain a genus and other provisions following the same under the said Chapter are species thereof. This we say in view of the fact that whereas Rule 64 provides for general prohibition in respect of sale, purchase, consumption or use of the psychotropic substances specified in Schedule I, Rule 65 prohibits manufacture of psychotropic substances, whereas Rule 66 prohibits possession, etc. of psychotropic substances and Rule 67 prohibits transport thereof. Rule 67-A provides for special provisions for medical and scientific purposes.

20. The general prohibitions contained in both Rules 53 and 64, therefore, refer only to the drugs and psychotropic substances specified in Schedule I. It is neither in doubt nor in dispute that whereas the Schedule appended to the 1985 Act contains the names of a large number of psychotropic substances, Schedule I of the Rules prescribes only 35 drugs and psychotropic substances.

xxx

xxx

xxx

22. It is not in dispute that the medicines seized from the said clinic come within the purview of Schedules G and H of the Drugs and Cosmetics Rules. It is furthermore not in dispute that

the medicines Epilan C. Phenobarbitone and Chlordiazepoxide are mentioned in Entries 69 and 36 of the 1985 Act respectively. whereas none of them finds place in Schedule I appended to the 1985 Rules. If the said drugs do not find place in Schedule I appended to the Rules, the provisions of Section 8 of the 1985 Act would have no application whatsoever. Section 8 of the 1985 Act contains a prohibitory clause, violation whereof leads to penal offences thereunder.

(Emphasis supplied)

76. In *Sanjay Kumar Kedia v. Narcotics Control Bureau and Another* reported in (2008) 2 SCC 294, this Court was faced with deciding, yet again, whether bail should be granted to the appellant wherein he was arrested in connection with the commission of offence under Sections 24 and 29 of the NDPS Act respectively, for the illegal sale of drugs, more particularly "Phentermine" and "Butalbital", through the internet. These two substances feature at Sl. Nos. 70 and 93 of the Schedule to the NDPS Act respectively and are not found in Schedule I of the NDPS Rules. While agreeing with the High Court that bail should not be granted and also providing a disclaimer that the observations made by this Court must not influence the decision on trial, this Court said that the benefit under Section 79 of the Information Technology Act, 2002 given to the intermediaries could not be extended to the appellant. In declaring so, it was held that the two drugs finding a place in the Schedule to the Act made it clear that they are psychotropic substances falling within the prohibition contained in Section 8 thereof and stated thus:

"9. It is clear from the Schedule to the Act that the two drugs Phentermine and Butalbital are psychotropic substances and therefore fall within the prohibition contained in Section 8 thereof. The appellant has been charged for offences punishable under Sections 24 and 29 of the Act [...]"

10. A perusal of Section 24 would show that it deals with the engagement or control of a trade in narcotic drugs and psychotropic substances controlled and supplied outside India and Section 29 provides for the penalty arising out of an abetment or criminal conspiracy to commit an offence under Chapter IV which includes Section 24 [...]"

(Emphasis supplied)

77. Again in *D. Ramakrishnan v. Intelligence Officer, Narcotic Control Bureau* reported in (2009) 14 SCC 603, the appellant and a co-accused were engaged in the internet pharmacy business and were alleged to have exported drugs abroad including "Alprazolam", "Lorazepam" and "Nitrazepam" which find place at S. Nos. 30, 56 and 64 of the Schedule to the NDPS Act respectively. Since the activities were carried on without a valid export authorisation as required under the NDPS regime, the appellant and his co-accused were prosecuted under Section 8(c) read with Sections 22, 23, 25, 27-A, 53, 53-A and 58 of the NDPS Act. Taking recourse to *Rajesh Kumar Gupta (supra)*, it was argued that the drugs being Schedule G and H drugs under the D&C Rules and not mentioned in Schedule I to the NDPS Rules, its export thereof would not attract the provisions of Rule 58 of the NDPS Rules which requires an export authorisation. This is because Rules 53 and 64 respectively being the genus and dealing with substances under Schedule I of the NDPS Rules would

mean that Rule 58 is also applicable only to such Schedule I substances. Furthermore, it was contended that since the drugs were used for medicinal purposes, the same is acknowledged in terms of the proviso under Section 8(c) of the NDPS Act. However, this Court took the view that the fact that the appellant and his co-accused had obtained licences under the D&C Act with a general permission for import and export did not enure any particular benefit to them since the D&C Act does not deal with exports. The appellant and his co-accused being licensees were thus required to comply with the specific requirements of the NDPS Act and its Rules. Hence, an offence under Section 8(c) was said to have been made out in the absence of an export authorisation and it was held that the application for bail was rightly rejected by the Special Judge as also the High Court. The relevant observations are as thus:

"13. The appellant and his co-accused are said to have got licences under the Drugs and Cosmetics Act, 1940. They had got general permission for import and export.

14. Section 80 of the Act provides that the provisions of the Act or the Rules made thereunder are in addition to, and not in derogation of the Drugs and Cosmetics Act, 1940 or the Rules made thereunder. The Drugs and Cosmetics Act, 1940 does not deal with exports. The provisions of the Customs Act do. The licensees, therefore, were, thus, required to comply with the specific requirements of the Act and the Rules. It is not denied or disputed that the appellant neither applied for nor granted any authority to export by the Narcotic Commissioner or any other officer who is authorised in this behalf.

15. We, therefore, are of the opinion that the High Court is right in opining that the decision of this Court in Rajesh Kumar

Gupta [(2007) 1 SCC 355 : (2007) 1 SCC (Cri) 356] is not applicable to the facts of this case."

(Emphasis supplied)

78. A three-Judge Bench decision of this Court in *Union of India and Another v. Sanjeev V. Deshpande* reported in (2014) 13 SCC 1 related to a batch of matters, all pertaining to prosecutions under the provisions of the NDPS Act wherein each one of the accused was alleged to have been in possession of a psychotropic substance only mentioned under the Schedule to the Act. In some of the cases bail was granted by the concerned High Court and in few others, bail was denied. This Court examined the legality of the conclusion that the absence of mention of a particular psychotropic substance in Schedule I to the Rules excludes the application of Section 8, notwithstanding the fact that such a drug is included in the Schedule to the Act.

- i. *First*, this Court in its decision analysed the true scope and ambit of Section 8(c) of the NDPS Act and stated that Section 8(c) in no uncertain terms prohibits the dealing in any manner in any narcotic drug or psychotropic substance. However, an exception to such prohibition is also contained in the said section and that is, that the dealing in any narcotic drug or psychotropic substance would be permitted "*in the manner and to the extent provided by the provisions of this Act or the Rules or Orders made thereunder*". Therefore, it was declared that a twin condition must be fulfilled i.e., the dealing must

be for medical or scientific purposes AND in the manner and to the extent provided by the provisions of the Act, Rules, or Orders made thereunder and the Court stated as thus:

"24. Before we examine the correctness of various submissions, we deem it appropriate to analyse and find out the true scope and ambit of Section 8(c). Section 8(c) in no uncertain terms prohibits the dealing in any manner in any narcotic drug or psychotropic substance. However, an exception to such prohibition is also contained in the said section.

*"8. Prohibition of certain operations.—
No person shall -*

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the Rules or Orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation."

The exception being that dealing in any narcotic drug or psychotropic substance is permitted "in the manner and to the extent provided by the provisions of this Act or the Rules or Orders made thereunder".

25. In other words, dealing in narcotic drugs and psychotropic substances is permissible only when such dealing is for medical purposes or scientific purposes. Further, the mere fact that the dealing in narcotic drugs and psychotropic substances is for a medical or scientific purpose does not by itself lift the embargo created under Section 8(c). Such a dealing must be in the manner and extent provided by the provisions of the Act, Rules or Orders made thereunder [...]"

(Emphasis supplied)

- ii. Secondly, it was opined that Sections 9 and 10 of the NDPS Act respectively, enable the Central and State Governments respectively, to frame rules to "permit and regulate" various aspects contemplated under Section 8(c) of dealing in narcotic drugs and psychotropic substances. It was clarified that the Act does not contemplate the framing of rules for "prohibiting" various activities of dealing in the same since such a prohibition is already present under Section 8(c). Therefore, it cannot be said that the prohibition contained under Section 8 would not be attracted in respect of all those psychotropic substances which find a mention only in the Schedule to the Act but not in Schedule I to the Rules framed under the Act. The relevant observations are as thus:

"25. [...] Sections 9 ["9.Power of Central Government to permit, control and regulate.—(1) Subject to the provisions of Section 8, the Central Government may, by rules—(a) permit and regulate—(i)-(v) *** (vi) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;"] and 10 ["10.Power of State Government to permit, control and regulate.—(1) Subject to the provisions of Section 8, the State Government may, by rules—(a) permit and regulate—***"] enable the Central and the State Governments respectively to make rules permitting and regulating various aspects (contemplated under Section 8(c). of dealing in narcotic drugs and psychotropic substances.

26. The Act does not contemplate framing of rules for prohibiting the various activities of dealing in narcotic drugs and psychotropic substances. Such prohibition is already contained in Section 8(c). It only contemplates of the framing of

Rules for permitting and regulating any activity of dealing in narcotic drugs or psychotropic substances.

27. Therefore, we are of the opinion that the conclusion reached by the various High Courts that prohibition contained under Section 8 is not attracted in respect to all those psychotropic substances which find a mention in the Schedule to the Act but not in Schedule I to the Rules framed under the Act is untenable."

(Emphasis supplied)

- iii. *Thirdly*, while overruling the decision made in *Rajesh Kumar Gupta (supra)*, it was stated that the rules framed under the Act cannot be understood to create rights and obligations contrary to those contained in the parent Act. Therefore, neither Rule 53 nor Rule 64 is a source of authority for prohibiting the dealing in narcotic drugs and psychotropic substances, instead the source is Section 8 of the NDPS Act itself. The provisions of Chapter VI of the NDPS Rules, contain rules permitting and regulating the import and export of narcotic drugs and psychotropic substances other than those specified in Schedule I to the NDPS Rules subject to various conditions and procedures stipulated in Chapter VI. Whereas, Chapter VII deals exclusively with various other aspects of dealing in psychotropic substances and the conditions subject to which such dealing is permitted. In that sense, both Rules 53 and 64 are really in the nature of an exception to the general scheme of Chapter VI and VII

respectively, wherein those two rules pertain to a list of narcotic drugs and psychotropic substances which cannot be dealt with in any manner notwithstanding the other provisions of these two chapters.

The relevant observations are reproduced hereinbelow:

29. We are unable to agree with the conclusion (reached in Rajesh Kumar Gupta case [State of Uttaranchal v. Rajesh Kumar Gupta, (2007) 1 SCC 355 : (2007) 1 SCC (Cri) 356]) that the prohibition contained in Rule 63 ["63. Prohibition of import and export of consignments through a post office box, etc.—The import or export of consignments of any narcotic drug or psychotropic substance through a post office box or through a bank is prohibited."] of the 1985 Rules is applicable only to those narcotic drugs and psychotropic substances which are mentioned in Schedule I to the Rules and not to the psychotropic substances enumerated in the Schedule to the Act. Such a conclusion was reached in Rajesh Kumar Gupta case [State of Uttaranchal v. Rajesh Kumar Gupta, (2007) 1 SCC 355 : (2007) 1 SCC (Cri) 356] on the understanding that Rule 53 (prohibiting the import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule I to the Rules) is the source of the authority for such prohibition. Such a conclusion was drawn from the fact that the other Rules contained in the Chapter permit import into and export out of India of certain narcotic drugs and psychotropic substances other than those specified in Schedule I to the Rules. Unfortunately, the learned Judges in reaching such a conclusion ignored the mandate of Section 8(c) which inter alia prohibits in absolute terms import into and export out of India of any narcotic drug and psychotropic substance. Rules framed under the Act cannot be understood to create rights and obligations contrary to those contained in the parent Act.

30. On examination of the scheme of Rules 53 to 63 which appear in Chapter VI, we are of the opinion that Rule 53 ["53. General prohibition.—Subject to the other provisions of this Chapter, the import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule I is prohibited: Provided that nothing in this rule shall

apply in case the drug substance is imported into or exported out of India subject to an import certificate or export authorisation issued under the provision of this Chapter and for the purposes mentioned in Chapter VII-A."] reiterates an aspect of the larger prohibition contained in Section 8(c) i.e. the prohibition of import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule I to the Rules. The proviso thereto however enables the import into and export out of India on the basis of an import certificate or export authorisation issued under the provisions of Chapter VI. The subsequent rules stipulate the conditions subject to which and the procedure to be followed by which some of the narcotic drugs and psychotropic substances could be imported into India or exported out of India. For example, opium is a narcotic drug by definition under Section 2(xiv) of the Act whose export and import is prohibited under Section 8(c). But Rule 54 ["54.Import of opium, etc.—The import of—(i) opium, concentrate of poppy straw, and(ii) morphine, codeine, thebaine, and their salts is prohibited save by the Government Opium Factory; Provided that nothing in this rule shall apply to import of morphine, codeine, thebaine and their salts by manufacturers notified by the Government, for use in manufacture of products to be exported or to imports of small quantities of morphine, codeine and thebaine and their salts not exceeding a total of 1 kilogram during a calendar year for analytical purposes by an importer, after following the procedure under Rule 55 and subject to such conditions as may be specified in the import certificate issued in Form 4-A." (emphasis supplied)] authorises the import of opium by the Government opium factory. The construction such as the one placed on Rule 53 in Rajesh Kumar Gupta case [State of Uttaranchal v. Rajesh Kumar Gupta, (2007) 1 SCC 355 : (2007) 1 SCC (Cri) 356] would in our opinion be wholly against the settled canons of statutory interpretation that the subordinate legislation cannot make stipulation contrary to the parent Act.

31. Chapter VII deals with psychotropic substances. No doubt Rule 64 ["64.General prohibition.—No person shall manufacture, possess, transport, import inter-State, export inter-State, sell, purchase, consume or use any of the psychotropic substances specified in Schedule I."] once again

purports to prohibit various operations other than import into or export out of India in psychotropic substances specified in Schedule I for the obvious reason that import and export operations are already covered by Rule 53. Rule 65 authorises the manufacture of psychotropic substances other than those specified in Schedule I to the Rules subject to and in accordance with the conditions of a licence granted under the 1945 Rules. The rule also provides for various other incidental matters. Rule 65-A prohibits the sale, purchase, consumption or use of any psychotropic substances except in accordance with the 1945 Rules.

32. Rule 66 prohibits any person from having in possession any psychotropic substance even for any of the purposes authorised under the 1945 Rules unless the person in possession of such a psychotropic substance is lawfully authorised to possess such substance for any of the purposes mentioned under the 1985 Rules. Persons who are authorised under the 1985 Rules, and the quantities of the material such persons are authorised to possess, are specified under Rule 66(2). They are:

- (1) any research institution or a hospital or dispensary maintained or supported by the Government, etc. — Rule 66(2).
- (2) individuals where such possession is needed for personal medical use subject of course to the limits and conditions specified — the two provisos to Rule 66(2).

33. Rule 66 reads as follows:

“66. Possession, etc., of psychotropic substances.—(1) No person shall possess any psychotropic substance for any of the purposes covered by the 1945 Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these Rules.

(2) Notwithstanding anything contained in sub-rule (1), any research institution, or a hospital or dispensary maintained or supported by the Government or local body or by charity or voluntary subscription, which is not authorised to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorised under the 1945 Rules, may possess a reasonable quantity of such substance

as may be necessary for their genuine scientific requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person: Provided that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time:

Provided further that an individual may possess the quantity of exceeding one hundred dosage units at a time but not exceeding three hundred dosage units at a time for his personal long term medical use if specifically prescribed by a Registered Medical Practitioner.

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession."

34. On the above analysis of the provisions of Chapters VI and VII of the 1985 Rules, we are of the opinion, both these chapters contain rules permitting and regulating the import and export of narcotic drugs and psychotropic substances other than those specified in Schedule I to the 1985 Rules subject to various conditions and procedure stipulated in Chapter VI. Whereas Chapter VII deals exclusively with various other aspects of dealing in psychotropic substances and the conditions subject to which such dealing in is permitted. We are of the opinion that both Rules 53 and 64 are really in the nature of exception to the general scheme of Chapters VI and VII respectively containing a list of narcotic drugs and psychotropic substances which cannot be dealt in any manner notwithstanding the other provisions of these two chapters. We are of the clear opinion that neither Rule 53 nor Rule 64 is a source of authority for prohibiting the dealing in narcotic drugs and psychotropic substances, the source is Section 8. Rajesh Kumar Gupta case [State of Uttaranchal v. Rajesh Kumar Gupta, (2007) 1 SCC 355 : (2007) 1 SCC (Cri) 356] in our view is wrongly decided."

(Emphasis supplied)

79. What is discernible from the aforementioned decisions is that, there is no shadow of doubt on the proposition that dealing in psychotropic substances not finding a mention in Schedule I of the NDPS Rules but finding place in the Schedule to the Act, would also constitute an offence under Section 8 of the NDPS Act. Such was the position even before the decision of this Court in *Sanjeev V. Deshpande (supra)*. The only decision of this Court that laid down an alternate position of law was *Rajesh Kumar Gupta (supra)* which now stands overruled. It would be preposterous to say that no offence could be said to be made out when an accused deals with substances which are only mentioned under the Schedule to the Act. For then, the entire presence of the Schedule to the Act would have to be considered unnecessary to the scheme of the NDPS Regime. To render an entire Schedule nugatory could not have been the intention of the legislature.

80. What we understand to be the clarification of the position of law in *Rajesh Kumar Gupta (supra)* and *Sanjeev V. Deshpande (supra)* is thus:

- i. In *Rajesh Kumar Gupta (supra)*, Chapters VI and VII of the NDPS Rules respectively, were interpreted in such a manner where Rules 53 and 64 of the NDPS Rules respectively, were considered to set the tone for the other rules following in their respective Chapters i.e., that Rules 53 and 64 respectively, were the genus and the other rules were

considered to be species thereof. In other words, since Rules 53 and 64 respectively, only pertain to substances under Schedule I of the Rules, the other rules must also pertain to Schedule I substances only. Therefore, it was declared that it is only the psychotropic substances appended to Schedule I of the Rules which are regulated by the NDPS Rules, and dealing in substances, not finding a mention in Schedule I, would be unregulated and thus, not amount to an offence under Section 8(c).

- ii. *Sanjeev V. Deshpande (supra)* while overruling *Rajesh Kumar Gupta (supra)* dispelled the idea that Rules 53 and 64 respectively, constituted a genus but instead stated that Rules 53 and 64 respectively, are in the nature of an exception to the general scheme of their respective Chapters. To put it more clearly, that Rules 53 and 64 respectively stated that substances under Schedule I of the Rules cannot be dealt with in any manner whatsoever and the other Rules in the Chapter proceeded to lay down the procedure and conditions under which substances other than those mentioned in Schedule I of the Rules but contained in the Schedule to the Act, could be dealt with. Therefore, if an accused is charged with an offence for dealing with a substance mentioned under the Schedule to the Act and not in Schedule I of the Rules, he would be guilty of an offence under

Section 8(c) if the conditions and procedure laid down under the Rules, other than Rules 53 and 64, are not complied with.

81. However, a detailed and comprehensive analysis of Chapters VI and VII of the NDPS Rules, *inter alia*, makes it clear that the substances mentioned under Schedule I of the Rules are not absolutely prohibited to be dealt in, as stated in *Sanjeev V. Deshpande (supra)*. They are indeed allowed to be dealt with for the limited purposes as detailed in Chapter VIIA of the NDPS Rules. It goes without saying that in such dealing for the purposes mentioned under Chapter VIIA, persons would have to comply with the set of procedures and conditions to which the other substances are subjected to and strict compliance of all those rules are mandatory considering the high degree of havoc and menace that the substances mentioned in Schedule I to the NDPS Rules can create on public health and societal well-being.
82. The NDPS rules were revamped in the year 2015 *vide* G.S.R. 224(E) dated 25.03.2015 with a view to remove the ambiguity that the phrasing of several rules created. That the psychotropic substances mentioned under Schedule I of the NDPS Rules can also be dealt with but for the restricted and limited purposes enumerated under Chapter VIIA of the Rules and in compliance with the requirements under the other rules, is evident from the language of the rules

which came into effect post 25.03.2015. To illustrate, Rule 53 of the NDPS

Rules now reads as thus:

"53. General Prohibition. –

Import into and export out of India of the narcotic drugs and psychotropic substances is prohibited except with an import certificate or export authorization issued under the provision of this Chapter;

Provided that import into India or export out of India of the narcotic drugs and psychotropic substances specified in Schedule I of these rules shall be for the purpose mentioned in Chapter VIIA."

(Emphasis supplied)

83. Similarly, at present, Rule 64 of the NDPS Rules reads as follows:

"64. Manufacture of psychotropic substances. –

(1) No person shall manufacture any of the psychotropic substances except in accordance with the conditions of a licence granted under the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the 1945 rules) framed under the Drugs and Cosmetics Act, 1940 (23 of 1940), by an authority in-charge of Drugs Control in a State appointed by the State Government in this behalf:

Provided that a licence to manufacture a psychotropic substance specified in Schedule I shall be issued only for the purposes mentioned in Chapter VIIA:

Provided further that the authority in charge of the drug control in a State shall consult the Narcotics Commissioner before issuing a licence to manufacture a psychotropic substance specified in Schedule I."

(Emphasis supplied)

84. Rule 66 of the NDPS Rules also reads as thus:

*"66. Possession, etc., of psychotropic substances. –
(1) No person shall possess any psychotropic substance for any of the purposes covered under 1945 rules, unless he is lawfully authorized to possess such substance for any of the said purposes under these rules:*

Provided that possession of a psychotropic substance specified in Schedule I shall be only for the purposes mentioned in chapter VIIA."

(Emphasis supplied)

85. In our opinion the pith and substance of the rules essentially remained the same over the years, more particularly pre and post 25.03.2015. It is only the language that has been streamlined in a much more organised manner. Of course, the interpretation of the three-Judge Bench in *Sanjeev V Deshpande (supra)* of the scheme of Chapters VI and VII of the NDPS Rules respectively would hold the field in so far as the version of the NDPS Rules pre-25.03.2015 is concerned. Judicial propriety demands that we refrain from substituting our own conclusions to the said decision. However, since the rephrasing of the language and re-shuffling of the sub-rules *vide* G.S.R. 224(E) dated 25.03.2015 has clarified the true purport and intention behind the framing of the NDPS Rules, there remains no doubt in our mind that the law post - 25.03.2015 is crystal clear in itself.

- d. The provisions of the NDPS Act and its Rules are "in addition to" the D&C Act and the Rules made thereunder.

86. Section 80 of the NDPS Act states that the application of the D&C Act would not be barred and reads as follows:

"80. Application of the Drugs and Cosmetics Act, 1940 not barred.— The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder."

87. In P. Ramanatha Aiyar's *Advanced Law Lexicon*, the word derogation is defined as "*the partial repeal or abrogation of a law by a later act that limits its scope or impairs its utility and force*". It is also stated that the word "derogate" is a term of legislation. "Derogation" is partial and indirect abrogation i.e., when a subsequent law reduces the force and application of an older law, the character of the subsequent law is technically said to be derogatory. Therefore, the express language employed herein which states that the NDPS Act is not in derogation of the D&C Act leads to the inference that the enactment of the NDPS Act must not in any way be understood to take away the scope of an offence being also made out under the D&C Act. Furthermore, it is also stated that the provisions of the NDPS Act and its Rules "*shall be in addition to*" the D&C Act or the Rules made thereunder. Therefore, in the reverse scenario, i.e., when an offence under the D&C Act is made out or can potentially be made out, the accused can also be charged or prosecuted for an

offence under the NDPS Act. Any argument to the contrary would be untenable. This is so because the NDPS Act applies in addition to the provisions of the D&C Act. Inevitably, there may arise situations wherein the substance in question in a particular case falls under the ambit of both the NDPS Act and D&C Act. However, the overlap would not necessarily imply that the application of the provisions of the NDPS Act would be at the cost of exclusion of the provisions of D&C Act, or *vice versa*. Section 80 of the NDPS Act must be understood in the context and object behind the coming into force of these two legislations i.e., the NDPS Act and D&C Act respectively, and the distinct purposes that they seek to achieve.

88. In *Sanjeev V. Deshpande (supra)*, while it was deemed unnecessary to undertake a complete analysis of the implications of Section 80 of the NDPS Act in view of the conclusion arrived at therein, yet it was observed that the provisions of the NDPS Act apply in addition to the provisions of the D&C Act. Furthermore, it was stated that while the D&C Act deals with various operations of manufacture, sale, purchase etc. of drugs generally, the NDPS Act deals with a more specific class of drugs and is therefore, a special law on the subject. The relevant observations are reproduced hereinbelow:

"35. In view of our conclusion, the complete analysis of the implications of Section 80 [80. Application of the Drugs and Cosmetics Act, 1940 not barred.—The provisions of this Act or the Rules made thereunder shall be in addition to, and not in

derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the Rules made thereunder."] of the Act is not really called for in the instant case. It is only required to be stated that essentially the Drugs and Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase, etc. of drugs generally whereas the Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject. Further the provisions of the Act operate in addition to the provisions of the 1940 Act."

(Emphasis supplied)

89. The object of the NDPS Act and D&C Act, respectively was reiterated in *State of Punjab v. Rakesh Kumar* reported in (2019) 2 SCC 466. Herein, several respondent-accused were convicted for the offence committed either under Section 21 or Section 22 of the NDPS Act for the bulk possession of "manufactured drugs" without any valid authorisation. The High Court allowed the applications seeking suspension of sentence, preferred by the respondent-accused and directed that they be released on bail pending the final disposal of the appeals before it. In doing so, it was observed by the High Court that in cases of manufactured drugs, be it containing narcotic drugs or psychotropic substances, if manufactured by a manufacturer, the same must be tried if a violation has been committed, under the D&C Act and not under the NDPS Act, except in cases where the substance is in a loose form i.e., powder, liquid etc. This Court disagreed with the High Court that the respondent-accused could only be prosecuted for an offence under the D&C Act despite there being

a *prima facie* violation of Section 8 of the NDPS Act. In opining so, the decision elaborated on the following aspects:

- i. *First*, that the objectives behind the NDPS Act and D&C Act are different.

It was opined that the former is a special law enacted with an object to control and regulate the operations relating to narcotic drugs and psychotropic substances. Whereas, the latter was enacted specifically to prevent substandard drugs and to maintain high standards of medical treatment. It intended to curtail the menace of adulteration of drugs and also of the production, manufacture, distribution and sale of spurious and substandard drugs. In short, while the D&C Act brings within its scope drugs which are intended to be used for therapeutic or medicinal usage, the NDPS Act intends to curb and penalise the usage of drugs that are utilized for intoxication or for the purpose of inducing a stimulant effect.

The relevant observations are as thus:

"7. At the outset it is essential to note the objectives of the two legislations before us i.e. the Drugs and Cosmetics Act, 1940 and the NDPS Act. The Drugs and Cosmetics Act, 1940 was enacted to specifically prevent substandard drugs and to maintain high standards of medical treatment (Chimanlal Jagjivan Das Sheth v. State of Maharashtra [Chimanlal Jagjivan Das Sheth v. State of Maharashtra, AIR 1963 SC 665 : (1963) 1 Cri LJ 621]). The Drugs and Cosmetics Act, 1940 was mainly intended to curtail the menace of adulteration of drugs and also of production, manufacture, distribution and sale of spurious and substandard drugs. On the other hand, the NDPS Act is a special law enacted by Parliament with an object to control and regulate the operations relating to narcotic drugs and psychotropic substances. After analysing the objectives of

both the Acts, we can safely conclude that while the Drugs and Cosmetics Act deals with drugs which are intended to be used for therapeutic or medicinal usage, on the other hand, the NDPS Act intends to curb and penalise the usage of drugs which are used for intoxication or for getting a stimulant effect."

(Emphasis supplied)

ii. Secondly, by relying on the decision in *Sanjeev V. Deshpande (supra)*, it was reiterated that Section 80 of the NDPS Act does not bar the application of the D&C Act and instead states that the provisions of the NDPS Act can be made applicable in addition to that of the provisions of the D&C Act. The NDPS Act should not be read in exclusion of the D&C Act. This Court took the view that since it is the prerogative of the State to prosecute the offender in accordance with law, the respondent-accused could be charged under Sections 21 or 22 of the NDPS Act respectively, considering that their actions amounted to a *prima facie* violation of Section 8 of the NDPS Act. The relevant observations are as follows:

"13. However, we are unable to agree on the conclusion reached by the High Court for reasons stated further. First, we note that Section 80 of the NDPS Act, clearly lays down that application of the Drugs and Cosmetics Act is not barred, and provisions of the NDPS Act can be applicable in addition to that of the provisions of the Drugs and Cosmetics Act. The statute further clarifies that the provisions of the NDPS Act are not in derogation of the Drugs and Cosmetics Act, 1940. This Court in Union of India v. Sanjeev V. Deshpande [Union of India v. Sanjeev V. Deshpande, (2014) 13 SCC 1 : (2014) 5 SCC (Cri) 496] , has held that : (SCC p. 16, para 35)

"35. ... essentially the Drugs and Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase, etc. of drugs generally whereas Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject. Further, the provisions of the Act operate in addition to the provisions of the 1940 Act."

(emphasis supplied)

14. The aforesaid decision in Sanjeev V. Deshpande case [Union of India v. Sanjeev V. Deshpande, (2014) 13 SCC 1 : (2014) 5 SCC (Cri) 496] further clarifies that, the NDPS Act, should not be read in exclusion to the Drugs and Cosmetics Act, 1940. Additionally, it is the prerogative of the State to prosecute the offender in accordance with law. In the present case, since the action of the respondent-accused amounted to a prima facie violation of Section 8 of the NDPS Act, they were charged under Section 22 of the NDPS Act.

15. In light of the above observations, we find that the decision rendered by the High Court holding that the respondent-accused must be tried under the Drugs and Cosmetics Act, 1940 instead of the NDPS Act, as they were found in possession of the "manufactured drugs", does not hold good in law. [...]"

(Emphasis supplied)

90. On a conspectus of the foregoing discussion on the scheme of the NDPS Act and its rules along with the D&C Act and the rules made thereunder, the position of law can be succinctly stated as follows:

- i. A bare reading of Section 2(xxiii) of the NDPS Act defining a "psychotropic substance" would indicate that all the items listed in the Schedule to the Act along with its salts and preparations fall within

the purview of "psychotropic substance". The term "psychotropic substance" mentioned in Section 8 must be seen & understood in light of Section 2(xxiii) which refers to the Schedule to the Act and all the psychotropic substances mentioned therein.

- ii. Section 8(c) while prohibiting the "dealing in" of all psychotropic substances mentioned under the Schedule to the Act, carves out an exception i.e., provides for a situation wherein the dealing in of psychotropic substances would not amount to an offence. However, those conditions forming part of the exception carved out under Section 8 must be read conjointly and not individually. In other words, for the accused to take the plea that his dealing in the narcotic drug or psychotropic substance does not constitute an offence under Section 8, it must be proved that the drug or substance was being dealt with (a) for medical or scientific purposes AND; (b) in the manner and to the extent provided by the provisions of the NDPS Act or the NDPS Rules or the orders made thereunder AND; (c) in accordance with the terms and conditions of the licence, permit or authorisation, if any, required under the provisions of the NDPS Act or the NDPS Rules or the orders made thereunder.
- iii. The NDPS Rules, 1985 have been brought into being by the Central Government in exercise of the powers under Sections 9 and 76 of the

NDPS Act, respectively. The underlying object of the NDPS rules is to “*permit and regulate*” certain activities for carrying out the purposes of the NDPS Act and not to “*prohibit*” those activities. The NDPS rules must not be understood as laying down standards different from or inconsistent with the substantive provisions of the NDPS Act, especially Section 8 and the Schedule to the NDPS Act.

- iv. Chapter VI of the NDPS Rules, *inter alia*, states that the import into and export out of India of all psychotropic substances, including those only mentioned under the Schedule to the Act, must be accompanied by a valid import certificate and export authorisation. However, the import and export of substances enumerated in Schedule I of the Rules is restricted to a pre-determined set of purposes as explained under Chapter VIIA, irrespective of having obtained an import certificate or export authorisation under the other rules of this Chapter.
- v. Chapter VII indicates that the manufacture of all psychotropic substances, including those mentioned only under the Schedule to the Act must be in accordance with the conditions of licence issued under the D&C Rules. Despite there being a general rule absolutely prohibiting the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of any of the psychotropic substances which find mention in Schedule I appended

to the Rules, still the above activities can be done *vis-à-vis* the substances mentioned in Schedule I appended to the Rules, provided such activities are in accordance with other provisions of the Chapter which generally apply to all psychotropic substances, and for the limited purposes mentioned under Chapter VIIA.

- vi. The manufacture of all psychotropic substances mentioned under the Schedule to the Act, and those mentioned under Schedule I of the Rules (provided they are manufactured only for the purposes elaborated under Chapter VIIA), in violation of the conditions of licence of manufacture issued under the D&C Act and its rules would amount to a contravention of Rule 65 of the NDPS Rules and thereby Section 8 of the NDPS Act itself. In other words, due to the operation of Rule 65, a violation of the condition of licence under the D&C Act read with its Rules would *ipso facto* tantamount to a violation of the NDPS Act read with its Rules.
- vii. Furthermore, no person shall possess any psychotropic substance, including those mentioned only under the Schedule to the Act for any of the purposes covered by the D&C Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under the NDPS rules. Therefore, Schedule I substances can be possessed only for the purposes mentioned under Chapter VIIA. All

other substances mentioned only under the Schedule to the Act can be possessed for the purposes mentioned under Chapter VIIA and also for the purposes falling under the broad umbrella of "medical or scientific purposes" as mentioned under Section 8 of the NDPS Act. The above is in addition to the fulfilment of the requirements under the D&C Rules.

- viii. The underlying idea that resonates throughout the NDPS rules is that dealing in any of the psychotropic substances mentioned under Schedule I of the NDPS Rules must strictly be in accordance with the NDPS Rules AND ONLY for the purposes enumerated under Chapter VIIA of the NDPS Rules. The substances not figuring under Schedule I of the Rules but listed in the Schedule to the Act must also abide by the requirements cast upon by the NDPS Rules. The difference as regards these substances, however, is that while they may be dealt with for the purposes enumerated under Chapter VIIA of the NDPS Rules, they can also be dealt with for other "medical and scientific purposes". Whether the accused has dealt with it within the confines of the expression "medical or scientific purposes" would be determined on the facts and circumstances of each case.
- ix. Therefore, the substances under Schedule I to the Rules are more strictly restricted and the remaining psychotropic substances under

the Schedule to the Act are more leniently restricted. The different levels in restriction could be seen as the primary reason behind providing two different schedules, i.e., one under the Act and another under the Rules.

- x. Several decisions of this Court including *Hussain (supra)*, *Ouseph alias Thankachan (supra)*, *Ravindran alias John (supra)*, *Sanjay Kumar Kedia (supra)*, *D. Ramakrishnan (supra)* and *Sanjeev V. Deshpande (supra)* have held that an offence under Section 8 of the NDPS Act can be made out even in respect of substances only mentioned under the Schedule to the NDPS Act and absent under Schedule I of the NDPS Rules. The outlier amongst these decisions was *Rajesh Kumar Gupta (supra)* which was subsequently overruled in *Sanjeev V. Deshpande (supra)*.
- xi. To say that no offence would be made out in a case where an accused deals with a substance mentioned only under the Schedule to the Act, would have the consequence of rendering the entire Schedule to the Act useless, unnecessary and nugatory.
- xii. *Rajesh Kumar Gupta (supra)* assumed that the prohibitory power could only be traced to Rules 53 and 64 of the NDPS Rules respectively, and stated that Rules 53 and 64 of the NDPS Rules respectively, were a genus and the other rules following in their

respective Chapters were species thereof. Therefore, since Rules 53 and 64 respectively, only related to the substances listed under Schedule I of the Rules, it was held that the dealing in of substances not finding a mention in Schedule I of the Rules and only listed under the Schedule to the Act, would be unregulated by the Rules and thus, would not amount to an offence under Section 8(c).

- xiii. On the other hand, *Sanjeev V. Deshpande (supra)* overruled *Rajesh Kumar Gupta (supra)* by explaining that it is Section 8(c) of the NDPS Act which prohibits various activities with respect to psychotropic substances and the source of this prohibitory power cannot be attributed to Rules 53 and 64 respectively. Rules 53 and 64 are in the nature of an exception to the general scheme of the NDPS Rules. While Rules 53 and 64 state that the substances under Schedule I of the Rules cannot be dealt with in any manner, the other substances i.e., those mentioned under the Schedule to the Act, are also regulated under the other rules in the respective Chapters of the NDPS Rules.
- xiv. However, what we understand as also being the essence of the scheme of the NDPS Rules is that, it does not absolutely prohibit the dealing in of the substances mentioned under Schedule I of the Rules as held in *Sanjeev V. Deshpande (supra)*. These substances figuring in Schedule I of the Rules can also be dealt with but only for the limited

purposes mentioned under Chapter VIIA of the NDPS Rules. This is evident from the re-phrasing of the NDPS Rules which was effected on 25.03.2015, which according to us, has not changed the meaning of the Rules but only altered its language.

- xv. Section 80 states that the provisions of the NDPS Act or the Rules made thereunder shall be in addition to, and not in derogation of the D&C Act and the Rules made thereunder. Therefore, when an offence under the D&C Act is made out or can potentially be made out, the accused can also be charged or prosecuted for an offence under the NDPS Act or *vice-versa*. The object sought to be achieved under both the legislations is also distinct i.e. the NDPS Act is a special law enacted to regulate the operations relating to narcotic drugs and psychotropic substances with a view to curb and penalise the usage of drugs by persons for intoxication etc., whereas the D&C Act was enacted to prevent substandard, adulterated and spurious drugs from entering the medical market and to maintain high standards in medical treatment. Hence, offences under both the enactments can also be said to have been constituted simultaneously, where the circumstances so require.

ii. Whether the decision in *Sanjeev v. Deshpande (supra)* should operate with prospective effect?

a. An overruling decision generally operates retrospectively.

91. The declaration of a statute dealing with substantive rights, by the legislature, is considered to be prospective unless it is expressly or by necessary implication made to have retrospective operation. The legal maxim "*Nova Constitutio Futuris Formam Imponere Debet, Non Praeteritis*" indicating that a new law ought to regulate what is to follow and not the past, carries with it a presumption of prospectivity and this presumption is generally said to operate unless the contrary is shown by an express provision in the statute or if the retrospectivity is otherwise discernible through necessary implication. This is because such statutes would have the consequence of affecting vested rights, impose new burdens or impair existing obligations. However, when a decision rendering an opinion as regards the interpretation of a penal provision is subsequently overruled by the decision of a larger bench, the consequence of the overruling is starkly different and by default, retrospective. This is because it is settled law that the law declared by this Court is retrospective and is normally assumed to be the law from the inception.

92. The operation of a newly enacted statute or rule must not be confused with the effect of a judgment. A judgement or decision which interprets a statute or provision thereof declares the meaning of the statute as it should be construed from the date of its enactment. In other words, the judgment declares what the legislature had said at the time when the law was promulgated and therefore, it has retrospective effect. On the contrary, it is the statute or the rule which is presumed to be prospective unless expressly made retrospective. What follows from the same, is that a decision or judgment enunciating a principle of law is applicable to all cases irrespective of the stage of pendency before different forums since what has been enunciated is the meaning of the law which existed from the inception of the concerned statute or provision. What has been declared to be the law of the land must be held to have always been the law of the land. This conclusion also stems from the rationale that the duty of the court is not to "*pronounce a new law but to maintain and expound the old one*". The judge rather than being the creator of the law, is only its discoverer.

93. This Court in *Sarwan Kumar and Another v. Madan Lal Aggarwal* reported in (2003) 4 SCC 147, opined that when this Court interprets an existing law while overruling the interpretation assigned to it earlier, it cannot be said that a new law is laid down. The declaration of law relates back to the law itself. In other words, it would be deemed that the law was never otherwise. Herein, a 5-

judge bench of this Court in *Gian Devi Anand v. Jeevan Kumar and Others* reported in (1985) 2 SCC 683 had held that the rule of heritability extends to the statutory tenancy of a commercial premises as much as to a residential premises under the Delhi Rent Control Act, 1958. In light of the same, the question for determination in *Sarwan Kumar (supra)* was whether a decree for ejectment which was passed by a civil court *qua* a commercial tenancy on the basis that the tenancy was not heritable, before the declaration of law in *Gian Devi Anand (supra)*, was executable or not? By stating that the jurisdiction of the civil court to pass the decree for ejectment was barred and that the decree obtained by the decree-holder cannot be executed owing to it being a nullity and *non-est*, this Court observed as follows:

15. [...] The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship on those who had trusted to its existence. Invocation of the doctrine of "prospective overruling" is left to the discretion of the Court to mould with the justice of the cause or the matter before the Court. This Court while deciding *Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1]* did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in *Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1]* would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in *Gian Devi Anand case [(1985) 2 SCC 683 :*

1985 Supp (1) SCR 1] or any other case. Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation, the finding recorded by the High Court that the rule laid down in *Gian Devi Anand* case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] by this Court would be applicable to the cases arising from the date of the judgment of this Court cannot be accepted being erroneous.

20. [...] This Court in *Gian Devi Anand* case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] did not lay down any new law but only interpreted the existing law which was in force. As was observed by this Court in *Lily Thomas* case [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] the interpretation of a provision relates back to the date of the law itself and cannot be prospective of the judgment. When the court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood right from the beginning as per its decision. In *Gian Devi* case [(1980) 17 DLT 197] the interpretation given by the Delhi High Court that commercial tenancies were not heritable was overruled being erroneous. Interpretation given by the Delhi High Court was not legal. The interpretation given by this Court declaring that the commercial tenancies heritable would be the law as it stood from the beginning as per the interpretation put by this Court. It would be deemed that the law was never otherwise. Jurisdiction of the civil court has not been taken away by the interpretation given by this Court. This Court declared that the civil court had no jurisdiction to pass such a decree. It was not a question of taking away the jurisdiction; it was the declaration of law by this Court to that effect. The civil court assumed the jurisdiction on the basis of the interpretation given by the High Court in *Gian Devi* case [(1980) 17 DLT 197] which was set aside by this Court.

(Emphasis supplied)

94. While addressing the issue of the temporal and retrospective effect of a judicial decision and declaring that a tribunal or court is bound by a higher court's decision on the point in issue, irrespective of whether it is declared either prior

to or subsequent to the order which is sought to be called into question by a party, this Court in *Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stick Exchange Limited* reported in (2008) 14 SCC 171 stated that a judicial decision acts retrospectively by placing reliance on the Blackstonian theory. According to this theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". Therefore, if the subsequent decision alters or overrules the earlier one, it cannot be said to have made a new law. The correct principle of law is just discovered and applied retrospectively. In other words, if in a given situation an earlier decision of the court operated for quite some time and it is overruled by a subsequent decision, the decision rendered subsequently would have retrospective effect and would serve to clarify the legal position which was not clearly understood earlier. Any transaction would then be covered by the law declared by the overruling decision. The overruling is generally retrospective with the only caveat being that matters that are res judicatae or accounts that have been settled in the meantime would not be disturbed. The relevant observations made by this Court are reproduced hereinbelow:

"35. In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only

discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

36. Salmond in his well-known work states:

"[T]he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicatae or accounts that have been settled in the meantime."

(Emphasis supplied)

- b. The intention to make the decision prospectively applicable or the application of the doctrine of "prospective overruling" must be express and clear.

95. Resorting to the doctrine of "prospective overruling" is therefore, an exception to the normal rule that a judgement or decision applies retrospectively and to the general rule of doctrine of precedent. The application of the doctrine is based on the philosophy that "*The past cannot always be erased by a new judicial declaration*". That the Court can contemplate giving prospective application to a law declared by it, stems from the premise that the Court is neither required to apply a decision retrospectively nor is it prohibited from applying it retrospectively. The merits and demerits of retrospective or

prospective application is examined and the doctrine is applied wherever appropriate and necessary. This is precisely why the express declaration by a court that its decision is prospectively applicable is a requisite condition. Prospectivity as a concept cannot be considered to be inhered in all situations since the intention to attribute prospectivity to a decision must be limpid and clear. The same has been reiterated in a catena of decisions by this Court.

96. That there is no prospective overruling unless it is so indicated expressly and in the clearest possible terms was laid down by this Court in *P.V. George and Others v. State of Kerala and Others* reported in (2007) 3 SCC 557.

"19. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto.

xxx

xxx

xxx

25. In service matters, this Court on a number of occasions have passed orders on equitable consideration. But the same would not mean that whenever a law is declared, it will have an effect only because it has taken a different view from the earlier one. In those cases it is categorically stated that it would have prospective operation.

xxx

xxx

xxx

29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective

operation or not. The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf."

(Emphasis supplied)

97. In another decision of this Court in *B.A. Linga Reddy and Others v. Karnataka State Transport Authority and Others* reported in (2015) 4 SCC 515, it was reiterated that in the absence of a declaration that the decision would operate prospectively, it must be given retrospective effect. The relevant observations are as thus:

"34. The view of the High Court in Ashrafulla [Karnataka SRTC v. Ashrafulla, Writ Appeal No. 403 of 1988, order dated 21-7-1988 (KAR). For order, see Karnataka SRTC v. Ashrafulla Khan, (2002) 2 SCC 560 at pp. 565-66, para 3] has been reversed by this Court. The decision is of retrospective operation, as it has not been laid down that it would operate prospectively; more so, in the case of reversal of the judgment. This Court in P.V. George v. State of Kerala [(2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] held that the law declared by a court will have a retrospective effect if not declared so specifically. [...]"

35. In *Ravi S. Naik v. Union of India* [1994 Supp (2) SCC 641], it has been laid down that there is retrospective operation of the decision of this Court. The interpretation of the provision becomes effective from the date of enactment of the provision. In *M.A. Murthy v. State of Karnataka* [(2003) 7 SCC 517 : 2003 SCC (L&S) 1076], it was held that the law declared by the Supreme Court is normally assumed to be the law from inception. Prospective operation is only exception to this normal rule. [...]"

(Emphasis supplied)

98. In yet another decision of this Court in *Manoj Parihar and Others v. State of Jammu and Kashmir and Others* reported in (2022) 14 SCC 72, where the bench comprised of one of us (J.B. Pardiwala, J.), it was opined that the doctrine of prospective overruling must be exercised in explicit terms and therefore, the law declared by this Court would have a retrospective effect unless stated otherwise. The observations are reproduced as thus:

"26. What was done in Bimlesh Tanwar [Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] was actually a declaration of law. Therefore, the same will have retrospective effect. In P.V. George v. State of Kerala [P.V. George v. State of Kerala, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823], this Court held that "the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically".

27. This Court was conscious of the fact, as could be seen from para 19 of the Report in P.V. George [P.V. George v. State of Kerala, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823], that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. But still this Court held that the power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be exercised in the clearest possible term.

28. Therefore, it is clear that anything done as a consequence of the decision of this Court in P.S. Ghalaut [P.S. Ghalaut v. State of Haryana, (1995) 5 SCC 625 : 1995 SCC (L&S) 1270], cannot stand since this Court did not apply the doctrine of prospective overruling in Bimlesh Tanwar [Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] in express terms. [...]"

(Emphasis supplied)

- c. The doctrine of "Prospective Overruling" and factors which may lead to the application thereof.

99. Prospective Overruling which was initially a doctrine familiar to American Jurisprudence was applied by this Court for the first time in *C. Golak Nath and Others v. State of Punjab and Another* reported in AIR 1967 SC 1643. By setting out certain limits for the application of this doctrine, it was laid down that the doctrine of prospective overruling can be invoked only in matters arising under the Constitution; that it could be applied only by this Court since it has the constitutional jurisdiction to declare the law binding on all courts in the country; and that the scope of the retroactive operation of the law which has been declared in supersession of its earlier decision(s) would be left to the Court's discretion to be moulded in accordance with the justice of the cause or matter before it. Over the period of time, this doctrine has been extended to the interpretation of ordinary statutes as well. Furthermore, the doctrine has also been applied in situations wherein the Court has dealt with the issue or the question of law for the first time. Therefore, it can be said that case-law trajectory has seen both the prospective declaration and the prospective overruling of law.

100. This Court in *Baburam v. C.C.Jacob and Others* reported in (1999) 3 SCC 362 elaborated on the reasons which necessitate the prospective declaration of

law by this Court, by stating that the object would be to avoid the reopening of settled issues, to prevent the multiplicity of proceedings, to curb uncertainty in law and thwart avoidable litigation. It was stated that, on the application of this doctrine, it is deemed that all actions taken contrary to the declaration of law but prior to the date of the declaration, are validated. The subordinate forums which are legally bound to apply the declaration of law made by this Court are also required to apply such a dictum to cases which would arise in future only. The pertinent observations made in the decision are reproduced hereinbelow:

"4. We are unable to agree with this view of the Tribunal. It is to be noted that the prospectivity given to Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] was obviously on the ground that there was a doubt in regard to the position of law until the same was clarified by this Court in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481]. The decision of the DPC was taken in June 1993; much prior to the judgment in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481]. It is only pursuant to the decision of the DPC, the appellant came to be promoted on 27-6-1994 which is also a date prior to the delivery of the judgment in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481]. In our opinion, the prospectivity was given to Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] only to see that the status prevailing prior to the judgment in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] should not be disturbed.

5. The prospective declaration of law is a devise innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest.

Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. In the instant case, both decisions of the DPC as well as the appointing authority being prior to the judgment in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] we are of the opinion that the Tribunal was in error in applying this decision. For this reason, these appeals succeed and are hereby allowed; setting aside the orders and directions made by the Tribunal in OAs Nos. 186 of 1994 and 961 of 1995."

(Emphasis supplied)

101. However, partly differing from the interpretation given in *Baburam (supra)*, the Constitutional Bench of this Court in *Somaiya Organics (India) Ltd. and Another v. State of U.P. and Another* reported in (2001) 5 SCC 519 had clarified that the application of the doctrine of prospective overruling would not have the effect of validating an invalid law. Therein, initially, a seven-judge bench of this Court in *Synthetics and Chemicals Ltd. and Others v. State of U.P. and Others* reported in (1990) 1 SCC 109, held that the provisions of State enactments permitting the levy of excise duty in the form of vend fee must be struck down prospectively from the date of its judgment i.e., from 25.10.1989. There was, however, some confusion on whether the State was entitled to collect the taxes in respect of the period prior to 25.10.1989 or not. As per the majority, prospective overruling, despite the terminology is only a recognition of the principle that the court moulds the relief claimed in order to meet the

justice of the case, more particularly justice not in its logical but in its equitable sense. Prospective overruling could be seen as a method which was evolved by the courts to adjust the competing rights of the parties so as to save transactions, whether statutory or otherwise, that were effected by the earlier law. Therefore, it was held that it would not be right to say that upon applying the doctrine of prospective overruling, an invalid law has been held to be valid during the past period. All that is done is that the declaration of invalidity of the legislation is directed to take effect from a future date. In the facts of the case, it was elaborated that what was intended was that the status quo as on 25.10.1989 be maintained as regards the actual payment or levy concerned. Hence, what had gone into the coffers of the Government with or without any strings attached, was to remain with it and what was not received was also not to be later realised by the Government. The relevant observations are reproduced hereinbelow:

"27. In the ultimate analysis, prospective overruling, despite the terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the justice of the case — justice not in its logical but in its equitable sense. As far as this country is concerned, the power has been expressly conferred by Article 142 of the Constitution which allows this Court to "pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it". In exercise of this power, this Court has often denied the relief claimed despite holding in the claimants' favour in order to do "complete justice".

28. Given this constitutional discretion, it was perhaps unnecessary to resort to any principle of prospective overruling, a view which was expressed in Narayanibai v. State of Maharashtra [(1969) 3 SCC 468] at p. 470 and in Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201 : 1997 SCC (L&S)

1299] In the latter case, while dealing with the "doctrine of prospective overruling", this Court said that it was a method evolved by the courts to adjust competing rights of parties so as to save transactions "whether statutory or otherwise, that were effected by the earlier law". According to this Court, it was a rule

"of judicial craftsmanship with pragmatism and judicial statesmanship as a useful outline to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law operated prior to the date of the judgment overruling the previous law".

Ultimately, it is a question of this Court's discretion and is, for this reason, relatable directly to the words of the Court granting the relief.

xxx

xxx

xxx

33. [...] These observations are in consonance with the directions given in para 89 of the judgment in second Synthetics case [(1990) 1 SCC 109] and applying the said principles to the present appeals the only conclusion which can be arrived at is that this Court intended the status quo as on 25-10-1989 to be maintained as regards actual payment or levy was concerned. What had gone to the coffers of the Government with or without any strings attached, was to remain with it and what was not received could not be realised by the Government.

xxx

xxx

xxx

36. It is true that the effect of a legislation without legislative competence is that it is non est. (See *Behram Khurshid Pesikaka v. State of Bombay* [(1954) 1 SCC 240 : AIR 1955 SC 123 : (1955) 1 SCR 613] at SCR pp. 652, 653, R.M.D. Chamarbaugwalla v. Union of India [AIR 1957 SC 628 : 1957 SCR 930] at p. 940, *M.P.V. Sundararamier & Co. v. State of A.P.* [AIR 1958 SC 468 : 1958 SCR 1422] at SCR p. 1468 and *Mahendra Lal Jaini v. State of U.P.* [AIR 1963 SC 1019 : 1963 Supp (1) SCR 912] at SCR pp. 937-41.)

37. Nevertheless a law enacted without legislative competence remains on the statute-book till a court of competent jurisdiction adjudicates thereon and declares it to be void. When the court declares it to be void it is only then that it can be said that it is non est for all purposes. In *Synthetics and Chemicals case* [(1990) 1 SCC 109] the invalidity of the provisions was a declaration under Article 141 of the Constitution. It was for doing complete justice that the court in exercise of its jurisdiction under Article 142 moulded the relief in such a way as to give effect to its declaration prospectively. It is not possible to accept that such an order of prospective overruling is contrary to law. An invalid law has not been held to be valid. All that has happened is that the declaration of invalidity of the legislation was directed to take effect from a future date."

(Emphasis supplied)

102. In a concurring opinion, Ruma Pal, J., while responding to the argument that the court cannot breathe life into a dead or invalid statute up to the date of its judgment by subscribing to prospectivity, stated that such a contention proceeds on a misunderstanding of the effect of prospective overruling. It was opined that when the doctrine is applied, the Court must not be seen to be authorising or validating something that had been declared to be illegal or void, nor must the decision be construed as imbuing the legislature with competence to impose the levy up until the law was declared to be invalid. The relevant observations are as follows:

"45. One of the arguments of the appellant as noted by my learned brother was that the Court in *Synthetics case* [(1990) 1 SCC 109] by resorting to prospective overruling had in fact sought to uphold a law up to the period of the judgment which law had held to have been passed without competence. It is submitted that the finding that the States were not competent to levy tax on industrial alcohol meant that the State Acts were non est and that the Court could not

by giving prospective effect to its judgment breathe life into a dead statute up to the date of the judgment. It was also contended by the appellant that even under Article 142, the Court could not whittle down or act in derogation of any constitutional provision. By declaring that the statute was valid up to the date of the judgment, according to the appellant, the specific constitutional provisions, namely, Article 246 and Article 245 were infringed. Reliance has been placed on the decision of this Court in Prem Chand Garg v. Excise Commr., U.P. [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] and Supreme Court Bar Assn. v. Union of India [(1998) 4 SCC 409].

46. The argument of the appellant proceeds on a misunderstanding of the effect of prospective overruling. As has been elaborately stated in my learned brother's judgment, by prospective overruling the court does not grant the relief claimed even after holding in the claimant's favour. In this case, the Court held that the statutory provision imposing vend fee was invalid. Strictly speaking, this would have entitled the appellant to a refund from the respondents of all amounts collected by way of vend fee. But because, as stated in Synthetics [(1990) 1 SCC 109] decision itself, over a period of time imposts and levies had been imposed by virtue of the earlier decision and that the States as well as the petitioners and manufacturers had adjusted their rights and their positions on that basis, this relief was denied. The Court did not, by denying the relief, authorise or validate what had been declared to be illegal or void nor did it imbue the legislature with competence up to the date of the judgment."

(Emphasis supplied)

103. Therefore, the court does not make legal, something that is illegal, for the past period by invoking the doctrine of prospective overruling. On the contrary, upon giving due consideration to what has been expounded in *Somaiya Organics (supra)*, it is clear that the idea behind the invocation of the doctrine is to meet the justice of each case in the most practical and equitable sense. In

addition to this, the doctrine also seeks to adjust and balance the competing rights of all the parties involved i.e., parties who on one hand, had acted solely on the basis of an invalid law or an overruled decision and altered their respective rights and positions, and on the other, the parties who had brought a successful case in establishing that the law or decision which existed in operation was invalid. To prevent the chaotic unscrambling of actions done in the past, a middle-ground is reached by postponing the decision declaring the invalidity to a particular date while keeping in mind the larger interest of doing complete justice. That ensuring "complete justice" in the most equitable way is the true essence of the doctrine is also evident from the fact that this Court also has, on several occasions, prescribed the limits of retroactivity of the law declared by it.

104. Such a demarcation of the limits of retroactivity was done in *Kailash Chand Sharma v. State of Rajasthan and Others* reported in (2002) 6 SCC 562, wherein the issue was as regards the grant of bonus marks in the recruitment process for Primary School Teachers in Zila Parishads solely to applicants belonging to the district and rural areas of certain specified districts and, whether the same would be violative of Articles 14 and 16 of the Constitution respectively. By relying on the Full Bench decision of the High Court dated 21.10.1999 rendered in *Deepak Kumar Suthar v. State of Rajasthan* reported

in (1999) 2 Raj LR 692 (FB), the impugned Full Bench decision dated 18.11.1999 and another impugned Division Bench decision of the High Court reiterated that, providing any form of advantage or weightage in public employment in any State service, would not be permissible on the ground of place of birth or residence or, on the ground of being a resident of an urban area or rural area. This Court while agreeing with the impugned decisions had observed that the legality of the selection process which included the addition of bonus marks could not have been seriously doubted either by the appointing authorities or by the candidates, in view of the judicial precedents which operated at the relevant time. A cloud of doubt was cast on the said practice only at a time when the selection process was completed and the results were declared or about to be declared. Therefore, under such circumstances, it was considered proper to apply the impugned judgment dated 18.11.1999 rendered by the Full Bench of the High Court prospectively. Such a recourse was also considered appropriate considering that none of the appointed or selected candidates were made parties to the respective writ petitions before the High Court. Therefore, this Court thought fit to not implement the Full Bench decision of the High Court, which treaded a new path, to the detriment of the candidates who were already appointed. With a view to balance the competing claims, the relief was confined only to the petitioners who were affected by the grant of bonus marks and who had moved the High Court on or before

17.11.1999. Therefore, the appointments made on or after 18.11.1999 was subject to the claims of the writ petitioners i.e., if upon a fresh consideration of the candidature of the writ petitioners as against those candidates who were appointed on or after 18.11.1999, the writ petitioners were found to have had superior merit, they would be offered appointments even by displacing the candidates appointed on or after 18.11.1999, if necessary. In other words, only for the petitioners who had moved the High Court prior to 18.11.1999, retrospective benefit of the Full Bench decision was given. Otherwise, the appointments made up to 17.11.1999 were not to be reopened or reconsidered. However, the aforesaid relief was tailored with a clear disclaimer that it was moulded in view of the special facts and circumstances of the case and while acting within the jurisdiction conferred upon this Court under Article 142 of the Constitution. The relevant observations are reproduced hereinbelow:

"42. [...] In the present case, the legality of the selection process with the addition of bonus marks could not have been seriously doubted either by the appointing authorities or by the candidates in view of the judicial precedents. A cloud was cast on the said decisions only after the selection process was completed and the results were declared or about to be declared. It is, therefore, a fit case to apply the judgment of the Full Bench rendered subsequent to the selection prospectively. One more aspect which is to be taken into account is that in almost all the writ petitions the candidates appointed, not to speak of the candidates selected, were not made parties before the High Court. Maybe, the laborious and long-drawn exercise of serving notices on each and every party likely to be affected need not have been gone through. At least, a general notice by newspaper publication could have been sought for or in the alternative, at least a few of the last candidates selected/appointed could have been put on notice; but,

that was not done in almost all the cases. That is the added reason why the judgment treading a new path should not as far as possible result in detriment to the candidates already appointed. We are not so much on the question whether the writ petitioners were legally bound to implead all the candidates selected/appointed during the pendency of the petitions having regard to the fact that they were challenging the notification or the policy decision of general application; but, we are taking this fact into consideration to lean towards the view of the High Court that its judgment ought to be applied prospectively, even if the non-impleadment is not a fatal flaw.

43. Prospectivity to what extent is the next question. [...]

xxx

xxx

xxx

46. Having due regard to the rival contentions adverted to above and keeping in view the factual scenario and the need to balance the competing claims in the light of acceptance of prospective overruling in principle, we consider it just and proper to confine the relief only to the petitioners who moved the High Court and to make appointments made on or after 18-11-1999 in any of the districts subject to the claims of the petitioners. Accordingly, we direct:

1. The claims of the writ petitioners should be considered afresh in the light of this judgment vis-à-vis the candidates appointed on or after 18-11-1999 or those in the select list who are yet to be appointed. On such consideration, if those writ petitioners are found to have superior merit in case the bonus marks of 10% and/or 5% are excluded, they should be offered appointments, if necessary, by displacing the candidates appointed on or after 18-11-1999.

2. The appointments made up to 17-11-1999 need not be reopened and reconsidered in the light of the law laid down in this judgment. [...]

47. Before parting, we must say that we have moulded the relief as above on a consideration of special facts and circumstances of this case acting within the framework of powers vested in this Court under Article 142 of the Constitution. Insofar as the relief has been

granted or modified in the manner aforesaid, this judgment may not be treated as a binding precedent in any case that may arise in future."

(Emphasis supplied)

105. Therefore, the birth of the doctrine of prospective overruling, although not indigenous to India, yet has been well entrenched in Indian jurisprudence. As a default rule, any judgment deciding a question of law would be retrospective and would apply to the factual situation in the background of which such a decision is rendered. However, it is only when the hardship is too great that such a retrospective operation is withheld. Broadly, the doctrine has been applied in order to not unsettle everything that was undertaken in the past either on account of an existing law/rule or a decision of the court. The object is to ensure a smooth transition of the law and not disturb matters that have attained finality. Time and again, it has been reiterated that prospective overruling is an accepted doctrine as an extended facet of stare decisis. The doctrine has been invoked under several different subject-matters, for several reasons, each unique to the facts and circumstances of particular case.

106. In *Managing Director, ECIL, Hyderabad and Others v. B. Karunakar and Others* reported in (1993) 4 SCC 727, a constitutional Bench of this Court was concerned with whether a delinquent employee is entitled to a copy of the enquiry report of the enquiry officer, before the disciplinary authority takes a

decision on the guilt of the delinquent, especially when the enquiry officer is someone other than the disciplinary authority. By declaring that such a right is available to the delinquent employee and the same being denied would amount to depriving him of reasonable opportunity and violate his rights under Articles 14 and 21 of the Constitution respectively, along with the principles of natural justice, this Court affirmed the decision of this Court in *Union of India and Others v. Mohd. Ramzan Khan* reported in (1991) 1 SCC 588. *Mohd. Ramzan Khan (supra)* contained a declaration that its decision would apply prospectively i.e., to orders of punishment passed after the date of its decision on 20.11.1990. In other words, the law laid down in *Mohd. Ramzan Khan (supra)* was not applicable to the orders of punishment passed before the aforesaid date notwithstanding the fact that the proceedings arising out of the same were pending in courts even after that date. Such pending proceedings were to be decided in accordance with the law prevalent prior to the said date.

107. While holding so, it was stated that courts can make the law laid down by them prospective in operation to prevent the unsettlement of settled positions, to prevent administrative chaos and to meet the ends of justice. The law on the subject being in a state of flux was also a factor that was emphasized to a large extent. In *B. Karunakar (supra)*, the authorities all over the country had proceeded on the basis that there was no need to furnish a copy of the report of

the enquiry officer to the delinquent employee and innumerable employees were also punished as a result of those proceedings. There were some cases wherein the orders of punishment had become final and in some others, the matters were pending in courts at different stages. Reopening all those disciplinary proceedings would have resulted in grave prejudice to the administration which was considered as far outweighing the benefit which would potentially accrue to the employees concerned if the disciplinary proceedings were allowed to be disturbed. Therefore, on a holistic perspective and giving due regard to both administrative reality and public interest, it was considered necessary that the prospectivity given to the decision in *Mohd. Ramzan Khan (supra)* not be disturbed. The relevant observations of the majority opinion are reproduced hereinbelow:

"34. [...] It is now well settled that the courts can make the law laid down by them prospective in operation to prevent unsettlement of the settled positions, to prevent administrative chaos and to meet the ends of justice. In this connection, we may refer to some well-known decisions on the point.

43. [...] It has, therefore, to be accepted that at least till this Court took the view in question in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the law on the subject was in a flux. Indeed, it is contended on behalf of the appellants/petitioners before us that the law on the subject is not settled even till this day in view of the apparent conflict in decisions of this Court. The learned Judges who referred the matter to this Bench had also taken the same view. We have pointed out that there was no contradiction between the view taken in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] and the view taken by this Court in the earlier cases and the reliance placed on K.C. Asthana

case [(1988) 3 SCC 600 : 1988 SCC (L&S) 869] to contend that a contrary view was taken there was not well-merited. It will, therefore, have to be held that notwithstanding the decision of the Gujarat High Court in N.N. Prajapati case [(1985) 2 GLR 1406] and of the Central Administrative Tribunal in Premnath K. Sharma case [(1988) 6 ATC 904 : (1988) 3 SLJ (CAT) 449] and of the other courts and tribunals, the law was in an unsettled condition till at least November 20, 1990 on which day the Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after November 20, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the enquiry report to the delinquent employee. The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to November 20, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505]. This is so notwithstanding the view taken by the different benches of the Central Administrative Tribunal or by the High Courts or by this Court in R.K. Vashisht case [1993 Supp (1) SCC 431 : 1993 SCC (L&S) 153 : (1993) 23 ATC 444 (II)].

44. The need to make the law laid down in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the enquiry officer to the delinquent employee and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration

which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] without furnishing the report of the enquiry officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above."

(Emphasis supplied)

108. The minority opinion rendered by K. Ramaswamy, J., also illustrated the circumstances and the potential reasons due to which the doctrine of prospective overruling may be resorted to. It was opined that under constitutional law, retrospective operation of an overruling judgment is neither required nor prohibited. The decision as regards retrospectivity or prospectivity must depend on the facts and circumstances of each case, as also the nature and purpose which the overruling decision seeks to serve. Other relevant factors which must be taken account of include the justifiable reliance which has been placed by the administration on the overruled decision, the ability to effectuate the new rule adopted in the overruling case without doing injustice and whether the likelihood of its retrospective operation substantially burdens the administration of justice. Prior history of the rule in question, its purpose and effect and whether the retroactive operation will accelerate or retard its operation are also significant considerations. The relevant observations are reproduced as thus:

"66. When judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions or prospectively to the transactions in future only. [...]"

xxx

xxx

xxx

73. It would, thus, be clear that the Supreme Court of the United States of America has consistently, while overruling previous law or laying a new principle, made its operation prospective and given the relief to the party succeeding and in some cases given retrospectively and denied the relief in other cases. As a matter of constitutional law retrospective operation of an overruling decision is neither required nor prohibited by the Constitution but is one of judicial attitude depending on the facts and circumstances in each case, the nature and purpose the particular overruling decision seeks to serve. The court would look into the justifiable reliance on the overruled case by the administration; ability to effectuate the new rule adopted in the overruling case without doing injustice; the likelihood of its operation whether substantially burdens the administration of justice or retards the purpose. All these factors are to be taken into account while overruling the earlier decision or laying down a new principle. The benefit of the decision must be given to the parties before the Court even though applied to future cases from that date prospectively would not be extended to the parties whose adjudication either had become final or matters are pending trial or in appeal. [...] This Court would adopt retroactive or non-retroactive effect of a decision not as a matter of constitutional compulsion but a matter of judicial policy determined in each case after evaluating the merits and demerits of the particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard its operation. The reliance on the old rule and the cost of the burden of the administration are equally germane and be taken into account in deciding to give effect to prospective or retrospective operation."

(Emphasis supplied)

109. Following the spirit of the discussion in *B. Karunakar (supra)*, this Court has invoked the doctrine of prospective overruling only when it has been appropriate and absolutely necessary to do so. In *K. Madhava Reddy and Others v. State of Andhra Pradesh and Others* reported in (2014) 6 SCC 537, it was observed that the doctrine of prospective overruling was a rule of judicial craftsmanship laced with pragmatism and judicial statesmanship which intends to serve as an useful tool, ensuring the smooth transition of the operation of law, without unduly affecting the rights of the people who acted upon the law which existed or operated previously. In the facts of the case, it was observed that the reversion of the petitioner to their parent cadre was bound to have a cascading effect which would prejudice several persons who are not even parties before the Court. The relevant observations are as follows:

"16. The "doctrine of prospective overruling" was observed by this Court as a rule of judicial craftsmanship laced with pragmatism and judicial statesmanship as a useful tool to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law that operated prior to the date of the judgment overruling the previous law.

xxx

xxx

xxx

22. [...] Such being the position reverting these officers at this distant point of time, to the posts of Senior Stenographers in their parent cadre does not appear to us to be either just, fair or equitable especially when upon reversion the State does not propose to promote them to the higher positions within their zone/cadre because such higher posts are occupied by other officers, most if not all of whom are junior to the petitioners and who may have to be reverted to make room for the petitioners to

hold those higher posts. Reversion of the petitioners to their parent cadre is therefore bound to have a cascading effect, prejudicing even those who are not parties before us.

xxx

xxx

xxx

24. In the result, we allow these appeals, set aside the orders passed by the High Court and hold that while GOMs Nos. 14 and 22 have been rightly declared to be ultra vires of the Presidential Order by the State Administrative Tribunal, the said declaration shall not affect the promotions and appointments made on the basis of the said GOMs prior to 7-11-2001, the date when Jagannadha Rao [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] was decided by this Court. The parties are left to bear their own costs."

(Emphasis supplied)

110. On the other hand, in *Justice Chandrashekaraiah (Retired) v. Janekere C. Krishna and Others* reported in (2013) 3 SCC 117 while holding that the appointment of the Upa-Lokayukta made in the absence of any consultation with the Chief Justice was void ab-initio, the Court refused to apply the principle of prospective overruling to save the appointment in question. It was stated that there was no overwhelming reason to save the appointment from attack and the defence that such were the appointments made in the past would be of no avail since merely because a wrong had been committed several times in the past, would not mean that it must be allowed to persist, otherwise the wrong would never be corrected. The relevant observations of this Court are reproduced hereinbelow:

"156. It was submitted that the practice followed for the appointment of the Upa-Lokayukta in the present case is the same or similar to the practice followed in the past and, therefore, this Court should not interfere with the appointment already made. If at all interference is called for, the doctrine of "prospective overruling" should be applied.

157. I am not inclined to accept either contention. Merely because a wrong has been committed several times in the past does not mean that it should be allowed to persist, otherwise it will never be corrected. The doctrine of "prospective overruling" has no application since there is no overwhelming reason to save the appointment of the Upa-Lokayukta from attack. As already held, in the absence of any consultation with the Chief Justice, the appointment of Justice Chandrashekaraiyah as an Upa-Lokayukta is void ab initio. However, this will not affect any other appointment already made since no such appointment is under challenge before us."

(Emphasis supplied)

111. Yet another decision of this Court in *Union of India v. I.P. Awasthi and Others* reported in (2015) 17 SCC 340 took the view that it would not be appropriate to apply the doctrine of prospective overruling when a large number of parties are not affected. The doctrine was stated to have been evolved to avoid confusion in matters where a large number of parties have settled their affairs on account of the overruled law. Since larger public interest was not involved in the facts of the case, this Court refrained from applying the said doctrine and struck down the amended rule retrospectively. The relevant observations are reproduced as thus:

“3. There is no doubt that this Court has evolved the doctrine of prospective overruling in order to avoid confusion in matters where large number of parties have settled their affairs by the law which stood before the overruling was done by this Court. We are, however, unable to accede to the request made by the learned counsel for the appellants for two reasons. First, we are informed at the Bar that the amendment to the Rules was made in the year 1992 and CAT set aside the amendment in the year 2000. During this period, there were only 12 promotions that were granted under the amended Rules. As a consequence of the order of CAT being upheld by the judgment [Union of India v. I.P. Awasthi, WP (C) No. 5460 of 2001, order dated 5-2-2002 (Del)] of the High Court under challenge, it is only 12 cases which have to be reopened. We are not, therefore, satisfied that large public interest is likely to be affected by permitting the amended Rule being struck down retrospectively from the date on which it was amended. Second, the doctrine of prospective overruling pertains only to the powers of this Court. As far as CAT is concerned, we doubt that there is any such doctrine available for exercise of its powers. For both reasons, we decline the suggestion made.”

(Emphasis supplied)

112. In *Union of India and Another v. Ganpati Dealcom Private Limited* reported in (2023) 1 SCC 315, it was succinctly explained that the application of the doctrine is only a limited exception and must be resorted to when substantial actions have been undertaken under the invalid laws such that going back to the original position would be next to impossible and observed as thus:

“66. At this stage, we may only note that when a court declares a law as unconstitutional, the effect of the same is that such a declaration would render the law not to exist in the law books since its inception. It is only a limited exception under constitutional law, or when substantial actions have been undertaken under such unconstitutional laws that going back to

the original position would be next to impossible. In those cases alone, would this Court take recourse to the concept of "prospective overruling".

(Emphasis supplied)

113. Therefore, it is clear as a noon day that the invocation of the doctrine of prospective overruling or the attribution of prospectivity to a decision must not be resorted to in a routine manner without the Court satisfying itself that the circumstances demand such a solution, both to do complete justice to the matter at hand and also to reorient the law in the right direction without creating widespread chaos and disruption. By employing the doctrine of prospective overruling, the matter pending before different forums would still be governed under the old law or the overruled decision. In simpler words, the pending cases would not be affected by the new declaration of law. In the absence of this the Court applying this doctrine, all pending matters and future cases would automatically and inescapably be governed by the law declared in the overruling decision. In certain situations, it might be preferable on a holistic consideration of several competing interests and factors to invoke the doctrine of prospective overruling and therefore, it could be said that the ambit of the doctrine is co-extensive with the equity of a situation to prevent the intrusion into matters which have already been settled or have attained finality. The principle involves giving effect to the new law laid down from a prospective date, ordinarily from the date of the judgement of the overruling decision.

- d. It would be open for another bench to subsequently decide on the application of the doctrine of prospective overruling to a past decision.

114. Another pertinent question for the purpose of our discussion would be, whether the prospective operation of a particular decision delivered in the past can be decided subsequently by a different bench, which is concerned with the same question of law, especially when the previous decision is silent on the question of prospectivity or retrospectivity. There has been some debate as to whether this would amount to a review of the said decision under a non-review jurisdiction.

115. In *Saurabh Chaudri (Dr.) and Others v. Union of India and Others* reported (2004) 5 SCC 618, a constitutional Bench of this Court decided on the issue of the temporal operation of a judgment already declared. Here, several applications were filed seeking clarifications and directions for implementing the judgment of a Coordinate Bench of this Court in *Saurabh Chaudri v. Union of India* reported in (2003) 11 SCC 146 which concluded that for post-graduate (PG) admission to medical colleges, the all-India quota must be increased from 25% to 50%. The aforesaid decision was rendered on 04.11.2003 but was silent both on whether it would be applicable to the process of admissions which had already commenced or if it would have prospective application. In a majority opinion, it was declared that the judgement of the Coordinate Bench in *Saurabh*

Chaudri (supra) delivered on 04.11.2003 would be implemented prospectively from the academic year 2005-06 since the entire admission procedure for the academic year 2004-05 was already planned on the basis of the 25% all-India quota. However, S.B. Sinha, J in his minority opinion was of the view that the decision must be implemented from the academic year 2004-05 itself since the examinations were conducted much after the rendition of the judgment on 04.11.2003 and any action taken contrary to the decision thereto must be considered to be taken by the appropriate authorities at their own peril. The relevant observations made by this Court, in its majority opinion, is as follows:

"5. In our opinion, it would be appropriate to hold and direct the decision in Saurabh Chaudri case [(2003) 11 SCC 146] being made applicable only prospectively and thus exclude from the operation thereof the process of admission which had already commenced and was nearing finalisation when the judgment came to be pronounced.

6. Accordingly, it is directed that the allotment of seats under the all-India quota, the process as to which had commenced pursuant to the advertisement dated 16-9-2003 shall remain confined to 25% only. [...]

(Emphasis supplied)

116. S.B. Sinha, J., in his minority opinion had agreed with the general proposition that the declaration of law by reason of a judgment may affect the rights of parties retrospectively. Having said so, he expressed serious doubt as to whether a Constitution Bench can modify the judgment of another Constitution Bench for the purpose of declaring the former to have prospective effect, even

under the exercise of Article 142 of the Constitution. Such an exercise of the jurisdiction under Article 142, in his opinion, would only be appropriate during the rendition of the judgment and not thereafter. If a different view than the one arrived at in the initial judgement is sought to be taken, then it is the review jurisdiction which must be invoked. S.B. Sinha, J., went on to observe that if the decision of the initial judgment can be given effect to, then a direction which would run contrary to that ratio must not be issued subsequently. It was in this context that he opined that, a prayer seeking the prospective declaration of a decision which has already been made would amount to asking for a review and that would not be permissible. Therefore, according to him, the decision delivered on 04.11.2003 could not have been given effect to, prospectively, from the academic year 2005. The relevant observations are as follows:

"20. By reason of a judgment, as is well known, a law is declared. Declaration of such law may affect the rights of the parties retrospectively. Prospective application of a judgment by the court must, therefore, be expressly stated.[...]"

xxx

xxx

xxx

32. A statute is applied prospectively only when thereby a vested or accrued right is taken away and not otherwise. (See S.S. Bola v. B.D. Sardana [(1997) 8 SCC 522] .) A judgment rendered by a superior court declaring the law may even affect the right of the parties retrospectively.

xxx

xxx

xxx

34. Furthermore, it is extremely doubtful whether a Constitution Bench can modify a judgment rendered by a different Constitution Bench even in exercise of its jurisdiction under Article 142 of the

Constitution of India. The jurisdiction of this Court under Article 142 of the Constitution of India must be applied at the time of rendition of the judgment and not thereafter. After a judgment is rendered the Court can only exercise its power of review, if it intends to take a different view from the one rendered in the main judgment. Review of the judgment cannot be granted in the garb of a clarification. (See Delhi Admn. v. Gurdip Singh Uban [(2000) 7 SCC 296] .)

35. Furthermore, an order of review or modification of a judgment should not also ordinarily be passed at the behest of the applicants who are not parties to the writ petition. [...]

36. We must notice that it is not a case of the Union of India that the judgment in Saurabh Chaudri [(2003) 11 SCC 146] cannot be given effect to even at this stage. If it can be given effect to the Court should not issue a direction which would run contrary to the ratio laid down by this Court in the main judgment, particularly when the examinations had been held much after the rendition of the judgment. Asking the Court to apply the judgment of this Court with prospective effect would amount to asking for a review and, thus, the same cannot be permitted to be achieved by filing an application for clarification.

37. Application for clarification/modification filed by the Union of India is based on wholly wrong premise. A judgment, as is well known, must be read as a whole. So read it is evident that declaration of law has clearly been made therein. There does not exist any ambiguity requiring clarification.

38. Therefore, I respectfully dissent with the opinion of Brother Lahoti, J. I am of the view that no case has been made out for applying the judgment in Saurabh Chaudri [(2003) 11 SCC 146] from the academic year 2005."

(Emphasis supplied)

117. It must be noted that the majority opinion in *Saurabh Chaudri (supra)* which was inclined towards declaring the previous judgment prospectively applicable, was given when several IAs were filed seeking clarifications in or modification

of the judgment which was already rendered in the same matter on 04.11.2023. It was not an occasion where an altogether different bench was tasked with deciding on the prospective applicability of a previous decision rendered by a completely different bench. This question was, however, directly in issue before a three-judge bench of this Court in *Jarnail Singh and Others v. Lachhmi Narain Gupta and Others* reported in (2022) 10 SCC 595. Herein, one of the issues was whether the judgment in *M. Nagaraj v. Union of India* reported in (2006) 8 SCC 212 could be said to operate prospectively. *M. Nagaraj (supra)* upheld the constitutional validity of Article 16(4-A) subject to the State collecting quantifiable data showing inadequate representation. The law laid down therein applied from 17.06.1995 i.e., the date on which Article 16(4-A) came into force. While agreeing with the contention that the decision in *M. Nagaraj (supra)* must be given prospective effect from the date of its decision on 19.10.2006, the Court referred to the US Supreme Court decision in *Victor Linkletter v. Victor G. Walker* reported in 1965 SCC OnLine US SC 126 where an earlier judgement of the US Supreme Court in *Mapp v. Ohio* reported in 367 U.S. 643 was declared to be prospective in operation after considering the consequences that will ensue with its retrospective operation. With a view to avoid any confusion, and also to prevent the debilitating effect that it would have had on a very large number of employees, the Court declared that a prior judgment of this Court can be made prospectively applicable by a

different or even a smaller bench of this Court subsequently, in exercise of the power to do complete justice under Article 142. Furthermore, it was held that it would not be an absolute rule that prospective overruling or the prospective operation of a decision must be declared only by the bench which has rendered the decision in question. The contrary view taken by this Court in *M.A. Murthy v. State of Karnataka* reported in (2003) 7 SCC 517 that there shall be no prospective overruling unless indicated in the "particular decision" was declared to be *obiter* and not binding. Therefore, the three-judge bench in *Jarnail Singh (supra)* declared the decision of the five-judge Constitution Bench in *M. Nagaraj (supra)* to have prospective operation. The relevant observations are as thus:

"62. This Court in *Golak Nath [Golak Nath v. State of Punjab, (1967) 2 SCR 762 : AIR 1967 SC 1643]* and *Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299]*, referred to above, has laid down that Article 142 empowers this Court to mould the relief to do complete justice. To conclude this point, the purpose of holding that *M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013]* would have prospective effect is only to avoid chaos and confusion that would ensue from its retrospective operation, as it would have a debilitating effect on a very large number of employees, who may have availed of reservation in promotions without there being strict compliance of the conditions prescribed in *M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013]*. Most of them would have already retired from service on attaining the age of superannuation. The judgment of *M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013]* was delivered in 2006, interpreting Article 16(4-A) of the Constitution which came into force in 1995. As making the principles laid down in *M. Nagaraj [M. Nagaraj v. Union of*

India. (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] effective from the year 1995 would be detrimental to the interests of a number of civil servants and would have an effect of unsettling the seniority of individuals over a long period of time. it is necessary that the judgment of M. Nagaraj [M. Nagaraj v. Union of India. (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] should be declared to have prospective effect."

(Emphasis supplied)

- e. Applicability or non-applicability of doctrine of prospective overruling in criminal matters, so far.

118. As repeatedly discussed in the aforesaid parts of this judgment, the doctrine of prospective overruling was designed to prevent the unravelling of past transactions and the re-opening of matters which have already attained finality. In so far as the applicability of the doctrine or a rationale similar to it, to matters pertaining to criminal law are concerned, this Court has in the past held that acquittals granted on the basis of the earlier position/interpretation of law must not be interfered with.

119. In *State of Kerala and Others v. Allassery Mohammed and Others* reported in (1978) 2 SCC 386, the issue pertained to whether non-compliance with the requirement of Rule 22 of the Prevention of Food Adulteration Rules, 1955 would vitiate the entire trial and the conviction recorded therein. While this Court's decision in *Rajal Das Guru Namal Pamanani v. State of Maharashtra* reported in (1975) 3 SCC 375 held that the quantities mentioned under the said rule are required for a correct analysis and any shortage in the said quantity is

not permitted by the Statute, however, *Alassery (supra)* held that if the quantity sent to the Public Analyst, even though less than prescribed, is sufficient and enables the Public Analyst to make a correct analysis, then merely because the quantity sent was not in strict compliance with the Rule will not result in the nullification of the report and obliterate its evidentiary value. This was held by keeping in mind that it would endanger public health to acquit offenders on technical grounds which have no substance. However since *Pamanani (supra)* had held the field for a significant time and several prosecutions had resulted in acquittals in the meantime, the Court found it fit to dispose of the appeals by only laying down the correct proposition of law. Neither were the acquittals of any of the respondents set aside nor were their cases sent back to the Courts below. The relevant observations are reproduced hereinbelow:

17. [...] But taking the totality of the facts and circumstances of each case, and specially the fact that Pamanani case has held the field for about three years by now, we did not feel that justice required that we should interfere with the orders of acquittal in these cases and send some cases back to the High Court while deciding other ourselves by recording orders of conviction. Rule 22-B clarifying the law has also been introduced as late as December, 1977 although Pamanani case was decided in December, 1974. We were informed at the Bar, and so far we are aware, rightly too, that for non-compliance with the requirements of Rule 22, many cases in different States had ended in acquittal. Decision in many of them became final and only a few could be brought to this Court. Each one of the Food Inspectors concerned had failed in discharging his duty strictly in accordance with the requirements of the law, and, in such a situation, after great harassment, long delay, and expenses which the respondents had to incur, they should not be punished by this Court.

18. In the three Kerala cases Mr S.V. Gupte appearing with Mr K.R. Nambiar and Mr Sudhakaran stated before us that the State was interested more in the correct enunciation of the law than in seeing that the respondents in these appeals are convicted. They were not anxious to prosecute these matters to obtain ultimate conviction of the respondents. A large number of the other appeals are by the Municipal Corporation of Delhi for whom the Attorney General appeared assisted by Mr B.P. Maheshwari. Although a categorical stand was not taken on behalf of the appellants in these appeals as the one taken in the Kerala cases, eventually, the learned Attorney General did not seriously object to the course indicated by us. In the few Bombay appeals M/s V.S. Desai and M.N. Shroff showed their anxiety for obtaining ultimate convictions of the offenders, but we do not find sufficient reason for passing a different kind of order in the Bombay appeals. In similar situations in the case of *State of Bihar v. Hiralal Kejriwal* [AIR 1960 SC 47 : (1960) 1 SCR 726 : 1960 Cri LJ 150] this Court refused to exercise its discretionary jurisdiction under Article 136 of the Constitution and did not order the continuance of the criminal proceeding any further. In *Food Inspector, Calicut Corporation v. Cherukattil Gopalan* [(1971) 2 SCC 322 : 1971 SCC (Cri) 522 : 1971 Supp SCR 721] this Court said at p. 730 :

"But in view of the fact that the appellant has argued the appeal only as a test case and does not challenge the acquittal of the respondents, we merely set aside the order and judgment of the High Court. But we may make it clear that apart from holding the respondents technically guilty, we are not setting aside the order of acquittal passed in their favour."

19. For the reasons stated above, we dispose of these appeals by merely laying down the correct proposition of law but do not make any consequential orders setting aside the acquittal of any of the respondents or sending back the cases to the courts below or convicting any of them by an order of this Court."

(Emphasis supplied)

120. In *Alassery (supra)*, there was no mention of the doctrine of prospective overruling being applied to the facts of the case. What was done was that the

Court refrained from setting aside the acquittals of any of the respondents therein or sending their cases back for re-trial to the appropriate court or convicting any of the respondents therein by an order of the Court itself. However, there was no mention as regards matters which may have been pending before a trial court and which required a consideration of this issue. This may have been so because Rule 22-B which was introduced three years after the decision in *Pamanani (supra)* clarified the position of law laid down in *Pamanani (supra)* by stating that "*Notwithstanding anything contained in Rule 22, the quantity of sample sent for analysis shall be considered as sufficient unless the public analyst or the Director reports to the contrary*". Therefore, it was more likely that all the pending matters came to be instituted only after Rule 22-B was introduced and there remained no doubt on the position of law since. Therefore, this Court confined itself to making an observation relating to the acquittals alone i.e., that the acquittals would not be interfered with. However, if in case, there existed a matter, instituted before the trial court, before Rule 22-B came into being and was concerned with the same question, the decision in *Alassery (supra)* could be said to have been applicable to it retrospectively.

121. The applicability or discussion relating to the doctrine of prospective overruling can be noticed in a few other matters under the criminal arena, though

prominently on matters pertaining to procedural law. In *Ramesh Kumar Soni v. State of Madhya Pradesh* reported in (2013) 14 SCC 696, the Court was concerned with an amendment changing the triability of certain offences i.e., from the Judicial Magistrate First Class to the Court of Session and its effect on the cases pending trial or pending investigation. This Court had held that any amendment shifting the forum of the trial had to be, on principle, retrospective in nature in the absence of any indication to the contrary in the Amendment Act. This retrospective operation of amendments relating to procedure would be subject to the exception that the earlier procedure which was correctly adopted and which led to the proceedings being concluded under the old law cannot be reopened for the purpose of applying the new procedure. Furthermore, it was also reiterated that an accused does not possess a "vested right of forum" for his trial. However, the decision of a Full Bench of the Madhya Pradesh High Court in *Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007, In re*, reported in (2008) SCC OnLine MP 185 had opined that all the cases which were pending before the Judicial Magistrate as on 22.02.2008 i.e., the date of the amendment, would remain unaffected by the Amendment. Therefore, the Full Bench of the High Court directed that all the cases which were pending before the Judicial Magistrate and had already been committed to the Court of Session due to the coming into force of the amendment, to be

sent back to the Judicial Magistrate. This Court in *Ramesh Kumar Soni (supra)* disagreed and overruled the decision of the Full Bench but only prospectively. This was done because the trial of the cases that were sent back from the Sessions Court to the Judicial Magistrate under the orders of the Full Bench may have also been concluded or may be at an advanced stage. Therefore, any change of forum at that stage would have caused unnecessary and avoidable hardship to the accused if they were transferred again to the Court of Sessions in light of the conclusion that an amendment to procedural law would operate retrospectively. The relevant observations are reproduced hereinbelow:

"21. The upshot of the above discussion is that the view taken by the Full Bench [Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007. In re. (2008) 3 MPLJ 311] holding the amended provision to be inapplicable to pending cases is not correct on principle. The decision rendered by the Full Bench [Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007. In re. (2008) 3 MPLJ 311] would, therefore, stand overruled but only prospectively. We say so because the trial of the cases that were sent back from the Sessions Court to the Court of the Magistrate, First Class under the orders of the Full Bench [Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007. In re. (2008) 3 MPLJ 311] may also have been concluded or may be at an advanced stage. Any change of forum at this stage in such cases would cause unnecessary and avoidable hardship to the accused in those cases if they were to be committed to the Sessions for trial in the light of the amendment and the view expressed by us.

xxx

xxx

xxx

27. The present case, in our opinion, is one in which we need to make it clear that the overruling of the Full Bench decision of the

Madhya Pradesh High Court will not affect cases that have already been tried or are at an advanced stage before the Magistrates in terms of the said decision."

(Emphasis supplied)

122. On a conspectus of the aforesaid discussion on the doctrine of prospective overruling, the following can be summarised:

- i. The default rule is that the overruling of a decision generally operates retrospectively. This is because a judgement which interprets a statute or provision declares the meaning of the statute as it should have been construed from the date of its enactment and what has been declared to be the law of the land must be held to have always been the law of the land. This rationale also stems from the Blackstonian rule that the duty of the court is not to "*pronounce a new law but to maintain and expound the old one*". The judge rather than being the creator of the law, is only its discoverer. Therefore, if a subsequent decision alters or overrules the earlier one, it cannot be said to have made a new law. The correct principle of law is just discovered and applied retrospectively.
- ii. Since resorting to the doctrine of "prospective overruling" is an exception to the normal rule that a judgement or decision applies retrospectively and to the general rule of doctrine of precedent, an express declaration by the court that its decision is prospectively

applicable is absolutely necessary. Prospectivity as a concept cannot be considered to be inhered in situations since the intention to attribute prospectivity to a decision must be limpid and clear.

- iii. In *Jarnail Singh (supra)* this Court took the view that even if the overruling decision does not indicate that its decision is to apply with prospective effect, a different or even a smaller bench of this Court, subsequently, can declare that the doctrine of prospective overruling must be applied to the prior judgment of this Court, in exercise of the power under Article 142 to do complete justice to the matter at hand.
- iv. In *Baburam (supra)*, this Court was of the view that, on the application of the doctrine of prospective overruling, it is deemed that all actions taken contrary to the declaration of law but prior to the date of the declaration, are validated. However, *Somaiya Organics (supra)* clarified that the application of the doctrine of prospective overruling would not have the effect of validating an invalid law. All that is done is that the declaration of invalidity of the legislation is directed to take effect from a future date. To prevent the chaotic unscrambling of actions done in the past, a middle-ground is reached by postponing the decision declaring invalidity to a particular date, in the interest of doing complete justice. Thus, ensuring that "complete justice" is done in the most equitable way is the true essence of the doctrine and this is also evident

from the fact that this Court has, on several occasions, prescribed the limits to the retroactivity of the law declared by it.

- v. The evolution of the doctrine of prospective overruling, although not indigenous to India, yet has been well entrenched in Indian jurisprudence. As a default rule, any judgment deciding a question of law would be retrospective and would also apply to the factual situation in the background of which such a decision is rendered. However, it is only when the hardship is too great that such a retrospective operation is withheld. Broadly, the doctrine is being applied with a view to not unsettle everything that was undertaken in the past either on account of an existing law/rule or due to the decision of a court. The object is to ensure a smooth transition of the law and not disturb matters that have attained finality. Time and again, it has been reiterated that prospective overruling is an accepted doctrine as an extended facet of stare decisis. The doctrine involves giving effect to the new law laid down from a prospective date, ordinarily from the date of the judgement of the overruling decision. Sometimes, while declaring that a decision would be prospectively applicable, courts have granted limited relief to the parties or petitioners in question retrospectively.
- vi. There are several factors or considerations which may weigh with the court before the doctrine of prospective overruling is applied. Some

broad considerations include – to meet the ends of justice, prevent the unsettlement of settled positions, mitigate any administrative chaos keeping in mind the pragmatic realities, curb any uncertainty in law, thwart avoidable litigation, safeguard public interest and preserve the avowed object and purpose that is embodied in the overruling decision. The possibility of impact on a large number of parties or individuals, the impossibility of restoring the original and correct position of law, the existence of an overwhelming reason favouring prospectivity or where the law on the subject been in a state of flux for a significant period of time are also relevant. Therefore, the legitimate or justifiable reliance by a party or administration in good faith on the overruled decision, the ability to effectuate the new rule adopted in the overruling case without doing injustice, the likelihood of implementing its retrospective operation without substantially burdening the administration of justice, the prior history of the rule in question, its purpose and effect and whether the retroactive operation will accelerate or retard its operation, etc., are all significant considerations which are to be kept in mind before the doctrine of prospective overruling may be resorted to. Obviously, if one or more of the factors illustrated above are competing with each other i.e., one favours retrospectivity and the other favours prospectivity,

the competing considerations must be sought to be balanced to arrive at a reasonable conclusion.

- vii. Therefore, the invocation of the doctrine of prospective overruling or the attribution of prospectivity to a decision must not be resorted to in a routine manner without the court satisfying itself that the circumstances demand such a solution, both to do complete justice to the matter at hand and also to reorient the law in the right direction without creating widespread chaos and disruption. In certain situations, it might be preferable on a holistic consideration of several competing interests and factors to invoke the doctrine of prospective overruling and therefore, it could be said that the ambit of the doctrine is co-extensive with the equity of a situation. If the doctrine of prospective overruling is applied, pending cases would not be affected by the new declaration of law. In the absence of the court applying this doctrine, however, all pending matters and future cases would automatically and inescapably be governed by the law declared in the overruling decision.
- viii. In the realm of criminal law, the question of prospective or retrospective declaration of a law/decision has been comparatively rare. In *Alassery Mohammed (supra)*, this Court held that since *Pamanani (supra)* had held the field for a significant time and several prosecutions had resulted in acquittals in the meantime, the appeals would be disposed of by only

laying down the correct proposition of law. Neither were any acquittals disturbed nor were any of the matters remanded to the Courts below. The decision did not expressly apply the doctrine of prospective overruling. Therefore, it could reasonably be stated that the decision was retrospectively applicable to pending matters (if any) which had not yet resulted in an acquittal and which was instituted when *Pamanani (supra)* held the field or in other words, was instituted before Rule 22-B clarified the position of law.

- ix. One another decision on the doctrine of prospective overruling which pertains to criminal law was rendered in *Ramesh Kumar Soni (supra)*. Herein, this Court overruled the decision of the Full Bench of the High Court prospectively, by stating that any change of forum at this stage would cause unnecessary and avoidable hardship to the accused if they were transferred again in light of the conclusion arrived at in *Ramesh Kumar Soni (supra)*.

123. In light of the elaborate discussion hereinabove, we do not find it necessary, in the facts and circumstances of the matter at hand, to exercise the powers available to us and declare the decision given in *Sanjeev V. Deshpande (supra)* to be prospectively applicable. We have decided so because there exists no overwhelming reason for us to apply the doctrine of prospective overruling. On

the other hand, in order to meet the ends of justice and with a view to ensure that public interest is safeguarded and to give effect to the salutary object behind the enactment of the NDPS Act, the decision must necessarily be retrospectively applicable. This Court in *Sanjeev V. Deshpande (supra)*, perhaps, did not think fit to confine or restrict its interpretation of Section 8 of the NDPS Act to future cases only. This is evinced from the fact that whilst overruling *Rajesh Kumar Gupta (supra)*, it deliberately chose not to discuss the doctrine of prospective overruling let alone resort to it. This conspicuous silence in *Sanjeev Deshpande (supra)* as regards the prospective or retrospective effect of overruling *Rajesh Kumar Gupta (supra)* has to be borne in mind and given due deference. As a natural corollary to the aforesaid, we see no reason why we should deviate from the default rule of retrospectivity and instead, resort to the doctrine of prospective overruling. Therefore, pending cases, if any, which were instituted before the decision of this Court in *Sanjeev V. Deshpande (supra)* would also be governed by the law as clarified by it.

- f. Article 20(1) considerations on the retrospective applicability of the decision in *Sanjeev v. Deshpande (supra)*.

124. Article 20(1) of the Constitution of India reads that – “No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty

greater than that which might have been inflicted under the law in force at the time of the commission of the offence.” It is therefore, set in stone under the constitutional principles of our legal system that it would be absolutely impermissible for an accused to be convicted of an offence under any Act, if his act was not an offence at the time during which it was committed. Herein, the import of the words “law in force at the time of the commission” is especially important. It has been detailed by us, with sufficient clarity, in the preceding paragraphs, that judges do not make law but only find the right law. This is precisely the reason behind retrospectively applying any overruling decision as a default rule. However, can the overruling judgment and its declaration of law be considered to be the “law in force at the time of the commission”? Such a question is required to be considered by us more particularly as regards matters which pertain to substantive law, like the present one. Herein, the controversy is whether the dealing in of psychotropic substances which are mentioned under the Schedule to the NDPS Act and not under Schedule I of the NDPS Rules would constitute an offence or not. While the decision in *Rajesh Kumar Gupta (supra)* answered in the negative, the subsequent decision in *Sanjeev V. Deshpande (supra)* answered affirmatively and overruled the decision in *Rajesh Kumar Gupta (supra)*. Following the general rule, the exposition of law in *Sanjeev V. Deshpande (supra)* is required to be considered as the right position of law from its inception. However, we

have to examine whether holding so would result in any implications on the fundamental rights of the accused, in the specific facts and attendant circumstances that accompany the present appeals.

125. Salmond, in his acclaimed work on jurisprudence, is of the opinion that a judge does not make law and merely declares it. According to him, when a particular decision is overruled, it is declared that the supposed rule laid down in such an overruled decision was never the right law. Since, its authoritative value is erased completely, any intermediate transaction, despite being made on the strength of that supposed rule, would be governed by the principles established in the overruling decision.
126. A reflection of this proposition laid down by Salmond was evident in the decision of the Indiana Supreme Court, way back in the year 1898, in *Center School Township v. State* reported in 150 Ind. 168., which discussed the effect of the overruling of a decision. It was held that a decision of a court of last resort, is only an exposition of what the court "construes the law to be", therefore, while overruling a former decision, the court does not declare the overruled decision to be bad in law, but that it was "never the law". The overruling would be indicative of the fact that the court was simply mistaken in regard to the law in its former decision and it would have the effect of obliterating the former decision altogether. However, it was cautioned that

courts will not apply a change made by the overruling decision to the construction of the law given in the overruled decision, so as to invade the vested rights of any person. The relevant observations are reproduced hereinbelow:

"Passing, however, to the consideration of what is regarded by the parties as the real question in issue --that is to say: Shall we confine the change made in the interpretation of the law by the Taggart case so as to operate prospectively only, and thereby not affect appellant in its claim to the entire surplus dog fund distributed to and received by it prior to March 21, 1895; or shall the new construction of the statute be held to be binding on it as to the money in dispute?"

The decisions of a court of last resort, the authorities assert, are not the law, but are only the evidence or exposition of what the court construes the law to be, and in overruling a former decision by a subsequent one the court does not declare the one overruled to be bad law, but that it never was the law, and the court was therefore simply mistaken in regard to the law in its former decision. The first decision, upon the point on which it is overruled, is wholly obliterated, and the law as therein construed or declared must be considered as though it never existed, and that the law always has been as expounded by the last decision. Haskett v. Maxey, 134 Ind. 182, 33 N.E. 358; Ram's Legal Judgments, 47.

This rule, however, is subject to the well settled doctrine that courts will not so apply a change made in the construction of the law as it was held to be in the overruled case, as to invade what is considered vested rights, or, in other words, while as a general rule, the law as expounded by the last decision operates both prospectively and retrospectively, still, courts are required to and do confine it in its operation so as not to impair vested rights, such as property rights or those resting on contracts express or implied. Haskett v. Maxey, supra; Stephenson v. Boody, 139 Ind. 60.

xxx

xxx

xxx

Appellant, therefore, having received the money through a judicial misinterpretation of the law, cannot be successfully heard to deny appellee's right thereto which existed in the first instance, under the proper construction of the statute whereby the legislature had declared its will in respect to the disposition of the surplus dog fund."

(Emphasis supplied)

127. The aforementioned decision reiterates that any decision of a court would only be an evidence or an exposition of what the court construes the law to be and this is precisely why the overruling decision would remove any authoritative value that the overruled decision might have had, even during the intervening period. *Center School Township (supra)* also clarified that the vested right, if any, which is sought to be protected as an exception to the retrospective application of the overruling decision, must be real. They must be rights of property or those founded on contracts, express or implied. *For example*, say a right has arisen on a contract or a transaction in the nature of a contract which is authorised by a statute and the statute concerned, is repealed. In such a scenario, a vested right would exist independently of the repealed statute. It was also held that the vested right must be something more than a mere expectation based upon an anticipated continuance of the existing law.

128. It is obvious that, in the factual circumstances before us, especially in matters of a criminal nature, the essence of the decision laid down in *Rajesh Kumar Gupta (supra)* could not be considered to have been separately embraced in

any contract, both express or implied. On the contrary, it is the legislative authority of the NDPS Act, more particularly Section 8 of the NDPS Act, which would have the final say on whether an offence is made out or not or govern the facts which the accused persons have subjected themselves to. When the very legal interpretation given to Section 8 of the NDPS Act could be said to have been wrong and misplaced in the overruled decision, it naturally follows that no vested right, whatsoever, could have accrued or be said to have existed independently of the statute, to such persons accused of a committing an offence under Section 8. More so, when the decision in *Rajesh Kumar Gupta (supra)* was an outlier on the issue when compared to several decisions that came prior to it.

129. A constitutional Bench of this Court in *Rao Shiv Bahadur Singh and Another v. State of Vindhya Pradesh* reported in (1953) 2 SCC 111 was concerned with the invocation of Article 20(1) with respect to a pre-Constitution ex-post facto law and held that Article 20(1) prohibits all convictions or subjections to penalty, after the Constitution, in respect of ex-post facto laws, irrespective of whether the same was a post-Constitution or a pre-Constitution law. Herein, the Vindhya Pradesh Ordinance 48 of 1949, though enacted on 11.09.1949, i.e., after the alleged offences in the case therein were committed, was made retrospective and deemed to have been in force from 09.08.1948. It was

therefore, urged that the Ordinance was a "*law in force*" during the time the offences were committed and would not be hit by Article 20. However, this Court disagreed with such a contention and said that to accept such an argument would be to give a hyper-technical meaning to the words "*law in force*". If it were accepted then the very purpose of Article 20 would be defeated since any ex-post facto law could be given retrospective effect by the legislature to overcome the rigours of Article 20. It was this Court's opinion that "*law in force*" must be understood as being the law in fact in existence and in operation at the time of commission of the offence as distinct from the law "*deemed*" to have become operative by virtue of the power of the legislature to pass retrospective laws. The relevant observations are reproduced hereinbelow:

"15. The next and the only serious question that arises in this case is with reference to the objections raised in reliance on Article 20 of the Constitution. This question arises from the fact that the charges as against the two appellants, in terms, refer to the offences committed as having been under the various sections of the Penal Code as adapted in the United States of Vindhya Pradesh by Ordinance 48 of 1949. This Ordinance was passed on 11-9-1949, while the offences themselves are said to have been committed in the months of February, March and April 1949 i.e. months prior to the Ordinance. It is urged, therefore, that the convictions in this case which were after the Constitution came into force are in respect of an ex post facto law creating offences after the commission of the acts charged as such offences and hence unconstitutional. This contention raises two important questions viz. (1) the proper construction of Article 20 of the Constitution, and (2) whether the various acts in respect of which the appellants were convicted constituted offences in this area only from the date when Ordinance 48 of 1949 was passed or were already so prior thereto.

xxx

xxx

xxx

22. In this connection our attention has been drawn to the fact that the Vindhya Pradesh Ordinance 48 of 1949, though enacted on 11-9-1949 i.e. after the alleged offences were committed, was in terms made retrospective by Section 2 of the said Ordinance which says that the Act "shall be deemed to have been in force in Vindhya Pradesh from 9-8-1948", a date long prior to the date of the commission of the offences. It was accordingly suggested that since such a law at the time when it was passed was a valid law and since this law had the effect of bringing this Ordinance into force from 9-8-1949, it cannot be said that the convictions are not in respect of "a law in force" at the time when the offences were committed. This, however, would be to import a somewhat technical meaning into the phrase "law in force" as used in Article 20. "Law in force" referred to therein must be taken to relate not to a law "deemed" to be in force and thus brought into force but the law factually in operation at the time or what may be called the then existing law. Otherwise, it is clear that the whole purpose of Article 20 would be completely defeated in its application even to ex post facto laws passed after the Constitution. Every such ex post facto law can be made retrospective, as it must be, if it is to regulate acts committed before the actual passing of the Act, and it can well be urged that by such retrospective operation it becomes the law in force at the time of the commencement of the Act. It is obvious that such a construction which nullifies Article 20 cannot possibly be adopted.

23. It cannot therefore be doubted that the phrase "law in force" as used in Article 20 must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law "deemed" to have become operative by virtue of the power of legislature to pass retrospective laws. It follows that if the appellants are able to substantiate their contention that the acts charged as offences in this case have become such only by virtue of Ordinance 48 of 1949 which has admittedly been passed subsequent to the commission thereof, then they would be entitled to the benefit of Article 20 of the Constitution and to have their convictions set aside. [...]"

(Emphasis supplied)

130. On the other hand, the issue in question before this Court in *Soni Devrajibhai Babubhai v. State of Gujarat* reported in (1991) 4 SCC 298 related to the insertion of Section 304-B to the IPC, 1860 w.e.f. 19.11.1986 which created a new substantive offence more stringent than Section 498-A IPC. The incident in question in the case occurred prior to 19.11.1986 and therefore, the accused were tried under Section 498-A instead of Section 304-B since their trial under the latter provision would be hit by Article 20(1). While affirming the view taken by the High Court, it was elaborated that, it was Section 498-A which was in the statute book when the incident occurred. The offence punishable under Section 304-B, known as dowry death, was inserted into the statute books only after the offence had been committed. Another indication that a new offence was "created" was that Section 304-B IPC is punishable with a minimum sentence of seven years which may extend to life imprisonment and was triable by a Court of Session whereas Section 498-A IPC is triable by a Magistrate of the First Class and is punishable for a term which may extend to three years in addition to a fine. The relevant observations are reproduced below:

"9. It is clear from the above historical background that the offence of dowry death punishable under Section 304-B of the Indian Penal Code is a new offence inserted in the Penal Code, 1860 with effect from November 19, 1986 when Act 43 of 1986 came into force. The offence under Section 304-B is punishable with a minimum sentence of seven years which may extend to life imprisonment and is triable by Court of Session. The corresponding amendments made in the Code of Criminal

Procedure and the Indian Evidence Act, relate to the trial and proof of the offence. Section 498-A inserted in the Penal Code, 1860 by the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) is an offence triable by a Magistrate of the First Class and is punishable with imprisonment for a term which may extend to three years in addition to fine. It is for the offence punishable under Section 498-A which was in the statute book on the date of death of Chhaya that the respondents are being tried in the Court of Magistrate of the First Class. The offence punishable under Section 304-B, known as dowry death, was a new offence created with effect from November 19, 1986 by insertion of the provision in the Penal Code, 1860 providing for a more stringent offence than Section 498-A. Section 304-B is a substantive provision creating a new offence and not merely a provision effecting a change in procedure for trial of a pre-existing substantive offence. Acceptance of the appellant's contention would amount to holding that the respondents can be tried and punished for the offence of dowry death provided in Section 304-B of the Penal Code, 1860 with the minimum sentence of seven years' imprisonment for an act done by them prior to creation of the new offence of dowry death. In our opinion, this would clearly deny to them the protection afforded by clause (1) of Article 20 of the Constitution which reads as under:

"20. Protection in respect of conviction for offences.— (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

10. In our opinion, the protection given by Article 20(1) is a complete answer to the appellant's contention. The contention of learned counsel for the appellant that Section 304-B inserted in the Penal Code, 1860 does not create a new offence and contains merely a rule of evidence is untenable. The rule of evidence to prove the offence of dowry death is contained in Section 113-B of the Indian Evidence Act providing for presumption as to dowry death which was a simultaneous amendment made in the Indian Evidence Act for proving the offence of dowry death. The fact that

the Indian Evidence Act was so amended simultaneously with the insertion of Section 304-B in the Penal Code, 1860 by the same Amendment Act is another pointer in this direction. This contention is, therefore, rejected."

(Emphasis supplied)

131. Another Constitutional Bench of this Court in *Central Bureau of Investigation v. R.R. Kishore* reported in (2023) 15 SCC 339 was faced with the issue whether the declaration of Section 6-A of the DSPE Act, 1946 as unconstitutional by the judgment rendered in *Subramanian Swamy v. Director, Central Bureau of Investigation and Another* reported in (2014) 8 SCC 682 led to the creation of a new offence, which had the effect of causing implications on the fundamental right guaranteed under Article 20(1) of the Constitution, and also whether the declaration of unconstitutionality must be given prospective effect. This Court held that the declaration of Section 6-A as unconstitutional would not have any implications as far as fundamental rights are concerned since the provision purely related to a procedural aspect. Furthermore, since the declaration of a provision as unconstitutional goes to the root of it and makes it *void ab initio* and *non-est*, its effect would be retrospective in nature. In declaring so, the Bench elaborated on the following aspects:

- i. *First*, that under the first part of Article 20(1), it is only the conviction or sentence for any offence under an ex-post facto law that is prohibited. It would be highly unjust, unfair and in violation of human

rights to punish a person under an ex-post facto law for acts or omissions that were not an offence when committed. The Bench agreed with the position taken in *Rao Shiv Bahadur Singh (supra)* that the term "*law in force*" under Article 20 must be taken to be the law factually in force or the existing law at the relevant time and not a law made applicable to the past period by virtue of a deeming fiction by the legislature.

- ii. *Secondly*, Section 6 of the General Clauses Act, 1897 provides that when an enactment is repealed, unless a different intention appears, the repeal shall not affect the previous operation of the repealed enactment or; affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment. Section 6 was held to be inapplicable to the scenario at hand since it was not a case where an enactment was repealed or revived but the situation pertained to the declaration of a statutory provision as unconstitutional. Therefore, it cannot be said that any right or privilege was acquired on the basis of the provision which came to be declared as unconstitutional and that the concerned individuals or accused could press such an unconstitutional provision in their favour.

The relevant observations are reproduced hereinbelow:

37. Clause (1) of Article 20 of the Constitution consists of two parts. The first part prohibits any law that prescribes judicial

punishment for violation of law with retrospective effect. Clause (1) of Article 20 of the Constitution does not apply to civil liability, as distinguished from punishment for a criminal offence. Further, what is prohibited is conviction or sentence for any offence under an ex post facto law, albeit the trial itself is not prohibited. [...]

38. The right under first part of clause (1) of Article 20 of the Constitution is a very valuable right, which must be safeguarded and protected by the courts as it is a constitutional mandate. The Constitution Bench of this Court in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* [*Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*, (1953) 2 SCC 111 : 1953 SCR 1188], highlighted the principle underlying the prohibition by relying upon judgment of Willes, J. in *Phillips v. Eyre* [*Phillips v. Eyre*, (1870) LR 6 QB 1 at pp. 23 and 25] and of the United States Supreme Court in *Calder v. Bull* [*Calder v. Bull*, 1 L Ed 648 at p. 649 : 3 Dall 386 : 3 US 386 (1798)], to hold that it would be highly unjust, unfair and in violation of human rights to punish a person under the ex post facto law for acts or omissions that were not an offence when committed. [...]

39. *Rao Shiv Bahadur Singh* [*Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*, (1953) 2 SCC 111 : 1953 SCR 1188] observes that the language of clause (1) of Article 20 of the Constitution is much wider in terms as the prohibition under the article is not confined to the passing of validity of the law, and that fullest effect must be given to the actual words used and what they convey. Accordingly, the decision had struck down *Vidhya Pradesh Ordinance 48 of 1949*, which though enacted on 11-9-1949, had postulated that the provisions would deemed to have come into force in *Vidhya Pradesh* on 9-4-1948, a date prior to the date of commission of offences. Interpreting the term "law in force", it was held that the Ordinance giving retrospective effect would not fall within the meaning of the phrase "law in force" as used in clause (1) of Article 20 of the Constitution. The "law in force" must be taken to relate not to a law deemed to be in force, but factually in force, and then only it will fall within the meaning of "existing law". Artifice or fiction will fall foul, when they are with the intent to defeat the salutary object and purpose behind clause (1) of Article 20 of

the Constitution. [In the present case, we need not examine when an offence is a continuous offence, an aspect and matter of considerable debate.]

xxx

xxx

xxx

42. The learned counsel for the parties have also briefly referred to Section 6 of the General Clauses Act, 1897. It would be appropriate to reproduce the said provision hereunder:

"6. Effect of repeal.— Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

A plain reading of the above provision indicates that the repeal of an enactment shall not affect previous operation, unless a different intention appears. It may be appropriately noted here that the present case does not involve repeal or revival of any enactment but is a case where a Constitution Bench of this

Court has declared a statutory provision as invalid and unconstitutional being hit by Article 14 of the Constitution. As such Section 6 of the 1897 Act will have no application."

(Emphasis supplied)

132. The background and context under which we are examining the applicability of Article 20(1) to the facts of our case are quite different and distinguishable. We are not concerned with a situation where the legislature or another competent authority had once enacted a provision/rule wherein the dealing of substances only mentioned in Schedule I of the NDPS Rules, would constitute an offence and the same later came to be substituted with a provision/rule which stated that the dealing in of all substances mentioned under the Schedule to the Act would also constitute an offence under Section 8. It is just that the position of law was assumed to be so in *Rajesh Kumar Gupta (supra)*, however, that conclusion was expressly declared as wrong in *Sanjeev V Deshpande (supra)*. The three-judge Bench in *Sanjeev V Deshpande (supra)* while overruling *Rajesh Kumar Gupta (supra)* went to the extent of saying that *Rajesh Kumar Gupta (supra)* ignored the mandate of Section 8(c) of the NDPS Act and that it was wrongly decided. Therefore, the intention of the legislature along with the true import and meaning of Section 8(c) read with the relevant rules was always that the dealing in of any psychotropic substance mentioned under the Schedule to the Act in contravention of the provisions of the Act and Rules framed thereunder, must necessarily be punished. The consistent line of decisions of

this Court, as elaborated by us in the preceding parts of this judgment, which pre-existed the decision in *Rajesh Kumar Gupta (supra)* and which also support the conclusion reached by *Sanjeev V Deshpande (supra)* and by us, serve as a testament to the undoubted position of law contained in the NDPS Act and its Rules, in this regard.

133. Furthermore, we are also not concerned with a scenario wherein the language of Section 8 of the NDPS Act is visibly narrow and through the act of judicial interpretation, an unreasonably wide or expansive interpretation has been accorded to it by the decision in *Sanjeev V Deshpande (supra)* and also by us. On the contrary, it is our opinion that the construction to Section 8 of the NDPS Act was inordinately restricted in *Rajesh Kumar Gupta (supra)* when the scope and ambit of the provision was clear in itself. Hence, the decision in *Sanjeev V Deshpande (supra)* taken along with the elaborate discussion which we have engaged in on the position of law, has only served to clarify the true meaning as exactly reflected in the statute, without any undue narrowing or expansion. Therefore, there is no doubt in our mind while clarifying that the decision in *Sanjeev V Deshpande (supra)* overruling the decision in *Rajesh Kumar Gupta (supra)* would have retrospective effect, that there would arise no adverse implications as regards the Article 20(1) rights which the accused persons are otherwise entitled to.

134. The Blackstonian theory also lends great support to our conclusion since it underscores the principle that it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". Therefore, the overruling of a decision cannot be equated to the creation of a new law. The correct principle of law is merely clarified and applied retrospectively. Therefore, in the circumstances of the instant case, it cannot be said that a new offence was "created" subsequently. It is to be considered as always have existed. The offence under Section 8 as expounded in *Sanjeev V Deshpande (supra)* was not introduced out of thin air and it cannot be said that its existence as construed in the aforesaid decision was undeniably absent from the scheme of the provisions under the NDPS Act. We have elaborated with sufficient detail, by even exhaustively and conscientiously discussing the Articles of the Convention of Psychotropic Substances, 1971 which motivated the enactment of the NDPS Act along with the object of the NDPS Act and concluding that it would be a grave error to assume that the law was ever otherwise.

135. Moreover, consider a situation wherein a certain statute or provision is declared to be unconstitutional by this Court for being violative of Article 14 of the Constitution but with prospective effect. Can it be argued that the actions undertaken on the basis of that unconstitutional provision or legislation, until the date of the judgment, would be open to being challenged for also being

violative of Article 14? This would necessarily be answered in the negative because the Court consciously declares prospectivity after weighing and balancing all interests and practical realities. No individual can claim the benefit of the decision declaring a provision as unconstitutional for transactions or events which occurred prior to that decision if the intention to give prospective effect to the decision is plain and direct. No doubt, the actions wrongly taken in the past would not be automatically validated but on a balance of equities, a challenge to those actions are also disallowed. Similarly, while a decision is being overruled and the default rule of retrospectivity in matters of overruling is applied, it would not be permissible for anyone to contend that any right accrued to them on the basis of the judgement which declared the wrong proposition of law. Therefore, the retrospective overruling of the decision in *Rajesh Kumar Gupta (supra)* cannot be faulted with for being possibly hit by Article 20(1) of the Constitution. It would not be open for an accused to contend that any right accrued to them on the basis of the judgement in *Rajesh Kumar Gupta (supra)*. However, with a view to do complete justice to the issue at hand, we declare that matters in which the trial has already concluded on the basis of the incorrect exposition of law and have attained finality, would not be disturbed. It would be tedious endeavour for all those acquittals to be re-opened and re-tried again. Having said so, any and all

pending matters would be adjudged on the basis of the correct interpretation of law as declared in *Sanjeev V Deshpande (supra)*.

136. The decisions of this Court in *Rao Shiv Bahadur Singh (supra)*, *Soni Devrajbhai Babubhai (supra)* and *R.R. Kishore (supra)* would not in any manner be an impediment to the above conclusion since – *First*, in *Rao Shiv Bahadur Singh (supra)*, it was opined that the expression “law in force” must be understood as being the law in fact in existence and in operation at the time of commission of the offence as distinct from the law “deemed” to have become operative by virtue of the power of the legislature to pass retrospective laws. The same is inapplicable herein since; (a) we are not dealing with a situation where the legislature has introduced a new offence which is sought to be retrospectively enforced and (b) the overruling of a decision and the declaration of the right meaning of law is not attributed to the provision by the overruling court through a “deeming fiction”. The overruling decision only mirrors what the lawmakers wanted the law to be and what it always was. Therefore, it cannot be disputed that the interpretation given in the overruling decision was infallibly the “law in force” at all times. *Secondly*, in *Soni Devrajbhai Babubhai (supra)*, it was apparent that the offences were traceable to two different provisions, the latter of which created a distinct offence and entered into the statute books much later in time. Therefore, it could be said without

any doubt that a new offence was "created". *Thirdly*, in *R.R. Kishore (supra)*, it was reiterated that it was only the conviction or sentence for any offence under an ex-post facto law that is prohibited under Article 20(1). The overruling of a decision cannot be equated to the enactment of an ex-post facto law, especially when the interpretation given to the statute/provision in the overruling decision is not a novel and unreasonably expansive interpretation of the provision in question such that it was completely unforeseeable. An ex-post facto law lays down a new or completely alternate legal position from what existed before. The same is not the effect of an overruling decision which only interprets the intention which always remained with the legislature while enacting the concerned provision. The indiscriminate dealing in of substances which are only mentioned under the Schedule to the Act cannot be said to have been indubitably legal and allowed by the legislation prior to the decision in *Sanjeev V Deshpande (supra)*.

137. We find it necessary to reiterate that acquittals which have already been recorded and have attained finality would not be unsettled in light of the overruling decision or the observations made by us. If it were a reverse scenario i.e., if the decision in *Rajesh Kumar Gupta (supra)* led to the conviction of several accused and then subsequently, the effect of the ratio in *Sanjeev V. Deshpande (supra)* was such that those accused were to be acquitted because

an offence was not made, we would have, without an iota of doubt leaned in favour of those matters being reconsidered and the convictions also being re-examined in light of the clarification given in the subsequent decision. However, presently, the situation not being such, we do not wish to subject any accused who has been acquitted, to trial again.

138. In *Somaiya (supra)*, this Court had emphasized that it cannot be said that the past actions would be validated when the doctrine of prospective overruling is resorted to. Therefore, the idea is not to declare all the actions that were taken contrary to law or in pursuance of an unconstitutional provision as valid, but to save those transactions on a balance of considerations. Similarly, if the accused before us had been acquitted directly as a consequence of the decision in *Rajesh Kumar Gupta (supra)*, the same cannot be said to have been made in accordance with law. Although, we have expressed our intention to not disturb any acquittal made in the past, which have attained finality, if the accused persons before us were acquitted by the respective Trial Courts due to the interpretation given in *Rajesh Kumar Gupta (supra)* and after an examination of materials placed on record, we were satisfied that the accused before us were indeed guilty of the offence with which they were charged, we could have held them "technically guilty" of the offence under Section 8 of the NDPS Act.

139. This concept of "technical guilt" found mention in the decision of this Court in *Food Inspector, Calicut Corporation v. Cherukattil Gopalan and Another* reported in (1971) 2 SCC 322. Here, the issue was whether the respondent running a tea-stall could be said to have "sold" the sugar to the Food Inspector under Section 2(xiii) of the Prevention of Food Adulteration Act, 1954 and hence fall under the ambit of Sections 7 and 16(1)(a)(i) of the Act which prohibits and punishes the manufacture, sale etc. of adulterated articles of food. The counsel for the appellant had, during the course of the arguments, made it clear that the appellant did not want the respondents to be convicted in case his contentions were accepted and that the Corporation only wished to clarify the legal position on the aforesaid issue. In conclusion, while this Court agreed with the contentions of the appellant, the respondents were only held to be "technically guilty" of the offence with which they were charged and this Court opined that they had been wrongly acquitted by the High Court and the Trial Court respectively. The relevant observations are reproduced below:

"26. Coming to the case on hand, on the findings of the two courts the sugar in question has been found to be adulterated. The purchase by the Food Inspector from the accused of sugar for purposes of analysis is a sale under Section 2(1) of the Act. Section 7 prohibits a person from selling adulterated article of food. Similarly, under Section 16(1)(a)(i) any person who sells adulterated food commits an offence and is punishable therein. The sugar which is the commodity before us is food under Section 2(3) of the Act. We have already pointed out that sugar by itself is an article used as food or at any rate it is an article which ordinarily enters into or is used in the composition or preparation of human food. In this case the sale was for analysis and the article

was an article of food and in view of the concurrent findings of both the courts that it was adulterated, the respondents have contravened Sections 16(1)(a)(i) of the Act. Hence it must be held that the respondents are technically guilty of the offence with which they were charged and they have been wrongly acquitted by the High Court and the District Magistrate. But in view of the fact that the appellant has argued the appeal only as a test case and does not challenge the acquittal of the respondents, we merely set aside the order and judgment of the High Court. But we may make it clear that apart from holding the respondents technically guilty, we are not setting aside the order of acquittal passed in their favour."

(Emphasis supplied)

140. In *Cherukattil Gopalan (supra)*, this Court did not set aside the order of acquittal which was passed in favour of the accused but at the same time, streamlined the position of law in that regard and only set aside the order and judgment of the High Court. Along similar lines, while we are refraining from directing that the orders of acquittal (if any) passed due to the decision in *Rajesh Kumar Gupta (supra)* be disturbed, in so far as the accused person before us are concerned, it would have been appropriate to declare them to be technically guilty of the offence under Section 8 of the NDPS Act, had they been acquitted. However, what has been brought out from the facts of the appeals before us, is that the accused persons were not acquitted but discharged due to the decision in *Rajesh Kumar Gupta (supra)*. Therefore, there arises no occasion for us to hold them technically guilty of the offences under the provisions of the NDPS Act that they were charged with. At this juncture, the

obvious next step would be for the trial *qua* all the accused before us to be commenced in accordance with law.

141. One another question of law which has sprung up in the facts of our case is whether, after the charges are framed by the Trial Court, an accused could be discharged or his charges could be deleted through an application made under Section 216 of the CrPC.

iii. The scope of Section 216 of the CrPC

142. Section 216 of the CrPC reads as thus:

"216. Court may alter charge.—

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless

sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

(Emphasis supplied)

143. Under this provision, any Court is empowered to "alter" or "add" to any charge framed against the accused, at any time before the judgment is pronounced. Therefore, an outer time limit is set i.e. the power conferred upon the Courts cannot be exercised after a decision is pronounced in the matter. Although the provision does not expressly provide for the stage of the trial after which the power under Section 216 CrPC can be exercised, yet logic and rationale obviously requires it to be exercised after a charge has been framed by the Trial Court under Section 228 CrPC. For if no charge has been framed, there arises no occasion to add or alter it. As a natural corollary, if an accused has already been discharged under Section 227 CrPC, no application or action under Section 216 CrPC would be maintainable.

144. The Court may alter or add to any charge either upon its own motion or on an application by the parties concerned. Therefore, such a power can be invoked by the Court *suo moto* as well. This power under Section 216 CrPC is exclusive to the concerned Court and no party can seek such an addition or alteration of charge as a matter of right by filing an application. It would be the Trial Court which must decide whether a proper charge has been framed or not, at the appropriate stage of the trial. On a consideration of the broad probabilities of

the case, the total effect of the evidence and documents adduced, the Trial Court must satisfy itself that the exercise of power under Section 216 is necessary. The provision has been enacted with the salutary object to ensure a fair and full trial to the accused person(s) in each case.

145. This Court in *Anant Prakash Sinha v. State of Haryana and Another* reported in (2016) 6 SCC 105 summarised the principles as regards Section 216 CrPC. Herein, charges were framed against the appellant-husband for the commission of offences punishable under Sections 498-A and 323 IPC. During the pendency of the matter, the informant wife had filed an application under Section 216 CrPC for framing an additional charge under Section 406 IPC against both the husband and the mother-in-law on the ground that there was an express complaint with regard to the misappropriation of her entire Stridhan and other articles. Hence, it was contended that the accused persons had committed criminal breach of trust, however, a charge sheet was not filed in respect of the said offence. The application was allowed by the Trial Court and subsequently, the Revisional Court upheld the framing of charge under Section 406 IPC only against the appellant-husband. This Court while agreeing with the High Court summarised the principles underlying Section 216 CrPC as follows:

- i. *First*, the test for exercise of power under Section 216 CrPC is that it must be founded on the material available on record and therefore, it

can be on the basis of the complaint or the FIR, or other accompanying documents or materials brought on record during the course of the trial. The charge which has been framed by the Trial Court must therefore be in accord with the materials available before him.

- ii. *Secondly*, the power must not be construed in a restricted manner to mean that unless evidence has been let in, the charges that have already been framed cannot be altered. The Court is empowered to change or alter the charge framed, if it finds that there is a defect or that something has been left out in the order framing charge.
- iii. *Thirdly*, it is obligatory for the Court to ensure that no prejudice is caused to the accused due to the addition or alteration of charge. The accused must be informed and made aware of the new charge as also the case against him so that he can understand the defence that can be led on his behalf.

The relevant observations are reproduced hereinbelow:

"18. From the aforesaid, it is graphic that the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before

him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial. It has been held in *Amar Singh v. State of Haryana* [*Amar Singh v. State of Haryana*, (1974) 3 SCC 81 : 1973 SCC (Cri) 789] that the accused must always be made aware of the case against him so as to enable him to understand the defence that he can lead. An accused can be convicted for an offence which is minor than the one he has been charged with, unless the accused satisfies the court that there has been a failure of justice by the non-framing of a charge under a particular penal provision, and some prejudice has been caused to the accused. [...]"

(Emphasis supplied)

146. In another decision of this Court in *Nallapareddy Sridhar Reddy v. State of A.P.* reported in (2020) 12 SCC 467, the scope of powers under Section 216 was elaborated. It was stated that the power under this provision to alter a charge is an exclusive and wide-ranging power and this is clear from the fact that it may be exercised at any time before the judgment is pronounced, meaning also at a stage wherein the evidence and arguments are completed and the judgment is reserved. It was further stated that if the Court is of the opinion that there was an omission in the framing of charge or if the existence of the factual ingredients constituting another offence is also inferred from a *prima facie* examination of the material brought on record, the alteration or addition

of a charge can be done. Such material brought on record must have a direct nexus with the ingredients of the alleged offence. This Court cautioned that the power under this provision must be exercised judiciously and observed as follows:

"21. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."

(Emphasis supplied)

- a. What is the meaning of the expression "alter" occurring in Section 216 CrPC.

147. P. Ramanatha Aiyar in his *Law Lexicon* (6th Edn.) defined "alter" as "to make a change in; to modify; to vary in some degree". "Alteration" is defined as a

"change or substitution of one thing for another". Further, it has been elaborated that the term "alter" is to be distinguished from its synonyms i.e., "change" and "amend". To change something may import the substitution of an entirely different thing, while on the other hand, to alter would be to operate upon a subject matter which continues to be the same objectively while just modified in some particular. To illustrate it better in the context of charging an accused with an offence, let's say an accused is charged with an offence initially under Section 323 IPC for simple hurt. If the Trial Court is of the opinion that the case is in fact one of grievous hurt, it may alter the charge of the accused for an offence under Section 325 IPC. This would be an alteration since the broad subject matter continues to be the same. Further, to amend would imply that the modification made in the subject improves it, which might not necessarily be the case with an alteration. In other words, an amendment may involve an alteration but an alteration does not always amend.

148. In *Sohan Lal and Others v. State of Rajasthan* reported in (1990) 4 SCC 580, this Court while holding that an application under Section 216 would not be maintainable against persons who have already been discharged, elaborated the meaning of the words "alter and add to" as follows:

"12. Add to any charge means the addition of a new charge. An alteration of a charge means changing or variation of an existing charge or making of a different charge. Under this section addition to and alteration of a charge or charges implies one or more existing charge or charges."

(Emphasis supplied)

149. Therefore, to alter a charge would be to vary an existing charge and make a different charge. Hence, when the Court exercises its power under Section 216, either on its own motion or on an application made by the parties, and "alters" a charge, it would be necessary that the existing charge be varied and a new charge be made. In the instant case, in Criminal Appeal No. 1319 of 2013, the Trial Court in its order dated 30.11.2006 had held that the charge framed by his predecessor for the offence under Sections 8, 22 and 29 of the NDPS Act had not been made out and that the case of the accused had to be a case under the D&C Act which would be triable by the Metropolitan Magistrate. In Criminal Appeal No. 272 of 2014, again, the Trial Court in its order dated 17.04.2010 similarly held that the offences under Sections 8 and 22 of the NDPS Act were not made out and the matter would fall within the rigours of the D&C Act.
150. However, if careful attention is paid to the orders of the Special Judge in both the appeals, it cannot be said that they have exercised their power under Section 216 to "alter" the charge of the accused persons. We say so because, the charge which existed under Sections 8, 22 and 29 of the NDPS Act in Criminal Appeal No. 1319 of 2013 and under Sections 8 and 22 of the NDPS Act in Criminal Appeal No. 272 of 2014 respectively were not varied and a different charge under a specific provision of the D&C Act was not made. In such a circumstance, in effect, the Special Judge had discharged or deleted the charge of the accused persons under the NDPS Act in both the appeals.

- b. Whether charges could be deleted or the accused be discharged under Section 216 CrPC.

151. Section 216 CrPC provides the Court with the power to do two things – *One*, alter a charge and *two*, add to a charge. Nowhere, does the provision expressly or by necessary implication lead to an inference that a charge could be deleted altogether. No doubt, the Court is given an expansive and wide-ranging power. However, that must not mean that the powers conferred are without any limits.

152. In a recent decision of this Court in *K. Ravi v. State of Tamil Nadu and Another* reported in 2024 SCC OnLine SC 2283, this Court had categorically observed that Section 216 does not give any right to the accused to file a fresh application seeking discharge after the charge has been framed by the Court. Herein, several accused were charge-sheeted under Sections 147, 148, 323, 324, 307 and 302 of the IPC respectively. The respondent no. 2 - accused filed an application for discharge under Section 227 CrPC which was dismissed by the Sessions Court. After charges were framed, the respondent no.2 along with the other accused then filed an application under Section 216 CrPC seeking alteration of charge, which was also dismissed. In revision, the High Court, however, set aside the charge framed against the respondent no. 2. While holding that an accused cannot seek a discharge under the garb of modification/alteration of charge through a Section 216 application, this Court

also highlighted that it has become routine practice for the accused to file an application under Section 216 CrPC after their application for discharge under Section 227 CrPC is dismissed, sometimes in ignorance of the law but also on other occasions with the sole intent of derailing the trial. The relevant observations are as thus:

"7. From the above conspectus of events, it clearly transpires that the Respondent No. 2 after having failed to get himself discharged from the Sessions Court as well as from the High Court in the first round of litigation, filed another vexatious application before the Sessions Court under Section 216 of Cr. P.C., after the framing of charge by the Sessions Court, for modification of the charge. The Sessions Court having dismissed the said application, the Respondent No. 2 preferred the Revisional Application before the High Court under Section 397 and 401 of Cr. P.C. The High Court in its unusual impugned order, discharged the Respondent No. 2 (A-2) from the charges levelled against him, though his earlier application seeking discharge was already dismissed by the Sessions Court and confirmed by the High Court and that position had attained finality. [...]

xxx

xxx

xxx

11. It is trite to say that Section 216 is an enabling provision which enables the court to alter or add to any charge at any time before judgment is pronounced, and if any alternation or addition to a charge is made, the court has to follow the procedure as contained therein. Section 216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge under Section 227 has already been dismissed. Unfortunately, such applications are being filed in the trial courts sometimes in ignorance of law and sometimes deliberately to delay the proceedings. Once such applications though untenable are filed, the trial courts have no alternative but to decide them, and then again such orders would be challenged before the higher courts, and the whole criminal trial would get derailed. Suffice it

to say that such practice is highly deplorable, and if followed, should be dealt with sternly by the courts."

(Emphasis supplied)

153. A few High Courts have also rightly taken the view that an application under Section 216 CrPC cannot lead to the deletion of charge or the discharge of an accused. In a relatively recent decision of the High Court of Allahabad in *Dev Narain v. State of U.P. and Another* reported in 2023 SCC OnLine All 3216, it was stated that a prayer for discharge cannot be sustained in an application under Section 216 CrPC. Herein the sole-accused moved an application for discharge and the same was rejected. The application under Section 482 CrPC filed before the High Court was also dismissed but with the observation that "it is open to the applicant to move an application for alteration of charge under Section 216 CrPC before the Trial Court". Charges were framed against the accused under Sections 498-A, 304-B, 323 IPC and Sections 3 and 4 of the Dowry prohibition Act, 1961. After the evidence of PW-1 was recorded, the accused moved an application under Section 216 CrPC for alteration of charge and the same also came to be dismissed by the Trial Court. The High Court stated that the alteration of charge and deletion of charge hold different field and that these two cannot be intermingled. A perusal of the prayer made by the accused in the 216 CrPC application indicated that it was, in essence, a prayer for discharge and quashing of the charges levelled against him. Therefore, it was held that such a power to delete charges is not conferred on the Court under

Section 216 CrPC. It was added that a charge once framed, it must lead either to an acquittal or conviction at the end of the trial and charges cannot be permitted to be deleted mid-trial. The relevant observations are reproduced hereinbelow:

"9. From perusal of above, is apparent that the Court may alter or add to any charge at any time before judgment is pronounced but alteration of charge and deletion of charge hold different field and these two cannot be intermingled, otherwise it will cause miscarriage of justice. This is admitted fact that the discharge application moved by the revisionist was dismissed by the trial court and the criminal revision moved by the revisionist against rejection of discharge application has been dismissed by this Court vide order dated 9.8.2017 in Criminal Revision No. 2500 of 2017, wherein this Court observed that the instant criminal revision is finally disposed of with a direction that in case, the revisionist is aggrieved with regard to the framing of the charge as on date, he may file an appropriate application at the appropriate stage when the evidence is to be produced with regard to the alteration of charge and in case, such an application is filed, the same shall be heard and decided in accordance with law after hearing all parties concerned.

10. The charge has been framed against the accused by the court below under Sections 498-A, 304-B, 323 IPC and 3/4 of D.P. Act. The evidence of PW-1 Vibhuti Bhushan Garg was recorded on 1.9.2017 to 29.5.2018 and thereafter the present application under Section 216 Cr. P.C. has been filed for alteration of charge. [...]

11. From perusal of prayer made in application under Section 216 Cr. P.C., it appears in essence that this is a prayer for discharge as the revisionist has stated that he may be discharged from charged penal sections and the charges levelled against him be quashed. The trial court in exercise of its powers under Section 216 Cr. P.C. cannot delete the charges framed by it for the said offences as the criminal procedure code does not confers such powers on the court. The trial court can only alter to a charge or to add to a charge, which has already framed. The discharge

application moved by the revisionist has already been dismissed and said order has attained finality.

xxx

xxx

xxx

14. This Court in the case of Vibhuti Narayan Chaubey Alias v. State of U.P., 2003 Cri LJ 196 held that Section 216 of the code did not provide for deletion of a charge and that the word "delete" had intentionally not being used by the legislature.

I am in agreement with this conclusion. The petitioner is seeking the deletion of a charge of conspiracy altogether that is not permissible under Section 216 of the Code. The charge once framed must lead to either acquittal or conviction at the conclusion of trial. Section 216 of the Code does not permit the deletion of the same. Subsequently, Delhi High Court in the case of Verghese Stephen v. Central Bureau Of Investigation, 2007 Cri LJ 4080, placed reliance on aforesaid judgment of this Court in the case of Vibhuti Narayan Chaubey (supra)."

(Emphasis supplied)

154. We are in agreement with the view that once charges have been framed by the Trial Court in exercise of the powers under Section 228 CrPC, the accused cannot thereafter be discharged, be it through an exercise of the powers under Sections 227 or 216 CrPC. It is reiterated that the language of Section 216 CrPC provides only for the addition and alteration of charge(s) and not for the deletion or discharge of an accused. If the Legislature had intended to empower the Trial Court with the power to delete a charge at that stage, the same would have been expressly and unambiguously stated. Therefore, at such a stage of the trial, the accused must necessarily either be convicted or acquitted of the charges that were so framed against him. No shortcuts must be allowed.

155. In both the appeals before us i.e. Criminal Appeal Nos. 1319 of 2013 and 272 of 2014 respectively, the Trial Courts *vide* their orders dated 30.11.2006 and 17.04.2010 have in effect deleted the charge framed for the offence under the provisions of the NDPS Act and then transferred the file to the Court of the Metropolitan Magistrate for proceeding in accordance with the provisions of the D&C Act, without arriving at a decision to acquit the accused as regards the charges already framed under the provisions of the NDPS Act. The same is impermissible under the scheme of our criminal procedure code and both the Trial Courts could be said to have committed a grave error while reaching the conclusion that as the offences were not triable by them, the case should be transferred to the court of the Metropolitan Magistrate respectively.

E. CONCLUSION

156. It cannot be said that the dealing in of "Buprenorphine Hydrochloride" would not amount to an offence under Section 8 of the NDPS Act owing to the fact that the said psychotropic substance only finds mention under the Schedule to the NDPS Act and is not listed under Schedule I of the NDPS Rules. There exists nothing to indicate that Rules 53 and 64 of the NDPS Rules respectively, are the governing rules in their respective Chapters, more so, when the language

of the other rules in Chapters VI and VII respectively, are clear about their application to the substances mentioned under the Schedule to the Act as well.

157. All the psychotropic substances mentioned under the Schedule to the Act have potential grave and harmful consequences to the individual and the society at large, when abused. Some psychotropic substances mentioned under the Schedule to the NDPS Act are also mentioned under the D&C Act and the rules framed thereunder. This is only because those substances while capable of being abused for their inherent properties could also be used in the field of medicine. However, the mere mention of certain psychotropic substances under the D&C regime would not take them away from the purview of the NDPS Act, if they are also mentioned under the Schedule to the NDPS Act.

158. There arises no occasion for us to declare the interpretation given to Section 8 of the NDPS Act and the relevant NDPS Rules, by the decision in *Sanjeev V. Deshpande (supra)*, as prospectively applicable. There exists no overwhelming reason for us to do so. On the other hand, in order to meet the ends of justice and with a view to ensure that public interest is safeguarded and to give effect to the salutary object behind the enactment of the NDPS Act, the decision must necessarily be retrospectively applicable. This Court in *Sanjeev V. Deshpande (supra)*, perhaps, did not think fit to confine or restrict its interpretation of Section 8 of the NDPS Act to future cases only. This is evinced from the fact

that whilst overruling *Rajesh Kumar Gupta (supra)*, it deliberately chose not to discuss the doctrine of prospective overruling let alone resort to it. This conspicuous silence in *Sanjeev Deshpande (supra)* as regards the prospective or retrospective effect of overruling *Rajesh Kumar Gupta (supra)* has to be borne in mind and given due deference. As a natural corollary to the aforesaid, we see no reason why we should deviate from the default rule of retrospectivity and instead, resort to the doctrine of prospective overruling. Therefore, pending cases, if any, which were instituted before the decision of this Court in *Sanjeev V. Deshpande (supra)* would also be governed by the law as clarified by it.

159. Furthermore, the retrospective application of the dictum in *Sanjeev V. Deshpande (supra)* would not give rise to any implications as regards the rights of the accused persons under Article 20(1) of the Constitution. This is because while overruling the decision in *Rajesh Kumar Gupta (supra)*, the decision in *Sanjeev V. Deshpande (supra)* has only clarified the law as it stood from its inception and given true effect to the meaning assigned to the relevant provisions of the NDPS Act and the Rules thereunder, by the lawmakers. The same cannot be construed as creating a new offence. Additionally, the overruling of a decision cannot be equated to the enactment of an ex-post facto law, especially when the interpretation given to the statute/provision in the overruling decision is not a novel and unreasonably expansive interpretation of

the provision in question such that it was completely unforeseeable. It cannot be reasonably argued that the indiscriminate dealing in of substances which are only mentioned under the Schedule to the NDPS Act and absent under Schedule I of the NDPS Rules, was indubitably legal and allowed by the legislation, prior to the decision in *Sanjeev V. Deshpande (supra)*. Therefore, there remains no doubt in our minds that giving retrospective effect to the decision in *Sanjeev V. Deshpande (supra)* would be necessary considering the facts and circumstances in the background of which we are called upon to adjudicate these matters

160. However, having held that the decision in *Sanjeev V. Deshpande (supra)* must be given retrospective effect, we find it necessary to clarify that acquittals which have already been recorded as a consequence of the decision in *Rajesh Kumar Gupta (supra)* and have attained finality, would not be unsettled in light of the overruling decision in *Sanjeev V. Deshpande (supra)* or the observations made by us.

161. We are, therefore, of the view that both the Trial Court and the High Court committed an error in holding that the offence under the provisions of the NDPS Act is not made out. The Trial Courts in both the appeals could also not have discharged/deleted the charge under the NDPS Act framed against the

accused persons while disposing of an application under Section 216 CrPC. This is something not permissible within our criminal procedure and the High Court unfortunately failed to take notice of this aspect.

162. In view of the law expounded by us, since the accused concerned in both the appeals were not acquitted in their respective trials, we direct that they be tried by the concerned Special Judge, NDPS, in accordance with law. The Trial Courts are directed to proceed with the trial and conclude it expeditiously.

163. With the aforesaid directions, we allow both the appeals filed by the appellants and set aside the impugned orders passed by the High Court.

164. We direct the Registry to send one copy each of this judgment to all the High Courts.

165. Pending application(s), if any, shall stand disposed of.

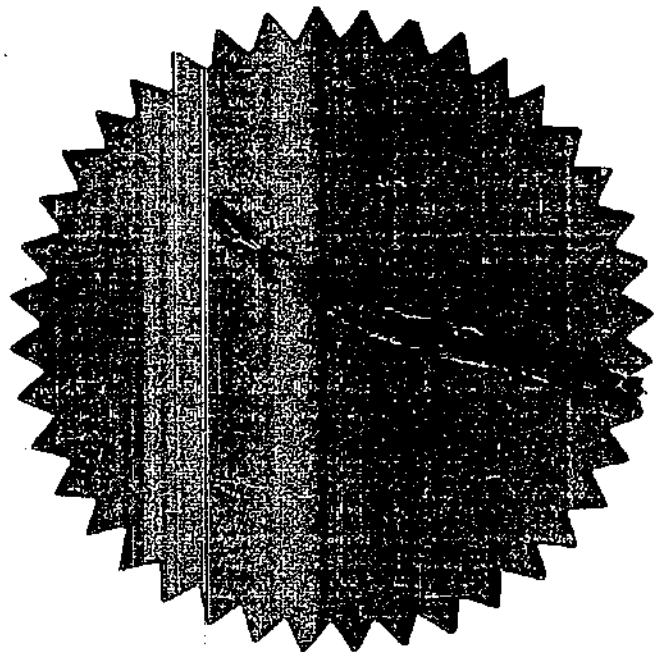
..... J.
(J.B. Pardiwala)

..... J.
(Manoj Misra)

New Delhi;
17th April, 2025.

3777

3777



SEALED IN MY PRESENCE

Item No. 15

Court No. 1

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

Appeal No. 16/2025
(IA No 60/2026)

Rainbow Environments Pvt. Ltd.

Appellant

Versus

Ministry of Environment Forest and
Climate Change & Ors.

Respondent(s)

Date of hearing: 18.02.2026

**CORAM: HON’BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON’BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Appellant: Mr. Raj Panjwani, Senior Advocate with Dr. S.S. Hooda, Mr. Aayushman
Aeron & Mr. Sarabjit Singh, Advs. for Appellant

Respondents: Ms. Suhasini Sen & Mr. Sista Srinivas, Advs. for MoEF & CC

ORDER

1. By this appeal filed under section 16 of the National Green Tribunal Act, 2010, the Appellant has challenged the following two conditions which have been imposed by the Ministry of Environment, Forest and Climate Change (MoEF&CC) in the Environmental Clearance (EC) dated 02.01.2025:

“Additional EC Conditions

1. *This Environmental Clearance is subject to outcome of the court cases Nos. Civil Writ Petition (CWP) No. 2115 of 2024 & No. 12493 of 2024,*

I. Statutory compliance:

xxx xxx.....xxx
iv. *The project proponent shall obtain Consent to Establish / Operate under the provisions of Air (Prevention & Control of Pollution) Act, 1981 and the Water (Prevention & Control of Pollution) Act, 1974 from the concerned State Pollution Control Board/ Committee.”*

2. The stand of the learned Senior Counsel appearing for the Appellant is that in view of the exemption notification dated 12.11.2024 the appellant is exempted from obtaining the CTE under the Air Act and Water Act therefore, the incorporation of such a condition in the EC appears to be an oversight. As against this, the stand of MoEF&CC is that in furtherance of

the notification dated 12.11.2024, the SOP was issued requiring the concerned PCB to forward the environmental safeguards for the incorporation in the EC, but in this case, the said exercise has not been done and those safeguards have not been incorporated in the EC, therefore, the condition has been incorporated in the EC for obtaining the CTE.

3. Having heard learned Counsel for the parties and on the perusal of the record, it is noticed that the MoEF&CC had issued two separate exemption notifications dated 12.11.2024 under the Air Act and Water Act which are stated to be identically worded, therefore, the notification issued on 12.11.2024 under the Air Act only is reproduced below:

**“MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE
NOTIFICATION**

New Delhi. the 12th November, 2024

G.S.R. 702(E). In exercise of power conferred by the proviso to sub-section (1) of section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981), the Central Government, in consultation with the Central Pollution Control Board, exempts the following categories of industrial plants from the application of the provisions of the said sub-section, namely:-

- (a) all industrial plants having pollution index score upto 20 as listed in the Schedule to this notification, subject to condition that such plant shall inform in writing to the State Pollution Control Boards or the Pollution Control Committees:*
- (b) all industrial plants which have obtained prior environmental clearance as per the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1533(E), dated the 14th September, 2006 issued under the Environment (Protection) Act, 1986 (29 of 1986), in respect of previous consent to establish such plant.*

Subject to the provisions of the Act and this notification, MoEFCC may issue necessary standard operating procedure for streamlining implementation of this notification, as deemed appropriate.

*(No. Q-15012/2/2022-CPW-Part(1) / e-240741)
VED PRAKASH MISHRA, Jr. Secy.”*

4. The Appellant is covered by the Clause (b) of the above notification whereby the exemption from obtaining the Consent to Establish has been granted. The notification further provides for issuing necessary Standard

Operating Procedure (SOP) for streamlining the implementation of the notification.

5. In furtherance of the said notification, the O.M. dated 14.11.2024 was issued providing for detailed standard operating procedure for implementation of the notification to exempt the industries under the Water and Air Act. The said SOP reads as under:

“Annexure to letter No. Q-15012/2/2022-CPW-Part (1) /e-240741] dated 14-11-2024

Standard Operating Procedure (SOP) for implementation of the Notification to exempt certain categories of industrial plants under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981

Consequent to the notification published vide G.S.R. 703 (E) dated 12-11-2024 and G.S.R.702 (E) dated 12-11-2024 regarding exemption of certain categories of industrial plants from the application of the proviso to sub-section (1) of section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and proviso to sub-section (1) of section 21 of the Air (Prevention and Control of Pollution) Act, 1981, following SOP is issued for streamlining the implementation of these notifications:

1. All industries/activities, appended as schedule of the said notifications (categorized as White) exempted from the mandatory condition of obtaining CTE and CTO from SPCBs/PCCs as per the above referred notification will follow Procedure as given below:

- a. These units will have to intimate about their operation to SPCBs/PCCs in the form of a self-declaration, complying with all the prevalent rules and regulations. They are not required to pay any consent fee.*
- b. SPCBs/PCCs shall maintain list of such industries/activities separately, which shall be updated from time to time.*
- c. SPCBs/PCCs shall ensure that no activities other than those intimated, are carried out by such exempted units.*

2. The projects / activities requiring prior EC as per the Environmental Impact Assessment notification, 2006 (as amended from time to time) under Environment (Protection) Act, 1986 exempted from obtaining CTE separately, as per the above referred notification will follow Procedure as given below:

- a. They will obtain necessary EC from the competent authority under the notification referred above.*
- b. The Conditions of CTE, as may be required, will be integrated in the conditions of EC itself in the following manner:*

- i. *The competent authority for issuance of EC under EIA Notification, 2006 shall communicate the application of the Project Proponent (PP) to the concerned SPCB/PCC, as the case may be.*
 - ii. *The concerned SPCB/PCC will examine the case and communicate its comments to the above-referred competent authority within the time limit prescribed by it, which shall not be less than 30 days.*
 - iii. *SPCB/PCC may undertake inspection of the site, if required, before sending their comments. Further, SPCB/PCC may also raise queries to the PPs for additional information, if required. Any time taken by the PPs in responding to the queries of SPCBs/PCCs shall be in addition to the time limit prescribed.*
 - iv. *The EC granting authority shall consider the comments of the concerned SPCB/PCC for inclusion of additional conditions while issuing the EC, which will inter-alia, include that the PP shall pay the requisite CTE fee to SPCBs/PCCs within 30 days of issuance of EC.*
 - v. *The EC will become operational only after the payment of CTE fee. Delay in payment of CTE fee beyond 30 days may attract late fee as may be decided by the concerned SPCB/PCC.*
- c. *Such industries / activities shall be required to obtain CTO separately from the SPCBs / PCCs and any other authorization /permission, wherever required as per the prevailing rules and regulations.*

3. *Industries/activities not included in para 1 and 2 above shall be required to obtain CTE and CTO and other permissions, as per the prevailing rules and regulations.”*

6. The above SOP provides the procedure for integration of CTE conditions in EC itself.

7. Learned Counsel for the MoEF&CC has pointed out that in respect of ECs which were issued immediately after the exemption notification some anomalies had occurred and CTE conditions could not be incorporated in EC, therefore, the O.M. dated 14.01.2025 was issued inter-alia to cover those industries which were granted the EC after 12.11.2024, but for which the CTE was not granted. In this OM, the following procedure was prescribed for such cases:

“E. Projects which have already been granted EC after 12th November 2024 but for which CTE has not been granted

Such projects shall obtain the environmental safeguards required for the establishment of the Project/Activity, from the

concerned SPCB/PCC within 30 days of this OM, after payment of requisite fees. The same shall be appended to the EC later and the project proponent shall file six monthly compliance for the safeguards also, along with the EC conditions.”

8. Learned Senior Counsel for the Appellant has pointed out that the Appellant had already applied for the CTE and had subsequently also applied for incorporation of the additional safeguards in the CTE. Initially application for CTE was rejected by the PPCB on 10.04.2024 against which the Appellant had preferred an appeal before the Appellate Authority. The Appellate Authority by the order dated 09.02.2026 has allowed the appeal and has set aside the order of the PPCB dated 10.04.2024 and has remanded the matter back to the PPCB for deciding the application for Consent to Establish on merit in accordance with law.

9. Present is a case where the environmental clearance has been issued to the Appellant after the exemption notification, but the SOP dated 14.11.2024 could not be complied with and the requisite safeguards needed for the CTE could not be called by the competent authority issuing the EC from the concerned PCB, therefore, those safeguards have not been incorporated in the EC. In such circumstances, either those safeguards should be incorporated in the EC or there should be a separate CTE incorporating the safeguards for the protection of the environment.

10. In the present case, the Counsel for both the parties have agreed that the procedure which has been prescribed in the SOP dated 14.11.2024 may be followed and needful be done in terms of the said SOP by the authority competent to issue the EC by calling the reports/safeguards from the PCB.

11. Learned Counsel for the MoEF&CC has informed that when the application for grant of EC was made by the Appellant at that time, the tenure of SEIAA, Punjab had ended. Therefore, the application was made

by the Appellant for grant of EC to the MoEF&CC which was processed and the EC dated 02.01.2025 was issued by the MoEF&CC. She has informed that subsequently, the SEIAA, Punjab has been constituted and file has been transferred to SEIAA, Punjab, therefore, now any addition or alternation in the EC condition is required to be done by the SEIAA, Punjab.

12. In view of the consensus arrived at between the Counsel for the parties that now the procedure prescribed by the SOP dated 14.11.2024 needs to be followed and accordingly, the safeguards are required to be incorporated in the EC dated 02.01.2025, we dispose of this appeal directing the SEIAA, Punjab to take appropriate action in terms of the SOP dated 14.11.2024 and incorporate the requisite safeguards in the EC by obtaining the comments from the PPCB. Let this exercise be completed within a period of three months from the date of receipt of a copy of this order.

13. So far as the challenge to the additional EC Condition No. 1 is concerned, we do not find any ground to interfere in this condition because if any writ petition is pending touching upon the subject matter of the EC then the EC will be governed by the outcome of the said writ petition.

14. The appeal is accordingly dismissed.

Prakash Shrivastava, CP

Dr. Afroz Ahmad, EM

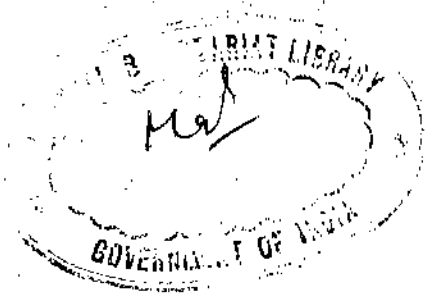
February 18, 2026
Appeal No. 16/2025
(IA No 60/2026)
dv

भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY



सं. 92]

नई दिल्ली, सोमवार, फरवरी 14, 2000/माघ 25, 1921

No. 92]

NEW DELHI, MONDAY, FEBRUARY 14, 2000/MAGHA 25, 1921

पर्यावरण और वन मंत्रालय

अधिसूचना

नई दिल्ली, 14 फरवरी, 2000

का० आ० 123 (अ).—विभिन्न स्रोतों से लगे स्थानों में परिवेशी ध्वनि स्तरों की वृद्धि पर अन्य बातों के साथ-साथ, औद्योगिक कार्यकलाप, सन्निर्माण कार्यकलाप, जनरेटर सेट, लाउड स्पीकर, लोक संबोधन प्रणाली, संगीत प्रणाली यानीय हार्न और अन्य यांत्रिक युक्तियों का मानव स्वास्थ्य पर हानिकार प्रभाव पड़ता है और मनुष्य के मानसिक स्वास्थ्य को प्रभावित करता है; अतः ध्वनि के संबंध में परिवेशी वायु क्वालिटी मानकों के अनुरक्षण के उद्देश्य से ध्वनि उत्पादक और जनक स्रोतों को विनियमित और नियंत्रित करना आवश्यक समझा गया है;

ध्वनि प्रदूषण (नियंत्रण और विनियमन) नियम, 1999 का प्रारूप भारत सरकार के पर्यावरण और वन मंत्रालय की अधिसूचना सं. का. आ. 528(अ), तारीख 28 जून, 1999 द्वारा प्रकाशित किया गया था जिसमें उन सभी व्यक्तियों से जिनके उससे प्रभावित होने की संभावना थी, आक्षेप और सुझाव उस तारीख से जिसको उक्त अधिसूचना की राजपत्रित प्रतियां जनता को उपलब्ध करा दी जाती हैं, साठ दिनों की अवधि की समाप्ति के पूर्व आमंत्रित किए गए थे;

उक्त राजपत्र की प्रतियां जनता को 1 जुलाई, 1999 को उपलब्ध करा दी गई थीं;

उक्त प्रारूप नियमों की बाबत जनता से प्राप्त आक्षेपों और सुझावों पर केन्द्रीय सरकार द्वारा सम्यक् रूप से विचार कर लिया गया है;

अतः अब केन्द्रीय सरकार, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उपधारा (2) के खंड (ii), धारा 6 की उपधारा (1) और उपधारा (2) के खंड (ख) तथा धारा 25 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए ध्वनि उत्पादक और जनक स्रोतों के विनियमन और नियंत्रण के लिए निम्नलिखित नियम बनाती है, अर्थात् :—

ध्वनि प्रदूषण (विनियमन और नियंत्रण) नियम, 2000

1. संक्षिप्त नाम और प्रारंभ

(1) इन नियमों का संक्षिप्त नाम ध्वनि प्रदूषण (विनियमन और नियंत्रण) नियम, 2000 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. परिभाषाएं

इन नियमों में जब तक संदर्भ से अन्यथा अपेक्षित न हो,—

- (क) "अधिनियम" से पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) अभिप्रेत है;
- (ख) "क्षेत्र/परिक्षेत्र" से इन नियमों से संलग्न अनुसूची में दिए गए चार प्रवर्गों में से किसी के अंतर्गत आने वाले सभी क्षेत्र अभिप्रेत हैं;
- (ग) "प्राधिकारी" से, प्रवृत्त विधियों के अनुसार यथास्थिति, केन्द्रीय सरकार या राज्य सरकार द्वारा प्राधिकृत कोई प्राधिकारी या अधिकारी, और उसमें तत्समय प्रवृत्त किसी विधि के अधीन ध्वनि के संबंध में परिवेशी वायु क्वालिटी मानक के अनुरक्षण के लिए अभिहीत जिला मजिस्ट्रेट, पुलिस आयुक्त या कोई अन्य अधिकारी अभिप्रेत है;
- (घ) किसी कारखाने या परिसरों के संबंध में "व्यक्ति" से ऐसा कोई व्यक्ति या अधिभोगी या उसका अधिकर्ता अभिप्रेत है जिसका उक्त कारखाने या परिसर के क्रियाकलाप पर नियंत्रण है;
- (ङ) संघ राज्यक्षेत्र के संबंध में "राज्य सरकार" से संविधान के अनुच्छेद 239 के अधीन नियुक्त उसका प्रशासक अभिप्रेत है;

3. विभिन्न क्षेत्रों/परिक्षेत्रों के लिए ध्वनि के संबंध में परिवेशी वायु क्वालिटी मानक

- (1) विभिन्न क्षेत्रों/परिक्षेत्रों के लिए ध्वनि के संबंध में परिवेशी वायु क्वालिटी मानक वे होंगे जो इन नियमों से संलग्न अनुसूची में विनिर्दिष्ट हैं।
- (2) राज्य सरकार, विभिन्न क्षेत्रों के लिए ध्वनि मानकों को क्रियान्वित करने के प्रयोजन के लिए औद्योगिक, वाणिज्यिक, आवासीय या शांत क्षेत्रों/परिक्षेत्रों में क्षेत्रों को प्रवर्गीकृत कर सकेगी।
- (3) राज्य सरकार ध्वनि के उपशमन के लिए उपाय करेगी जिसमें यानीय संचलन से प्रसर्जित ध्वनि सम्मिलित है और यह सुनिश्चित करेगी कि विद्यमान ध्वनि स्तर इन नियमों के अंतर्गत विनिर्दिष्ट परिवेशी वायु क्वालिटी मानक से अधिक न हो।
- (4) सभी विकास प्राधिकारी, स्थानीय निकाय और अन्य संबद्ध प्राधिकारी, शहरी और ग्रामीण योजना से संबंधित विकास क्रियाकलाप का आयोजन करते समय या उससे संबंधित कृत्यों का पालन करते समय ध्वनि संकट से बचाव के लिए और ध्वनि के संबंध में परिवेशी वायु क्वालिटी मानकों के अनुरक्षण के उद्देश्य की प्राप्ति के लिए जीवन की क्वालिटी के प्राचल के रूप में ध्वनि प्रदूषण के सभी पक्षों पर विचार करेंगे।
- (5) अस्पतालों, शैक्षिक संस्थाओं और न्यायालयों के आसपास कम-से-कम 100 मीटर तक के क्षेत्र को इन नियमों के प्रयोजन के लिए शांत क्षेत्र/परिक्षेत्र घोषित किया जाएगा।

4. ध्वनि प्रदूषण नियंत्रण उपायों को प्रवृत्त करने का दायित्व

- (1) किसी क्षेत्र/परिक्षेत्र में ध्वनि स्तर, उक्त अनुसूची में विनिर्दिष्ट ध्वनि से संबंधित परिवेशी वायु क्वालिटी मानक से अधिक नहीं होगा।
- (2) प्राधिकरण, ध्वनि प्रदूषण नियंत्रण उपायों के प्रवर्तन और ध्वनि से संबंधित परिवेशी वायु क्वालिटी मानकों के सम्यक् पालन के लिए उत्तरदायी होगा।

5. लाउड स्पीकर और लोक संबोधन प्रणाली के प्रयोग पर निर्बन्धन

- (1) लाउड स्पीकर या लोक संबोधन प्रणाली का प्रयोग केवल तभी किया जाएगा जब प्राधिकरण से लिखित अनुज्ञा अभिप्राप्त की गई हो।
- (2) लाउड स्पीकर या लोक संबोधन प्रणाली का प्रयोग रात में (10 बजे अपराह्न से 6 बजे पूर्वाह्न तक) नहीं किया जाएगा सिवाय तब के जब वह भीतरी संसूचना के लिए बंद परिसर में हो उदाहरणतया सभा भवन, सम्मेलन कक्ष, समुदाय हाल और प्रीतिभोज हाल।

6. शांत परिक्षेत्र/क्षेत्र में किसी उल्लंघन के परिणाम

जो कोई व्यक्ति शांत परिक्षेत्र/क्षेत्र के अंतर्गत आने वाले किसी स्थान में निम्नलिखित कोई अपराध करता है, वह उक्त अधिनियम के उपबंधों के अधीन शांति के लिए दायी होगा :—

- (i) जो कोई किसी प्रकार का संगीत गाता/बजाता है या कोई ध्वनि प्रवर्धक प्रयोग करता है;
- (ii) जो कोई ढोल/टॉम टॉम पीटता है या हार्न बजाता है चाहे वह संगीतमय हो या दबाने वाला, या तुरही बजाता है या किसी यंत्र को पीटता है या बजाता है, या
- (iii) जो कोई भीड़ आकर्षित करने के लिए कोई अनुकरणशील, संगीतमय या अन्य अभिनय प्रदर्शित करता है।

7. प्राधिकरण को की जाने वाली शिकायतें

- (1) कोई व्यक्ति, यदि ध्वनि स्तर परिवेशी ध्वनि मानक से 10 डीबी(ए) या किसी क्षेत्र/परिक्षेत्र के सामने तत्संबंधी स्तंभ में दिए गए से अधिक बढ़ जाता है तो प्राधिकरण को शिकायत कर सकेगा।
- (2) प्राधिकरण, शिकायत पर कार्यवाही करेगा और उल्लंघनकर्ता के विरुद्ध इन नियमों और प्रवृत्त किसी अन्य विधि के उपबंधों के अनुसार कार्यवाही करेगा।

3786

8. किसी संगीतमय ध्वनि या ध्वनि के जारी रहने को प्रतिबिद्ध आदि करने की शक्ति

- (1) यदि प्राधिकरण का, किसी पुलिस थाने के प्रभारी अधिकारी को रिपोर्ट से या उसके द्वारा प्राप्त किसी अन्य सूचना से समाधान हो जाता है कि लोक या किसी व्यक्ति, जो उसके आसपास निवास करता हो या किसी संपत्ति का अधिभोग करता हो, क्षोभ, विघ्न, असुविधा या क्षति या क्षोभ, विघ्न, असुविधा या क्षति के जोखिम को निवारित करने के लिए आवश्यक समझता है तो वह लिखित आदेश द्वारा निम्नलिखित के निवारण, प्रतिषेध, नियंत्रण या विनियमन के लिए किसी व्यक्ति को ऐसे निदेश जारी कर सकेगा जैसे वह आवश्यक समझे :—

(क) किन्हीं परिसरों में निम्नलिखित के घटने या जारी रहने पर—

- (i) किसी कंठ संगीत या वाद्य संगीत,
 (ii) किसी यंत्र जिसमें लाउड स्पीकर, लोक संबोधन प्रणाली, साधित्र या यंत्र या प्रयुक्ति जो ध्वनि उत्पादित या पुनरुत्पादित करने के योग्य है के किसी भी रीति से बजाने, पीटने, टकराने, धमन या प्रयोग द्वारा कारित ध्वनियाँ, या
 (ख) किन्हीं परिसरों में या पर किसी व्यापार, उप-व्यवसाय या संक्रिया या प्रक्रिया का करना जिसके परिणामस्वरूप या जिसके करने से ध्वनि हो।
 (2) उपनियम (1) के अधीन सशक्त किया गया प्राधिकरण या तो स्वयं अपनी प्रेरणा से या उपनियम (1) के अधीन किए गए किसी आदेश द्वारा व्यथित किसी व्यक्ति के आवेदन पर ऐसे आदेश में या तो विखंडित, उपांतरित या परिवर्तित कर सकता है :

परन्तु ऐसे किसी आवेदन का निपटान करने से पूर्व, उक्त प्राधिकरण आवेदक को व्यक्तिगत रूप से या उसका प्रतिनिधित्व करने वाले व्यक्ति द्वारा अपने समक्ष हाजिर होने और उक्त आदेश के विरुद्ध हेतुक दर्शित करने का अवसर देगा तथा यदि वह ऐसे किसी आवेदन को पूर्णतया या भागरूप रद्द करता है तो ऐसे रद्द किए जाने के लिए कारण अभिलिखित करेगा।

अनुसूची

[नियम 3(1) और 4(1) देखिए]

ध्वनि के संबंध में परिवेशी वायु क्वालिटी मानक

क्षेत्र का कोड	क्षेत्र/परिक्षेत्र का प्रवर्ग	डीबी(ए) लैक में सीमा*	
		दिन का समय	रात का समय
(क)	औद्योगिक क्षेत्र	75	70
(ख)	वाणिज्यिक क्षेत्र	65	55
(ग)	आवासीय क्षेत्र	55	45
(घ)	शांत परिक्षेत्र	50	40

टिप्पण :—1. दिन के समय से 6.00 बजे पूर्वा. से 10.00 बजे अप. तक अभिप्रेत है।

2. रात्रि समय से 10 बजे अप. से 6.00 बजे पूर्वा. तक अभिप्रेत है।

3. शांत परिक्षेत्र को ऐसे क्षेत्र के रूप में परिभाषित किया गया है जो अस्पतालों, शैक्षिक संस्थाओं और न्यायालयों के आसपास कम-से-कम 100 मीटर में समाविष्ट है। शांत परिक्षेत्र ऐसे परिक्षेत्र हैं जो सक्षम प्राधिकारी द्वारा इस प्रकार घोषित किए जाएं।

4. मिश्रित प्रवर्गों के क्षेत्र सक्षम प्राधिकारी द्वारा ऊपर वर्णित चार प्रवर्गों में से एक घोषित किए जा सकते हैं।

* डीबी(ए) लैक द्योतक है मानवीय श्रवण से संबंधित मापक 'ए' पर डेसीबल में ध्वनि का समय भारित औसत स्तर।

“डेसीबल” वह एकक है जिसमें ध्वनि मापी जाती है।

डीबी(ए) लैक में “ए” द्योतक है ध्वनि के माप में आवृत्ति भार और मानवीय कान की आवृत्ति उत्तर लक्षणों के समरूप है।

लैक : यह विनिर्दिष्ट अवधि में ध्वनि स्तर का ऊर्जा माध्य है।

[फा. सं. क्यू-14012/1/96-सीपीए]

विजय शर्मा, संयुक्त सचिव

MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 14 February, 2000

S.O. 123(E).— Whereas the increasing ambient noise levels in public places from various sources, inter-alia, industrial activity, construction activity, generator sets, loud speakers, public address systems, music systems, vehicular horns and other mechanical devices have deleterious effects on human health and the psychological well being of the people; it is considered necessary to regulate and control noise producing and generating sources with the objective of maintaining the ambient air quality standards in respect of noise;

Whereas a draft of Noise Pollution (Control and Regulation) Rules, 1999 was published under the notification of the Government of India in the Ministry of Environment and Forests vide number S.O. 528 (E) dated the 28th June, 1999 inviting objections and suggestions from all the persons likely to be affected thereby, before the expiry of the period of sixty days from the date on which the copies of the Gazette containing the said notification are made available to the public;

And whereas copies of the said Gazette were made available to the public on the 1st day of July, 1999;

And whereas the objections and suggestions received from the public in respect of the said draft rules have been duly considered by the Central Government;

Now, therefore, in exercise of the powers conferred by clause (ii) of sub-section (2) of section 3, sub-section (1) and clause (b) of sub-section (2) of section 6 and section 25 of the Environment (Protection) Act, 1986 (29 of 1986) read with rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following rules for the regulation and control of noise producing and generating sources, namely:-

The Noise Pollution (Regulation and Control) Rules, 2000**1. Short-title and commencement.-**

- (1) These rules may be called the Noise Pollution (Regulation and Control) Rules, 2000.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. In these rules, unless the context otherwise requires,-

- (a) "Act" means the Environment (Protection) Act, 1986 (29 of 1986);
- (b) "area/zone" means all areas which fall in either of the four categories given in the Schedule annexed to these rules;
- (c) "authority" means any authority or officer authorised by the Central Government, or as the case may be, the State Government in accordance with the laws in force and includes a District Magistrate, Police Commissioner, or any other officer designated for the maintenance of the ambient air quality standards in respect of noise under any law for the time being in force;
- (d) "person" in relation to any factory or premises means a person or occupier or his agent, who has control over the affairs of the factory or premises;
- (e) "State Government" in relation to a Union territory means the Administrator thereof appointed under article 239 of the Constitution.

3. Ambient air quality standards in respect of noise for different areas/zones.

- (1) The ambient air quality standards in respect of noise for different areas/zones shall be such as specified in the Schedule annexed to these rules.
- (2) The State Government may categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different areas.
- (3) The State Government shall take measures for abatement of noise including noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.
- (4) All development authorities, local bodies and other concerned authorities while planning developmental activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise.

- (5) An area comprising not less than 100 metres around hospitals, educational institutions and courts may be declared as silence area/zone for the purpose of these rules.

4. Responsibility as to enforcement of noise pollution control measures.-

- (1) The noise levels in any area/zone shall not exceed the ambient air quality standards in respect of noise as specified in the Schedule.
- (2) The authority shall be responsible for the enforcement of noise pollution control measures and the due compliance of the ambient air quality standards in respect of noise.

5. Restrictions on the use of loud speakers/public address system.-

- (1) A loud speaker or a public address system shall not be used except after obtaining written permission from the authority.
- (2) A loud speaker or a public address system shall not be used at night (between 10.00 p.m. to 6.00 a.m.) except in closed premises for communication within, e.g. auditoria, conference rooms, community halls and banquet halls.

6. Consequences of any violation in silence zone/area.-

Whoever, in any place covered under the silence zone/area commits any of the following offence, he shall be liable for penalty under the provisions of the Act:-

- (i) whoever, plays any music or uses any sound amplifiers,
- (ii) whoever, beats a drum or tom-tom or blows a horn either musical or pressure, or trumpet or beats or sounds any instrument, or
- (iii) whoever, exhibits any mimetic, musical or other performances of a nature to attract crowds.

7. Complaints to be made to the authority.-

- (1) A person may, if the noise level exceeds the ambient noise standards by 10 dB(A) or more given in the corresponding columns against any area/zone, make a complaint to the authority.

- (2) The authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules and any other law in force.

8. Power to prohibit etc. continuance of music sound or noise.-

- (1) If the authority is satisfied from the report of an officer incharge of a police station or other information received by him that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or risk of annoyance, disturbance, discomfort or injury to the public or to any person who dwell or occupy property on the vicinity, he may, by a written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating:-

(a) the incidence or continuance in or upon any premises of -

(i) any vocal or instrumental music,

(ii) sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers, public address systems, appliance or apparatus or contrivance which is capable of producing or re-producing sound, or

(b) the carrying on in or upon, any premises of any trade, avocation or operation or process resulting in or attended with noise.

- (2) The authority empowered under sub-rule (1) may, either on its own motion, or on the application of any person aggrieved by an order made under sub-rule (1), either rescind, modify or alter any such order.

Provided that before any such application is disposed of, the said authority shall afford to the applicant an opportunity of appearing before it either in person or by a person representing him and showing cause against the order and shall, if it rejects any such application either wholly or in part, record its reasons for such rejection.

SCHEDULE

(see rule 3(1) and 4(1))

Ambient Air Quality Standards in respect of Noise

Area Code	Category of Area/Zone	Limits in dB(A) Leq *	
		Day Time	NightTime
(A)	Industrial area	75	70
(B)	Commercial area	65	55
(C)	Residential area	55	45
(D)	Silence Zone	50	40

- Note :-
1. Day time shall mean from 6.00 a.m. to 10.00 p.m.
 2. Night time shall mean from 10.00 p.m. to 6.00 a.m.
 3. Silence zone is defined as an area comprising not less than 100 metres around hospitals, educational institutions and courts. The silence zones are zones which are declared as such by the competent authority.
 4. Mixed categories of areas may be declared as one of the four abovementioned categories by the competent authority.

*dB(A) Leq denotes the time weighted average of the level of sound in decibels on scale A which is relatable to human hearing.

A "decibel" is a unit in which noise is measured.

"A", in dB(A) Leq, denotes the frequency weighting in the measurement of noise and corresponds to frequency response characteristics of the human ear.

Leq : It is an energy mean of the noise level over a specified period.

[F. No Q-14012/1/96-CPA]

VIJAI SHARMA, Jt Secy.

GOVERNMENT OF NCT OF DELHI
DEPARTMENT OF FORESTS & WILDLIFE
A-BLOCK, 2ND FLOOR, VIKAS BHAWAN, IP ESTATE, NEW DELHI-110002

F.No.11(92)/RMB/MR SOP/2025-26/ 8441

Date: 24/09/25

To,

All land owning agencies in NCT of Delhi
(As per list enclosed)

Sub: Standard Operating Procedure (SOP) on "Morphological Ridge" as per the map provided by the Geological Survey of India (GSI)- reg.

Sir/ Madam,

Please find enclosed herewith a copy of the SOP on "Morphological Ridge" as per the map provided by the Geological Survey of India (GSI) and digitised by the GSDL. Any area or location within the NCT of Delhi may be checked on the E-Van Lekh website to ascertain whether it falls under the category of Morphological Ridge as per the existing GSI map. The SOP can also be accessed on the e-vanlekh portal i.e <https://evanlekh.eforest.delhi.gov.in>.

This issues with the approval of the Competent Authority.

Encl.A/A

Yours faithfully

—Asabestir
24/09/2025

(Jabestin A.)

Conservator of Forests (HQ)

To,

1. The Vice Chairman (DDA), Delhi Development Authority, Vikas Sadan, INA, New Delhi- 110023.
2. The Commissioner, MCD, Dr. S.P. Mukherjee Civic Center, JLN Marg, New Delhi-110002.
3. The Chairman, New Delhi Municipal Council (NDMC), Palika Kendra, Parliament Street, New Delhi-110001.
4. Principal Secretary, PWD, 12th Floor, MSO Building, I. P. Estate, New Delhi-110002.
5. The CEO, Delhi Parks & Garden Society, 6" Floor, C-Wing, Delhi Secretariat, New Delhi.
6. The Chairman, NHAI, National Highways Authority of India, G 5&6, Sector-10, Dwarka, New Delhi-110075.
7. The Directorate General (HQ), CPWD, A-Wing, Room No. - 101 Nirman Bhawan, New Delhi-110011.
8. The Director, Delhi Jal Board (HQ), Public Relations Office, Room No.306, 3rd Floor, Varunalaya Ph-II, Jhandewalan, Karol Bagh, New Delhi-110005.
9. The Director (Hort.), Environment Department, 11th Floor, MSO Building, I.P. Estate, New Delhi-110002.
10. The Managing Director, Corporate Planning Department, NTPC Ltd, NTPC Bhawan, SCOPE Complex, Institutional Area, Lodhi Road, New Delhi - 110003.
11. The President, Delhi Cantonment Board, Delhi-110010.
12. The Chairman JGM/ Land, DMRC, Metro Bhawan, 13, Fire Brigade Lane, Barakhmbha Road, Delhi-110001.
13. The Chairman (Civil), DTC, Delhi Transport Corporation (HQ), Govt. of NCT of Delhi, I.P.Estate, New Delhi- 110002.
14. The Chairman, DSIIDC, Delhi State Industrial and Infrastructure Development Corporation (DSIIDC), Technical Center Ground Floor Building Wazirpur Delhi-110052.
15. General Manager/CSR, BSES Rajdhani (BRPL), The GM/ CSR, BSES Rajdhani Power Ltd., BSES Bhawan, Nehru Place, New Delhi-110019.
16. The Secretary Directorate (Higher Education), Directorate of Higher Education, BTE Complex, Muni Maya Ram Marg, Pitampura, Delhi- 110034.
17. The Director, Education Department, Old Street, Delhi-110054.
18. The CEO / Director, DUSIB (Delhi Urban Shelter Improvement Board), ITO.
19. Pr. Chief Engineer, Northern Railways, Baroda House, Delhi/ the Divisional Engineer (Hort.), Office of the Northern Railway Divisional Office, State Entry Road New Delhi.

20. Chief Engineer (I&FC), Zone-II, L.M. Bund Office Complex, Shastri Nagar, Delhi-110031.
21. The DGM (CSR), NDPL, Tata Power Delhi Distribution Ltd. C-2 Block Near Sai Mandir Keshav puram Cencare, Delhi - 110035.
22. All District Magistrates / All DCPs of Delhi / All Deputy Conservator of Forests (DCFs) of Delhi.
23. The Land and Development Officer, Ministry of Housing & Urban Affairs, Land & Development Office, Room no. 623-A Wing, Nirman Bhawan, New Delhi-110001.

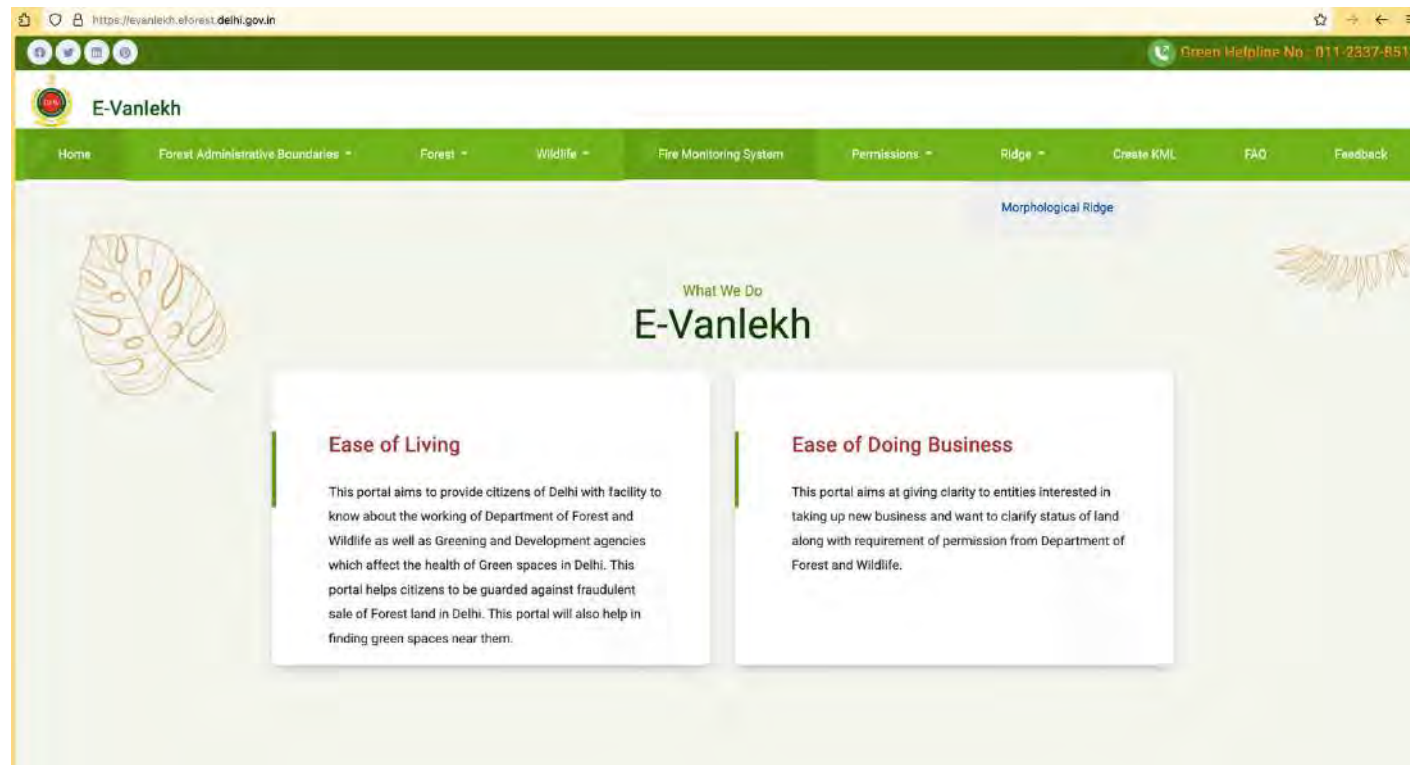
Copy for kind information to:-

1. The Principal Secretary to Hon'ble Lt. Governor of National Capital Territory of Delhi, Raj Niwas, Civil Lines, Delhi-110054.
2. The Principal Secretary to Hon'ble Chief Minister, Govt. of National Capital Territory of Delhi, Delhi Secretariat, New Delhi-02.
3. The Secretary to Hon'ble Minister (Environment, Forest & Wildlife), GNCTD.
4. The Staff Officer to Chief Secretary, GNCTD.
5. PS to Secretary (Environment & Forests), GNCTD.
6. PS to PCCF / HoD, Department of Forests & Wildlife, GNCTD.
7. PA to Chairman, Central Empowered Committee, Chanakya Bhawan, Chanakyapuri, New Delhi-110023.
8. The CCF (A), Department of Forests & Wildlife, GNCTD.
9. The CF, Department of Forests & Wildlife, GNCTD.
10. The DCF(P&M), Department of Forest & Wildlife, GNCTD.
11. IT Cell, Department of Forests & Wildlife, GNCTD for uploading on e-vanlekh portal.
12. Guard file.

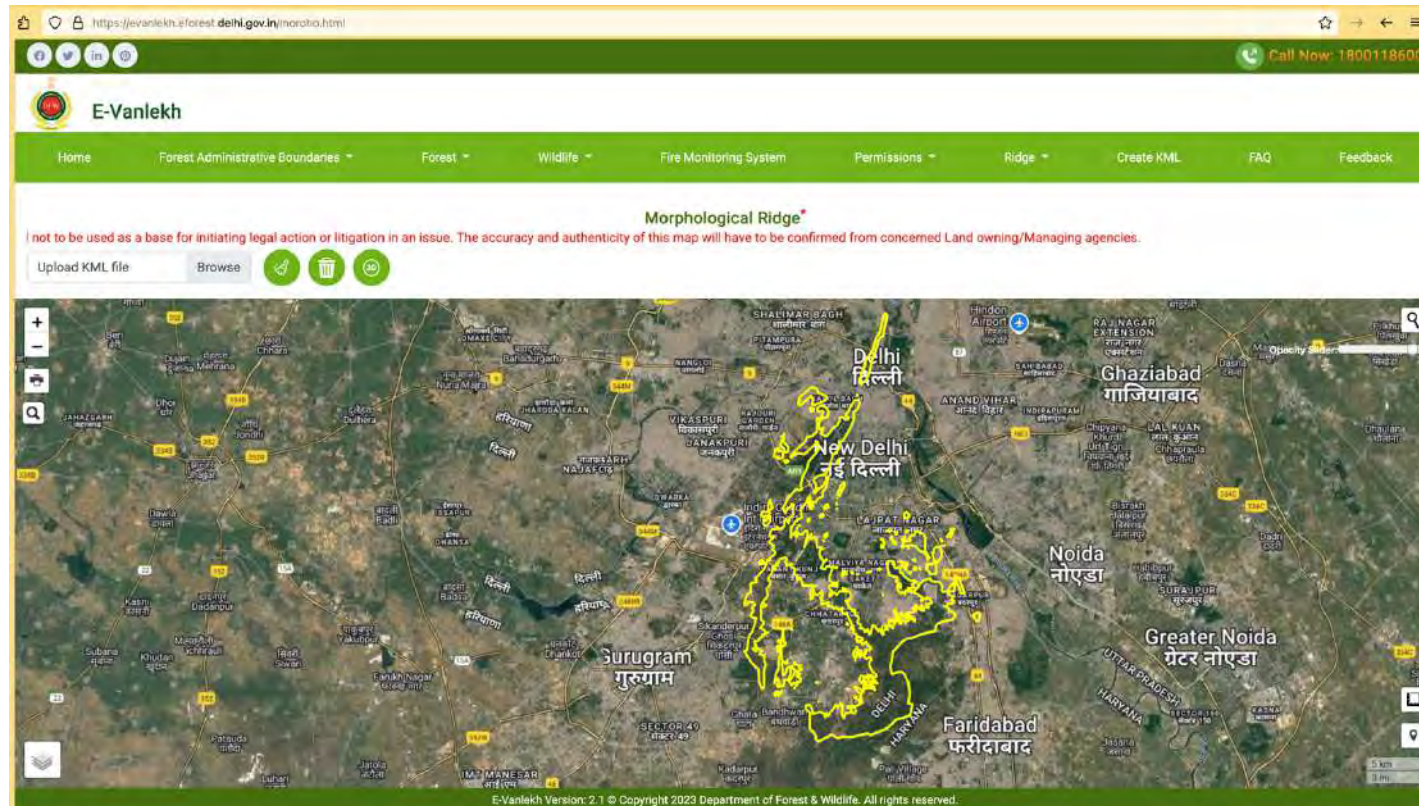
3795

HOW TO FIND OUT IF ANY AREA LIES WITHIN MORPHOLOGICAL RIDGE OF DELHI OR NOT?

1. Prepare *kml* file of the concerned area.
2. Log in to <https://evanlekh.eforest.delhi.gov.in/>
3. Go to Ridge on the top vertical row and when you bring the cursor on this “Morphological Ridge” in blue will appear as follows:



- Click on “Morphological Ridge” and following will appear:

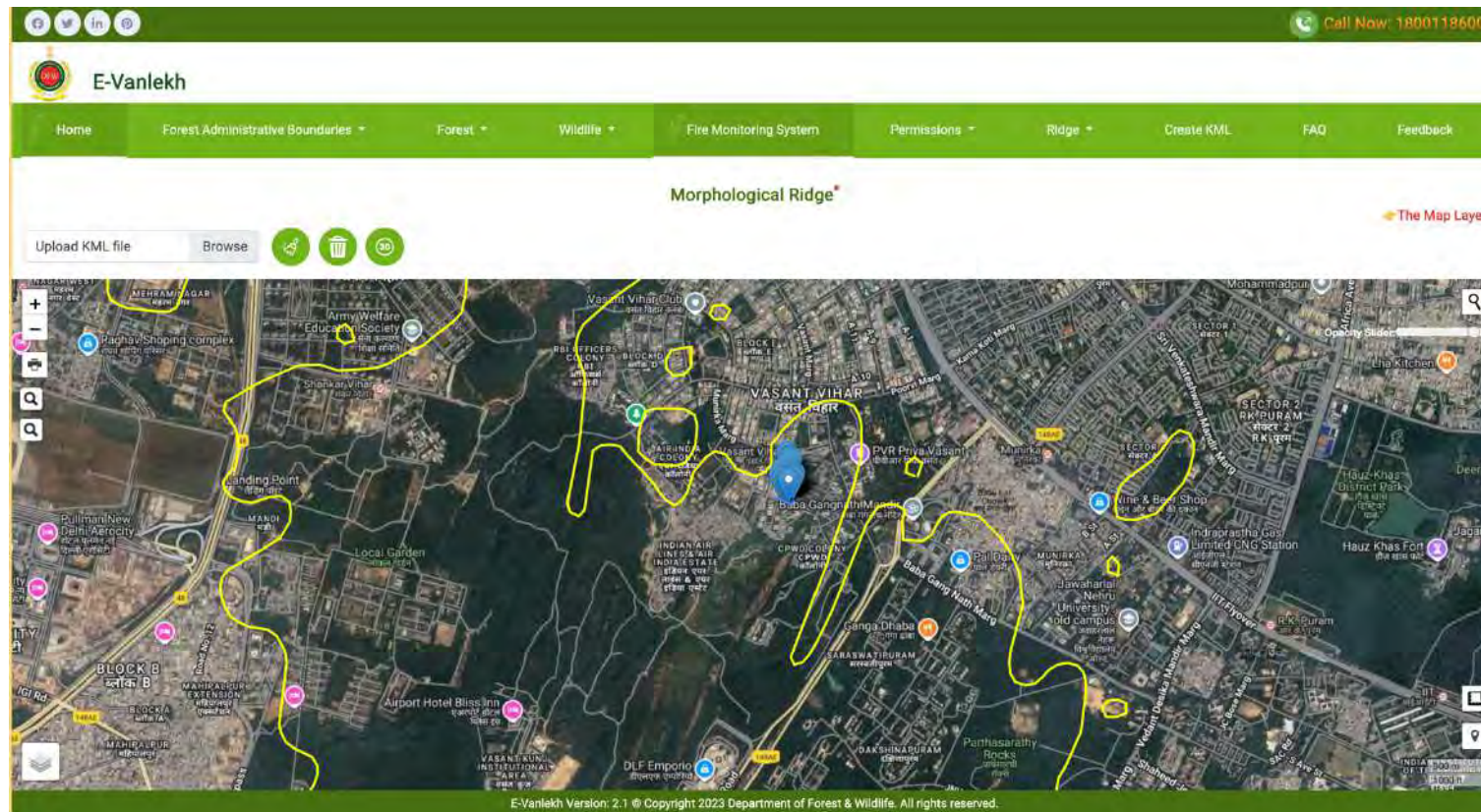


The area marked by yellow boundary the ‘Morphological Ridge’ as per map provided by Geological Survey of India (GSI).

- Just above this Google Earth image you can see a box in the left hand side with wordings “Upload KML file”.

3797

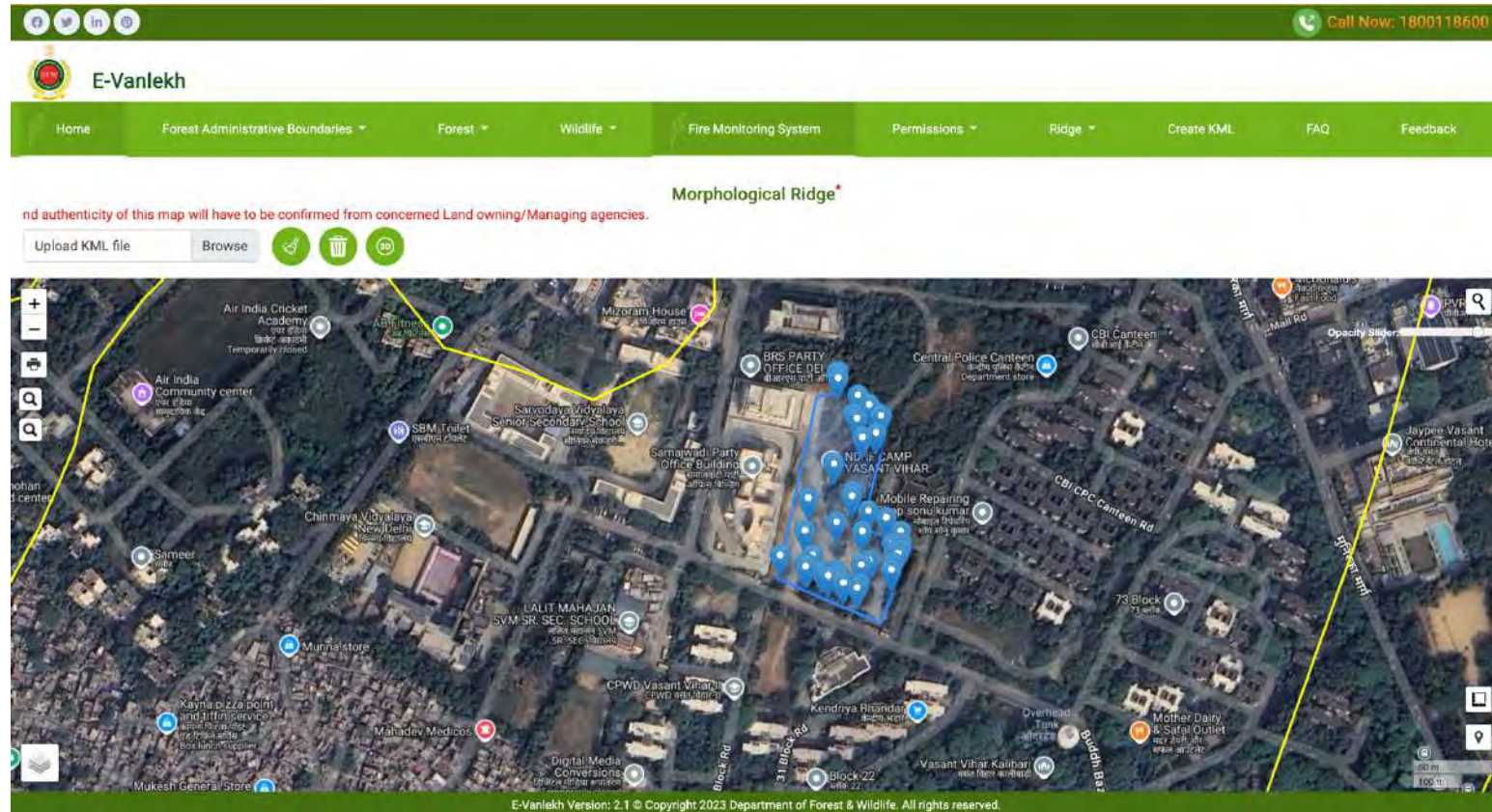
6. Please upload the *kml* file of your project site. For example, a *kml* of proposed building of NDRF has been uploaded and the following emerged:



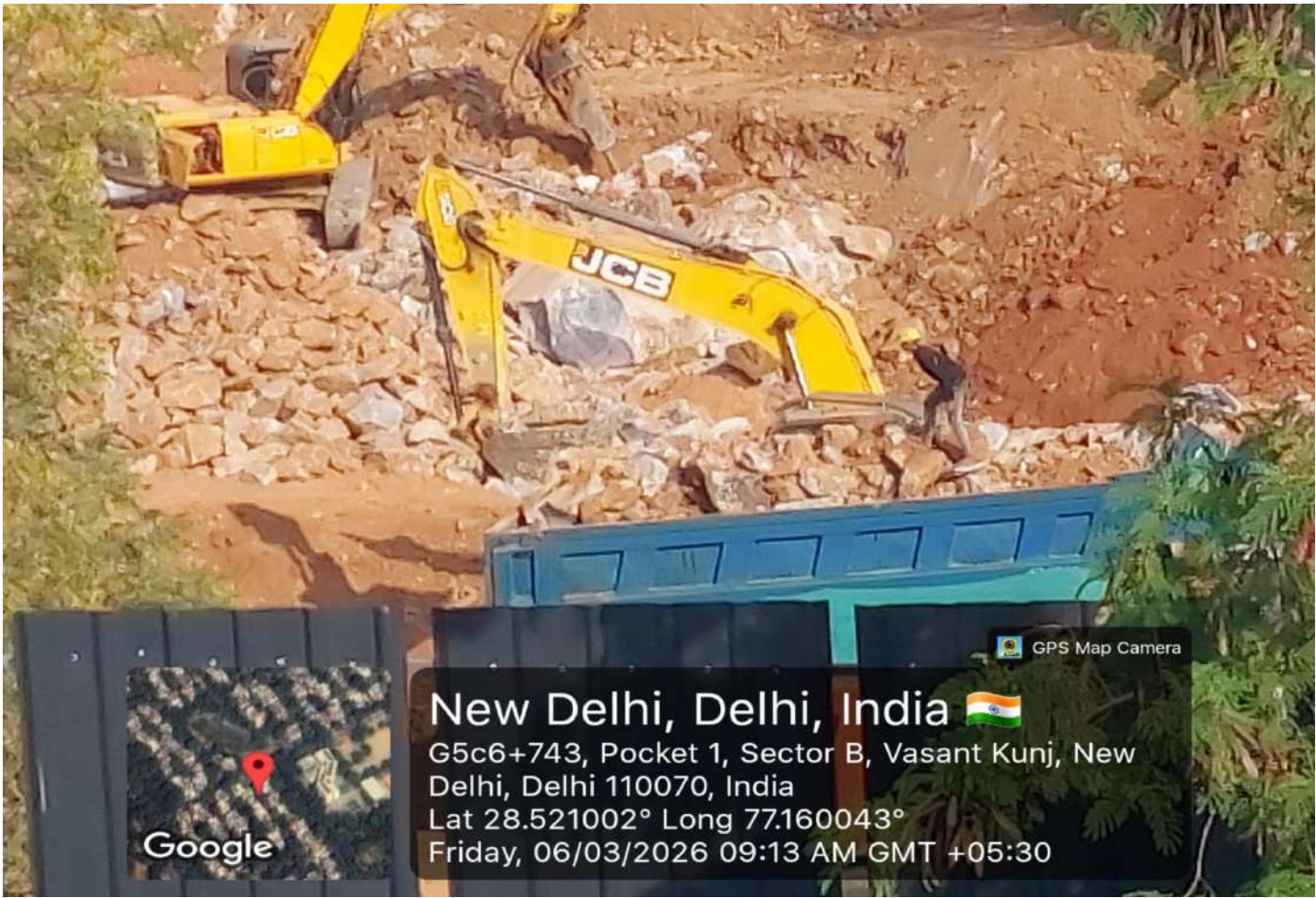
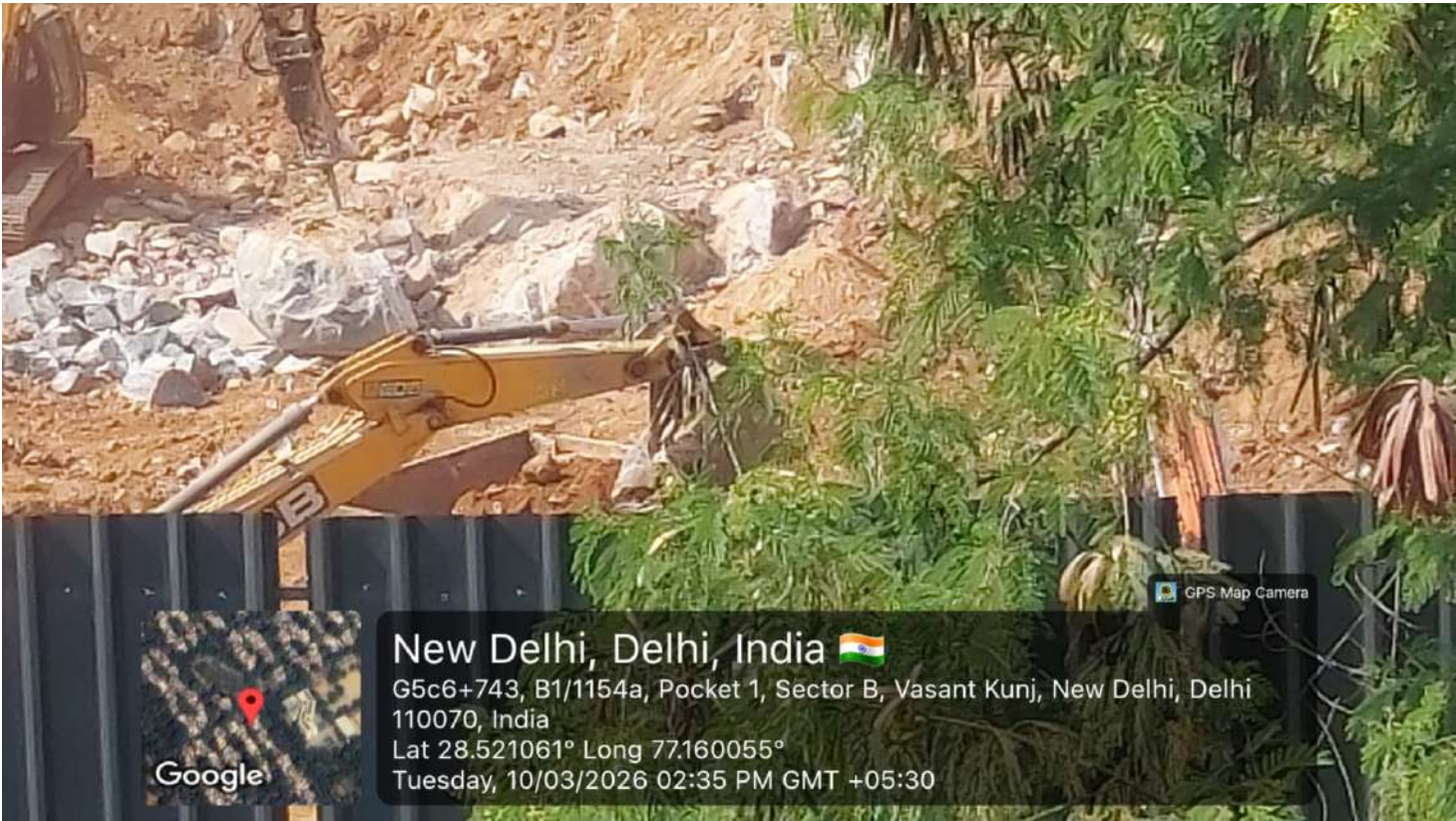
7. The blue dots indicate location of the site whose *kml* has been uploaded. As can be seen it falls within the Morphological Ridge area.

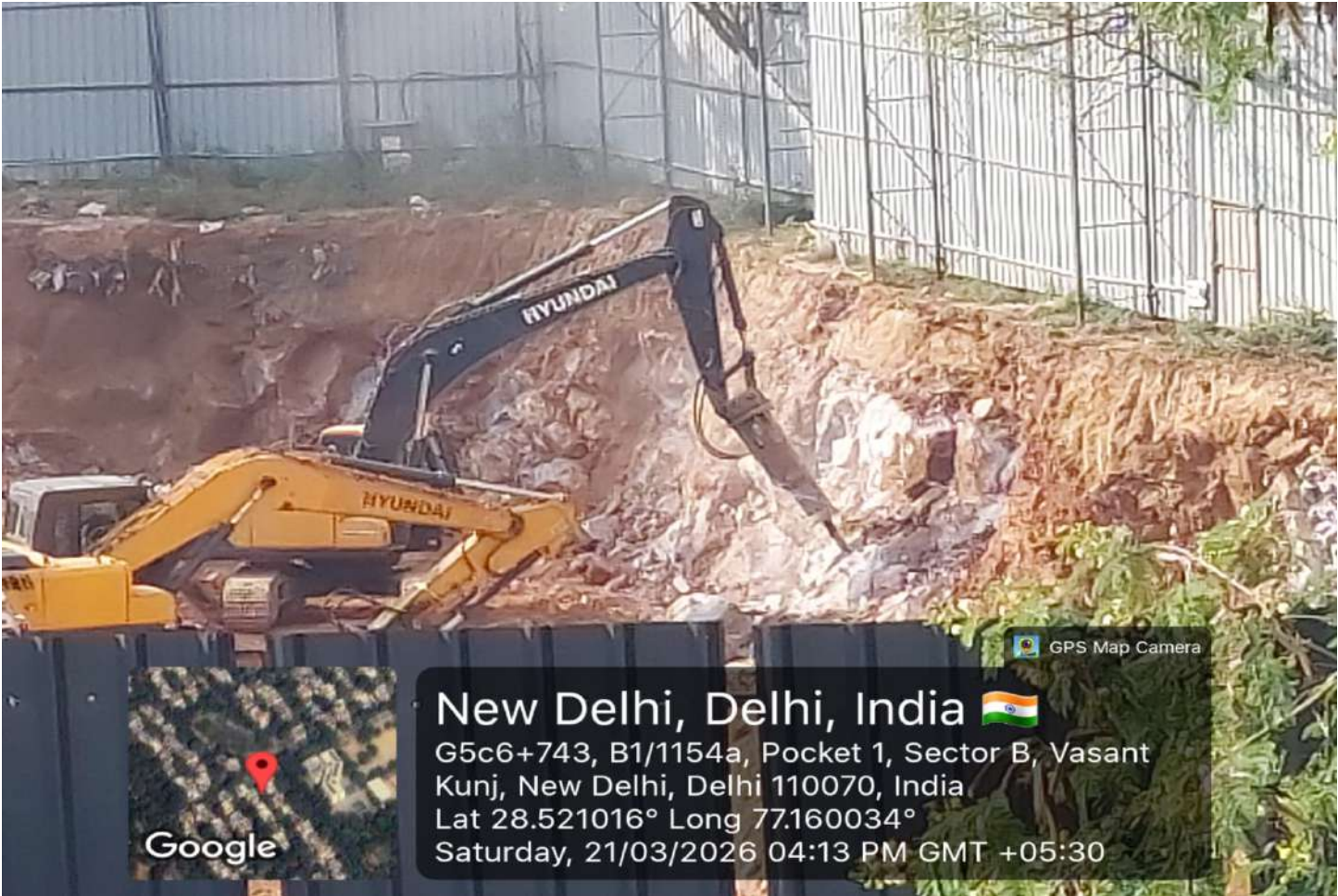
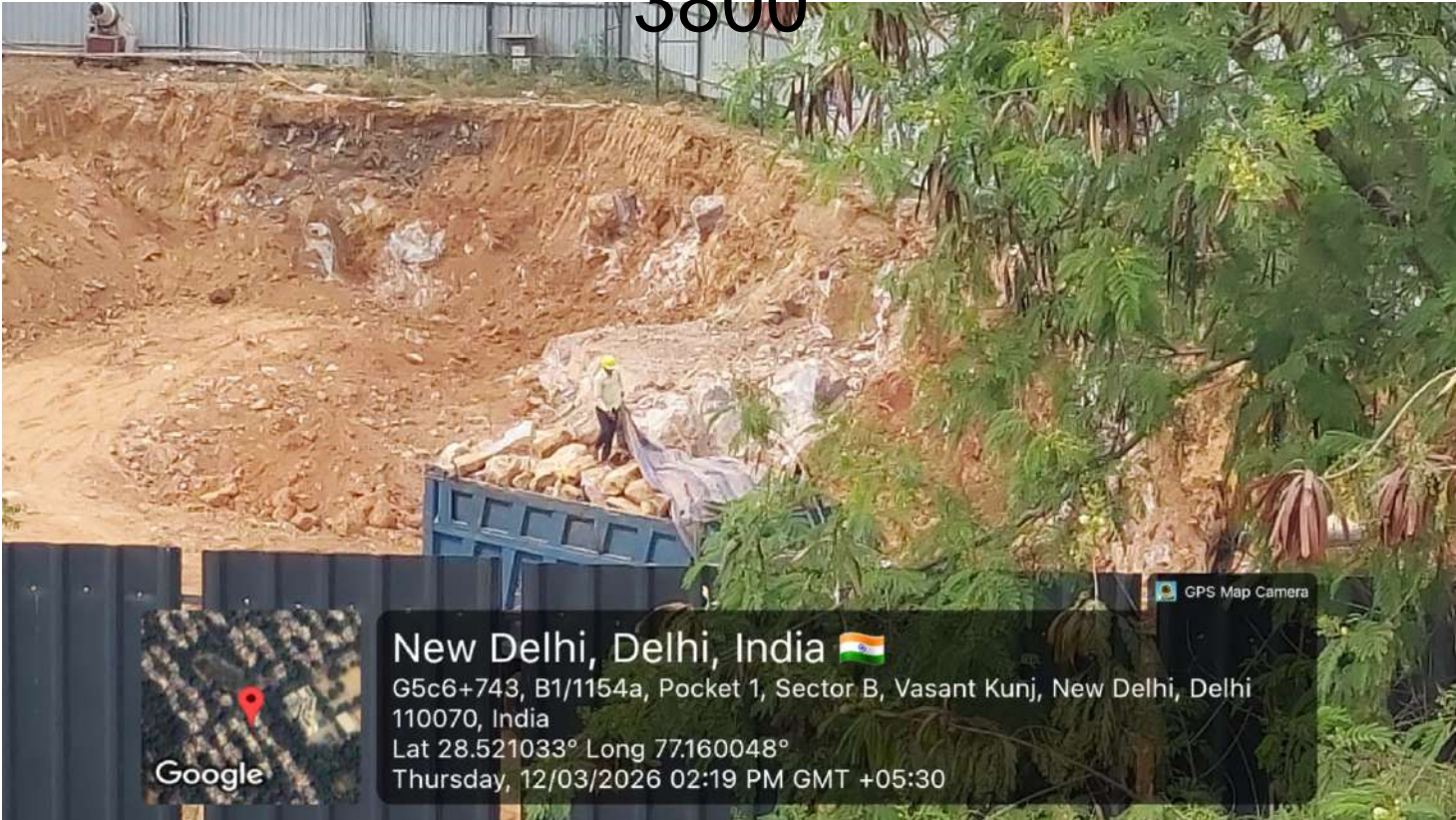
3798

8. In some cases, the area may partly fall inside the Morphological Ridge and partly outside. You can find that out by enlarging this image using + and – signs on the left top corner of the map. The image in the current selection will come out as follows, and the entire area in this case lies within the boundaries of Morphological Ridge:

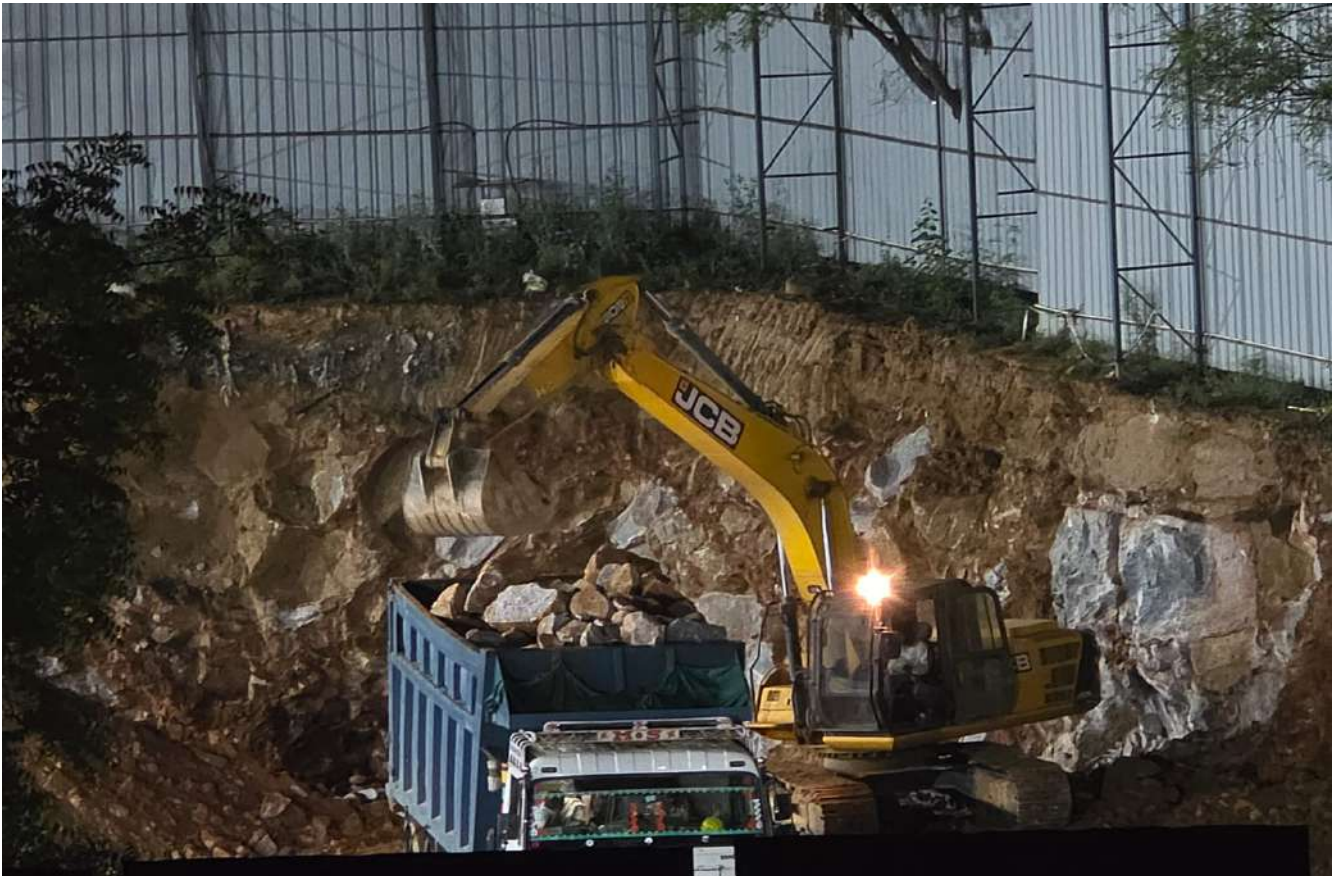
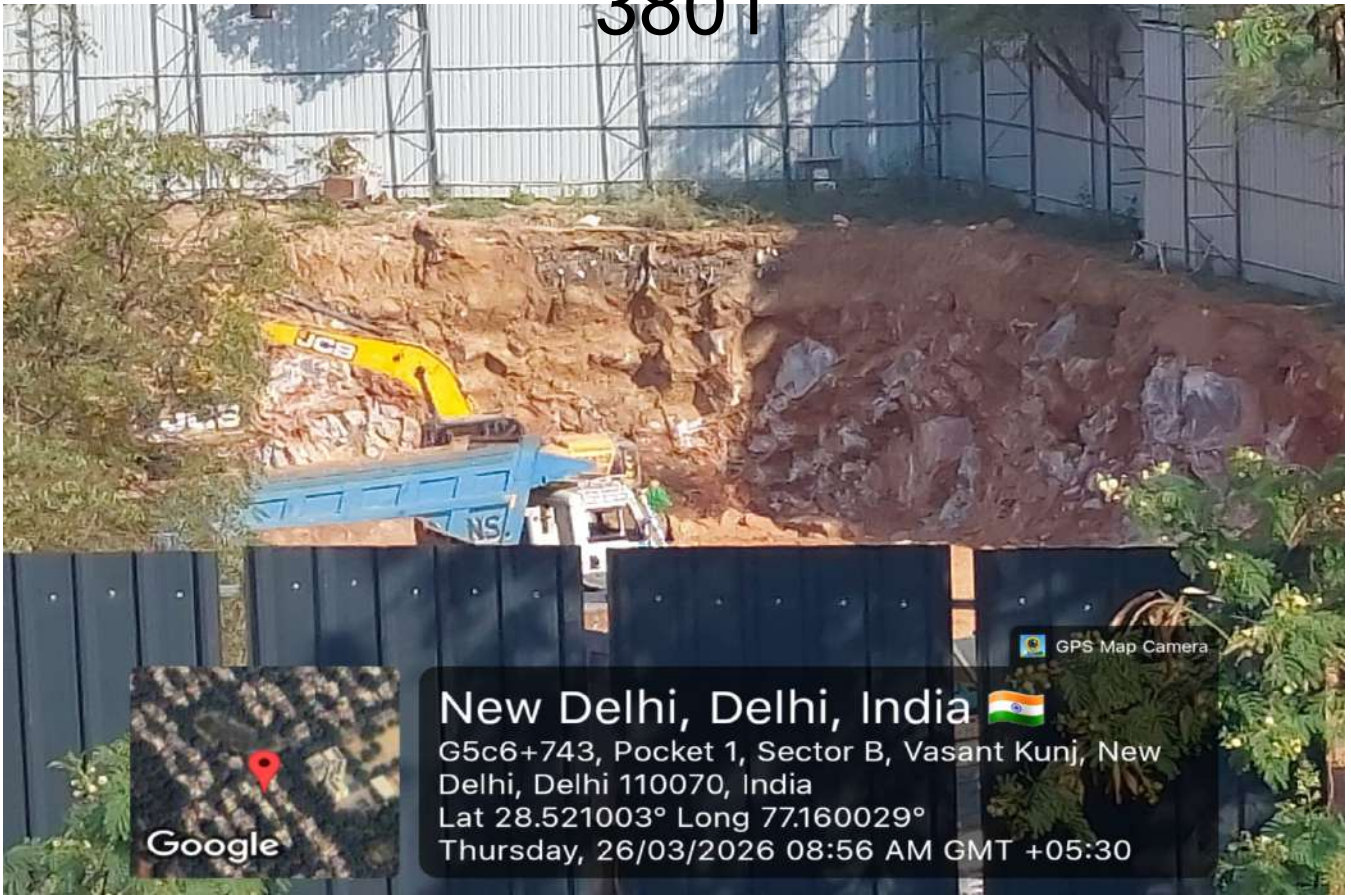


9. The process is simple and gives objective results very quickly. The CEC is also using the same process for analyzing the projects submitted before it.

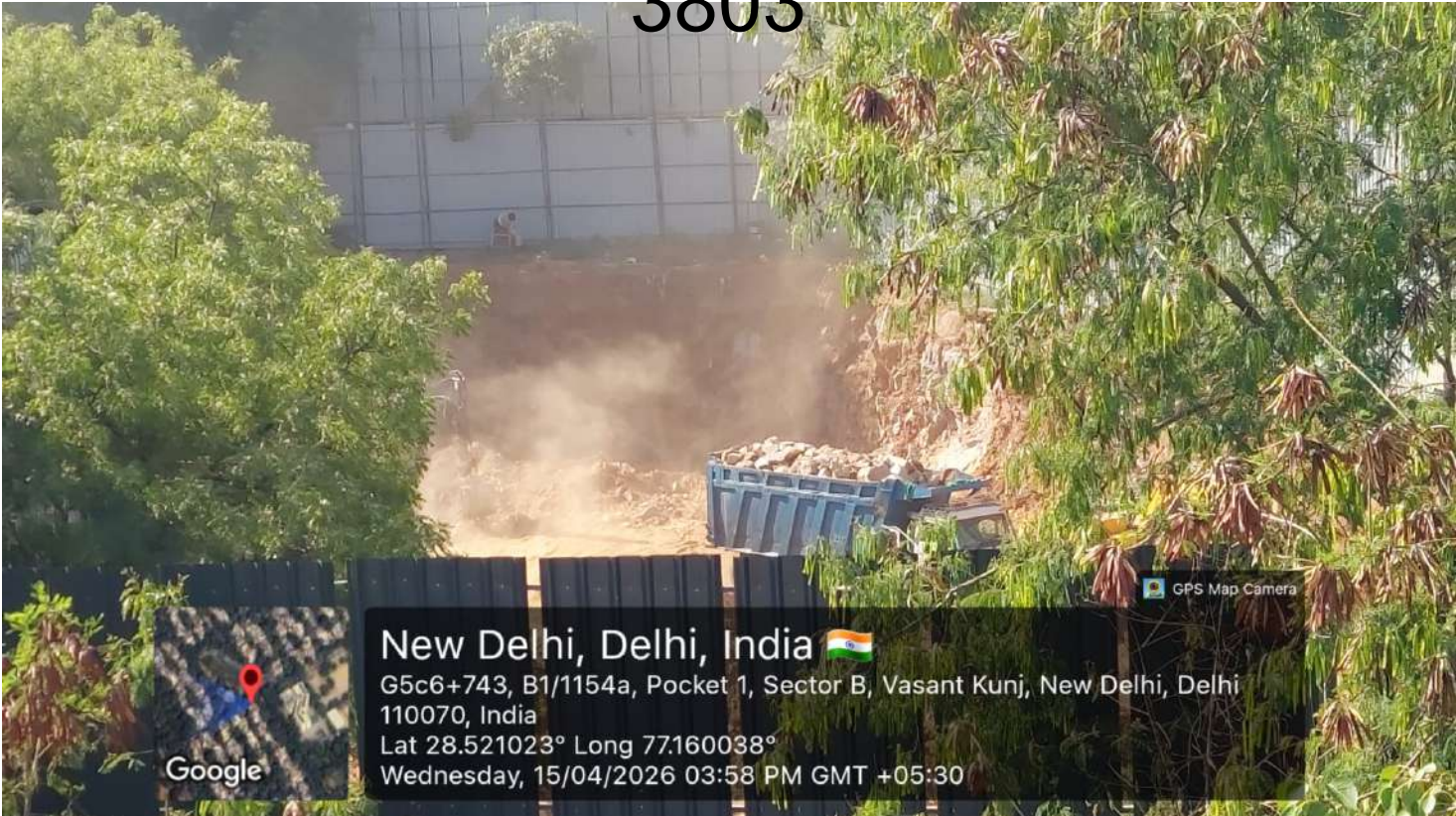


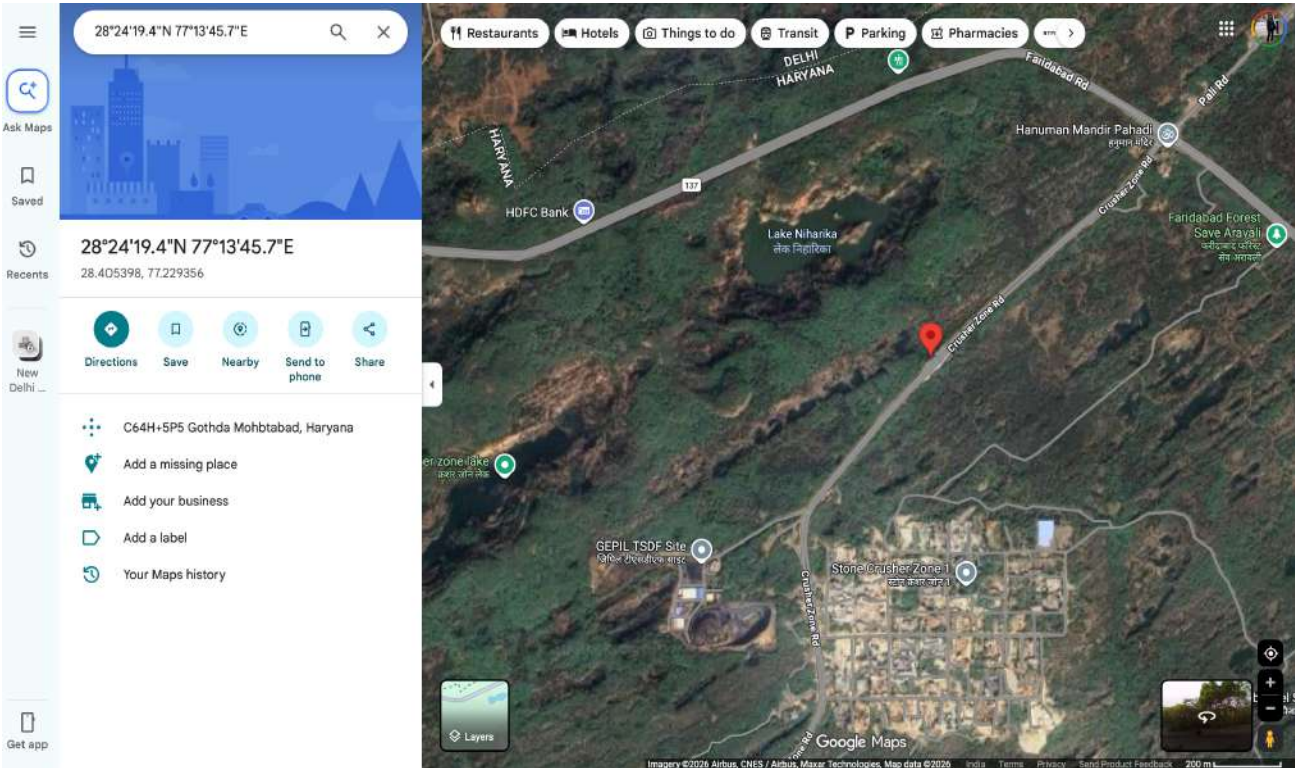


3801











**OFFICE OF THE SUB DIVISIONAL MAGISTRATE (MEHRAULI)
GOVT. OF NCT OF DELHI.**

**OLD TEHSIL BUILDING, MEHRAULI, NEW DELHI-110030
E-mail: sdmmehrauli.delhi@nic.in, Contact No.011-26641772**

No./1532/SDM/STF/MEH/2026/ 960-966

Dated: 9 / 4 / 2026

ORDER/NOTICE

To,

**Contractor / proprietor/ land owner /
Authorized representative of Multi-storied Housing Complex at
Kh. No. 2797/2026/1675/8 (Old) or 1230/2 (New)
at B-1 , Vasant Kunj , New Delhi**

Subject: Regarding illegal/ unauthorized construction being carried out and violations of other provisions of the MMDR Act, 1957, Section 4(1A), Disaster Management Act, 2005 and Section 30(2)(v) regarding violations of safety norms during illegal basement excavation activities.

Whereas, it has been brought to the notice of the undersigned through reliable sources/complaint/field report that unauthorized excavation of basement /illegal mining activity during basement construction at property/ land bearing no. **Kh. No. 2797/2026/1675/8 (Old) or 1230/2 (New) at B-1 , Vasant Kunj New Delhi** is being carried out, falling under the jurisdiction of Sub-Division Mehrauli, in contravention of the provisions of Safety issues under DDMA Act and the Mines and Minerals (Development and Regulation) Act, 1957.

And whereas, Section 4(1A) of the MMDR Act, 1957 clearly prohibits any person from undertaking mining operations including extraction of minor minerals / internal rock cutting except under and in accordance with the terms and conditions of a valid permit, lease or license granted under the Act.

And whereas, such unauthorized excavation of basement / cutting /breaking of rock (internal pahad formation) beneath the surface mining activities pose a serious threat to public safety, environment, and may aggravate disaster risks, thereby attracting provisions under the Disaster Management Act, 2005, particularly Section 30(2)(v), empowering the District Authority to take necessary measures for prevention and mitigation of disasters.

Now therefore, in exercise of the powers vested in the undersigned, Contractor/ owner / authorized representative of the property /land , are hereby directed to produce and appear in person or through authorized representative before the undersigned on or before 13/04/2026 at 12.00 PM along with following documents :-

1. Copy of sanction building plan
2. Permission, if any , for excavation of rock/minor minerals
3. Details of disposal of excavated material.

Failure to comply with this notice within stipulated time frame, shall result in strict legal action including seizure of equipment/vehicles, registration of FIR, imposition of penalties, and other coercive measures as per law, without any further notice and the site may be sealed and further construction restrained without any further notice.

Copy to:-

4. The DM (South), M.B. Road, Saket, New Delhi-110068.
5. SHO, Vasant Kunj – for necessary action and compliance.
6. MCD Zonal office , South
7. Concerned Patwari/Field Staff with the direction to serve / paste this notice on said property and submit its compliance.

(DR. RAHUL RATHOD)
SDM (MEHRAULI)



(DR. RAHUL RATHOD)
SDM (MEHRAULI)

