BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
REVIEW APPLICATION NO. 2 OF 2024
IN
O.A. NO. 125/2017

IN THE MATTER OF:
COURT ON ITS OWN MOTION .... APPLICANT

VS.

STATE OF KARNATAKA& ORS .... RESPONDENTS

AND IN THE MATTER OF ;-
Trinity Complex Apartment ...REVIEW APPLICANT
Owners Association,
No.25/2 Ambalipura,
Sarjapura Road
Bengaluru - 560102.
Represented by its
Authorized Signatory
Mr. Soubir Bose.
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COMPILATION OF JUDGMENT

2024 SCC OnLine SC 103

In the Supreme Court of India

(BEFORE P.S. NARASIMHA AND ARAVIND KUMAR, JJ.)

Veena Gupta and Another ... Appellant(s);

Versus

Central Pollution Control Board and Others ... Respondent(s).

Civil Appeal No(s). 1865-1866/2022

Decided on January 30, 2024

Advocates who appeared in this case:

For Appellant(s) Mr. Sanjay Parikh, Sr. Adv.
Mr. Ashish Aggarwal, Adv.
Ms. Tanya Aggarwal, Adv.
Ms. Tatini Basu, AOR
Ms. Nitipriya Kar, Adv.
Mr. Subodha Pandey, Adv.

For Respondent(s) Mr. Avneesh Arputham, AOR
Mr. Ankit Sharma, Adv.
Mr. Pradeep Misra, AOR
Mr. Daleep Dhyani, Adv.
Mr. Suraj Singh, Adv.
Mr. Manoj Kumar Sharma, Adv.
Mr. Praveen Swarup, AOR
Mr. Ameet Singh, Adv.
Mr. Devesh Maurya, Adv.
Mr. Ravi Kumar, Adv.
Ms. Payal Swarup, Adv.
Mr. Aman, Adv.
Mr. Rajeev Kumar Bansal, AOR
Mr. Vidya Sagar, Adv.
Mr. Rajesh Sonthalia, Adv.
Mrs. Amita Agarwal, Adv.
Mr. Shekher Kaushik, Adv.
Mr. Ganesh Barowalia, Adv.
Mrs. Vandana Gupta, Adv.
Mr. Rahul Gupta, AOR
Mr. Deepak Goel, AOR

Ms. Archana Preeti Gupta, Adv.

Ms. Harshita Maheshwari., Adv.

Ms. Alka Goyal, Adv.

Mr. Jitendra Bharti, Adv.

The Judgment of the Court was delivered by

P.S. NARASIMHA, J.:— These appeals arise out of two orders passed by the National Green Tribunal ("Tribunal" for short). The main order arises out of an ex parte order in suo motu proceedings holding the appellants to be guilty and directing payment of compensation. The second order is the dismissal of the review petition filed by the appellant No. 2 alleging that he had not been given an opportunity before an adverse order was passed against him. For the reasons to follow, we set aside the orders and remand the matter back to the Tribunal to issue notice to all the affected parties, hear them and pass appropriate orders.

2. The relevant portion of the order impugned[1] is as under:

"7. Even though no notice was issued by the Tribunal to the PP in absence of particulars, the Joint Committee has visited the site. Notice has been issued to the PP under the Employees Compensation Act for death of a person. Remedial measures have been suggested for future. The PP has been found to be operating without statutory consents in non-conforming area without safety precautions, endangering life and health of others. In these circumstances, reserving liberty to the PP to move this Tribunal, we do not consider it necessary to defer the matter and to proceed by notice to the PP in view of established facts, duly verified by the statutory authorities who are themselves competent to take the recommended measures.

8. In view of the above, further action may be taken by the Statutory Authorities, following due process. The compensation assessed may be recovered and if not paid within one month, coercive measures be taken against the concerned persons as well as against the property involved. We request the Member Secretary, Delhi State Legal Services Authority to ensure legal aid to the heirs of the deceased to enable due compensation to be paid to them. If the owners/tenant or other persons against whom action is taken are aggrieved, they are at liberty to take their remedies, including moving this Tribunal. The Authorities may also maintain vigil and take measures to prevent such incidents in future. We have noted the constitution of zone wise STF to check the illegal industrial activities and godowns in residential/non-conforming areas and are of the view that the same should be manned by officers of higher rank than the constitution now proposed. The Chief Secretary, Delhi may review the constitution accordingly."

3. It is evident from the above that the Tribunal itself has noted that notices were not issued to the Project Proponents. The Tribunal, in fact, considers it unnecessary to hear the Project Proponent to verify the facts in issue. The Tribunal thought it appropriate to adopt this method in view of a Joint Inspection Report that had been submitted. The persons who were prejudiced by the order of the Tribunal naturally filed Review Petitions before the Tribunal. Appellant No. 2 is one amongst them. The Review Petition was taken up and dismissed by the Tribunal on 26.11.2021.

4. The National Green Tribunal's recurrent engagement in unilateral decision making, provisioning ex post facto review hearing and routinely dismissing it has regrettably become a prevailing norm. In its zealous quest for justice, the Tribunal must tread carefully to avoid the oversight of propriety. The practice of ex parte orders and the imposition of damages amounting to crores of rupees, have proven to be a counterproductive force in the broader mission of environmental safeguarding.

5. Significantly, these orders have consistently faced stays from this Court, resulting in the unraveling of the commendable efforts put forth by the learned Members, lawyers, and other stakeholders[2]. It is imperative for the Tribunal to infuse a renewed sense of procedural integrity, ensuring that its actions resonate with a harmonious balance between justice and due process. Only then can it reclaim its standing as a beacon of environmental protection, where well-intentioned endeavors are not simply washed away.

6. It appears that the appellants did not have a full opportunity to contest the matter and place all their defenses before the Tribunal. They filed this appeal and by order dated 04.03.2022, this Court stayed the judgment and order passed by the Tribunal. This was inevitable. Two years have passed by and the stay is still operating. We have no other alternative except to set aside the orders dated 31.08.2021 and 26.11.2021 and remand the matter back to the Tribunal. The Tribunal issue notices to all the necessary parties, hear them in detail, and pass appropriate orders. Needless to say that the Tribunal shall hear the case, uninfluenced by the observations and conclusions drawn in the orders dated 31.08.2021 and 26.11.2021.

7. We make it clear that this order does not deal with the merits of the matter and the actions of those guilty of statutory and environmental violation will have to be subject to strict scrutiny and legal consequences.

8. The Civil Appeals are allowed with these directions.

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

[1] Original Application No. 65/2021, dated 31.08.2021

[2] *Singrauli Super Thermal Power Station* v. *Ashwani Kumar Dubey*, (2023) 8 SCC 35. This Court has already noticed the practice of the Tribunal in not providing an opportunity of hearing to the affected party and consequently set aside its orders and remanded the matter to the Tribunal for reconsideration after following principles of natural justice.

(2022) 13 Supreme Court Cases 401

(3J)

(BEFORE A.M. KHANWILKAR, HRISHIKESH ROY AND C.T. RAVIKUMAR, JJ.)

MUNICIPAL CORPORATION OF GREATER MUMBAI . . Appellant;

Versus

ANKITA SINHA AND OTHERS . . Respondents.

Civil Appeals Nos. 12122-123 of 2018† with Nos. 86 of 2019‡, 5902 of 2019††, 6273, 6274, 6275, 6276, 6279 of 2021†‡, 6277-78, 6280-81 of 2021‡†, 2897 of 2021‡‡, 6282, 6283, 6284, 6285, 6286 of 2021††† and 6262 of 2021†††‡, decided on October 7, 2021

† Arising from the Judgment and Order in *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2936 (National Green Tribunal, Original Application No. 510 of 2018, dt. 30-10-2018) and *Municipal Corpn. of Greater Mumbai* v. *Ankita Sinha*, 2018 SCC OnLine NGT 2923 (National Green Tribunal, Review Application No. 49 of 2018, dt. 5-12-2018)

‡ Arising from the Final Judgment and Order in *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2698 (National Green Tribunal, Original Application No. 510 of 2018, dt. 21-12-2018)

†† Arising from the Final Judgment and Order in *News Item Published in The Times of India Titled "Hanging Live Wire Kills 7 Jumbos in Odisha", In re*, 2019 SCC OnLine NGT 2917 (National Green Tribunal, Original Application No. 844 of 2018, dt. 16-5-2019)

†‡ Arising out of SLP (C) No. 6732, 5930, 6733, 16448 of 2021 (Diary No. 11655 of 2021) and 16451 of 2021 (Diary No. 13811 of 2021). Arising from the Final Judgment and Order in *Thomsun Aggregates* v. *State of Kerala* [Kerala High Court, WP (C) No. 19770 of 2020, dt. 21-12-2020] sub nom *V.K. Rocks (P) Ltd.* v. *State of Kerala* [Kerala High Court, WP (C) No. 15962 of 2020, dt. 21-12-2020], 2020 SCC OnLine Ker 25872

‡† Arising out of SLPs (C) Nos. 16449-450 of 2021 (Diary No. 13789 of 2021) and 16452-453 of 2021 (Diary No. 13890 of 2021). Arising from the Final Judgment and Order in *Thomsun Aggregates* v. *State of Kerala* [Kerala High Court, WP (C) No. 19770 of 2020, dt. 21-12-2020] sub nom and *Sachu Rajan Eapen* v. *State of Kerala*, 2021 SCC OnLine Ker 5036 [Kerala High Court, RP No. 1 of 2021 in WP (C) No. 17391 of 2020, dt. 28-1-2021]

‡‡ Arising from the Final Judgment and Order in *News Item Published in Times Now Titled "Karnataka : Six killed in Quarry Blast in Hirenagavalli, Chikkaballapur", In re*, 2021 SCC OnLine NGT 332 (National Green Tribunal, Original Application No. 59 of 2021, dt. 11-6-2021)

††† Arising out of SLPs (C) Nos. 11426, 11427, 11798, 12669 and 16454 of 2021 (Diary No. 19534 of 2021). Arising from the Final Judgment and Order in *P.K. Biju* v. *State of Kerala* [Kerala High Court, WA No. 250 of 2021, dt. 16-3-2021] sub nom *Sachu Rajan Eapen* v. *State of Kerala* (Kerala High Court, WA No. 255 of 2021, dt. 16-3-2021), 2021 SCC OnLine Ker 2641

†††‡ Arising out of Diary No. 16948 of 2021. Arising from the Final Judgment and Order in *News Item Published in The Dinamalar Titled "If The Encroachments Are Removed Totally, Narayanapuram Lake Will Become Source of Drinking Water", In re*, 2021 SCC OnLine NGT 333 (National Green Tribunal, Original Application No. 98 of 2020, dt. 4-6-2021)

A. **Environment Law — National Green Tribunal — Forum complementary to constitutional courts to provide an alternative efficacious remedy for redressal of environmental exigencies in public interest concerning environmental justice, environmental equity and for protection of rights under Art. 21 of the Constitution**

— NGT whether can suo motu initiate action for discharging functions under National Green Tribunal Act, 2010 (NGT Act) — Nature and scope of such suo motu power, procedural safeguards and rationale for — Law clarified — Held, NGT is vested with suo motu power to discharge its functions under the NGT Act — Such suo motu action can be initiated on basis of a letter or communication or even on basis of matters published in media (as in present case)

— Suo motu powers of NGT are somewhat distinct from those exercised by constitutional courts — Constitutional courts can foray into any issues under their constitutional mandate but NGT cannot naturally travel beyond its environmental domain in reference to the Scheduled enactments

— Exercise of suo motu jurisdiction does not mean eschewing the principles of natural justice and fair play — When such suo motu action is initiated, Registry of NGT should make an office report and send a notice to sender of such communication or author of news item to assist NGT in the course of hearing and to substantiate the factual matters — Party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders

— The rationale behind such an interpretation is in public interest to protect rights under Art. 21 of the Constitution and is evident from the legislative intent and provisions of NGT Act, the role and functions NGT, its sui generis characteristics and the visible impacts of climate change resulting in climatic emergencies

— (a) An affirmative role for NGT, beyond mere adjudication is certainly required for *serving the ends of environmental justice* — When adverse impact on environment is shocking, but community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord — Potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access

— (b) *Applying purposive interpretation,* NGT Act should be construed as giving authority to NGT to take suo motu cognizance of matters, for effective discharge of its mandate — S. 14(1) of the NGT Act conspicuously omits to specify that an application is necessary to trigger NGT into action — Provisions of NGT Act relating to jurisdiction, interim orders and payment of compensation and review do not require any application or appeal, for NGT to pass necessary orders

— (c) If NGT Act is not interpreted as giving NGT suo motu powers to initiate action, its functions might be hindered by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens — Another deterrence is the likelihood of polluters/violators being powerful entities

— (d) Court cannot validate an argument, which furthers uncertainty and would most assuredly result in injustice — While interpreting the NGT Act, the Court should not endorse an approach which would render NGT procedurally

shackled or incapacitated — Court must adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective — As NGT Act addresses wide ranging societal concerns, a holistic and purposive interpretation must be applied to declare that NGT has suo motu powers — NGT Act must be read in its entirety giving due meaning to each provision by comprehending the mischief it intends to remedy — Interpretation should eschew procedural impediment and accentuate the provisions dealing with rights under Art. 21 and regulations under environmental policy

— (e) The role of an institution like NGT cannot be mechanical or ornamental — Environmental justice and environmental equity are the pivotal threads of NGT's fabric — Hands-off mode for NGT, when faced with exigencies requiring an immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice

— (f) Jurisdictional jurisprudence should be moulded in favour of larger societal interest, whether that be in the form of "public interest litigation" or widening the scope of locus standi — When substantive justice is elusive, for a perceived procedural lacuna, it furthers inequality, both economic and social

— (g) As many of the cases transferred to NGT emanated in the superior courts it would be appropriate to assume that similar power to initiate suo motu proceedings should also be available with NGT — NGT is the institutionalisation of the developments made by the Court in the field of Environment Law — When many of the sensitive environmental matters were transferred to NGT, it was expected to be as proactive as superior courts in dealing with such matters

— (h) There is a need for collective stratagem for addressing environmental concerns — Such a society-centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court

— Relief and directions — Having answered the common legal questions, cases directed to be delinked to be heard separately — However, if the cases(s) emanate from same/common order of NGT, such case(s) should be heard together

— National Green Tribunal Act, 2010, Ss. 14 to 21 (Paras 22 to 101)

B. **Environment Law — Sustainable development — "Seventh Generation" sustainability principle, or the "Great Law of the Iroquois" — What is — Applicability of — Explained — Approach to be followed by courts and NGT — Clarifications issued by taking judicial notice of climate change, ecological imbalance and climate emergencies**

— Judicial notice taken of visible impacts such as uncertain rains, species extinction, loss of natural habitat, flooding and erosion and so on — Climate change also has the propensity to diminish freshwater resources, reduce agricultural yields and impact public health — Governmental assessment of India's increased vulnerability to such changes in the near future

— Present standards may not be able to handle unforeseen injustice of the future and long term irreparable environmental damage which are expected to be arrested by NGT — Thus there is a need to advert to "Seventh Generation"

sustainability principle, or the "Great Law of the Iroquois", which requires all decision-making to withstand for the benefit of seven generations down the line

— National Green Tribunal Act, 2010, Ss. 14 to 21 (Paras 90 to 101)

C. **Environment Law — National Green Tribunal — Alternative efficacious remedy through NGT — Backdrop of NGT and rationale behind its formation, stated**

— National Green Tribunal Act, 2010, Ss. 14 to 21

D. **Environment Law — National Green Tribunal Act, 2010 — Ss. 2(1)(c), (m), 14 to 20, 25, 29 and 33 and Ch. III — Jurisdiction, powers, functions of NGT, its non-adjudicatory role, its *sui generis role, its uniqueness vis-à-vis other tribunals and its self-activating capability* — Explicated — Wide discretion and locus standi to preserve and protect the environment, clarified (Paras 22 to 101)**

E. **Environment Law — National Green Tribunal Act, 2010 — Ss. 2(1)(c), (m), 14 to 20, 25, 29 and 33 and Ch. III — Interpretation of term "*decision*", in addition to "*order*" and "*award*" in S. 20 of the NGT Act makes it clear that NGT has to apply the "*precautionary principle*" along with the principles of sustainable development and the polluter pays principle — Onus is cast upon the Tribunal to act with promptitude to deal with environmental exigencies — Pre-emptive functions of NGT as a sui generis body may be noted (Paras 71 to 74)**

F. **Environment Law — General Principles of Environmental Law — Environmental justice and equity, explained — Approach required by court, stated (Paras 75 to 80)**

G. **Environment Law — General Principles of Environmental Law — Environmental jurisprudence in India — Effect on the manner of interpretation of functions of NGT**

— National Green Tribunal Act, 2010, Ss. 14 to 21 (Paras 81 to 90)

Declaring that NGT is vested with suo motu power in discharge of its functions under the NGT Act, the Supreme Court

Held :

I. The backdrop of the National Green Tribunal

The Law Commission of India in its 186th Report dated 23-9-2003 was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on a permanent basis to assist them. Therefore, NGT was conceived as a complementary specialised forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court under their writ jurisdiction. (Paras 22 and 43)

Law Commission of India, 186th Report on Proposal to Constitute Environment Courts, *referred to*

It was explicitly noted that the creation of NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialised forum. (Para 23)

Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before the High Courts and the Supreme Court and shift such issues to the domain of NGT. This is how the proposed forum was made free from the rules of evidence and NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts, etc. The observance of the principles of natural justice was however mandated. (Para 24)

L. Chandra Kumar v. *Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577, *cited*

Chapter IX, 186th Law Commission Report, *referred to*

II. The Preamble & Statement of Objects and Reasons

The National Environment Tribunal Act, 1995 ("NET") provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. The NET had a very limited and narrow mandate and jurisdiction. The Supreme Court had requested the Law Commission of India to consider the need for the constitution of specialised environmental courts. (Para 26)

The right to a healthy environment is a part of the right to life under Article 21 of the Constitution. NGT was expected *to achieve the objectives of Articles 21, 47, 48-A, 51-A(g) of the Constitution by means of a fair, fast and satisfactory judicial procedure*. An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction. (Para 27)

The mandate and jurisdiction of NGT is, therefore, conceived to be of the widest amplitude and it is in the nature of a sui generis forum. (Para 28)

The Preamble to the Act significantly emphasised on construing the right to healthy environment as a part of the right to life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. (Para 29)

The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of NGT. (Para 30)

III. The need for purposive interpretation

Adequate clarity is discernible in the phraseology and provisions of the NGT Act. NGT is intended to address wide-ranging societal concerns and these have prompted the Court to opt for purposive interpretation. The statute will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. (Para 31)

The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional courts flagging their environmental concerns. (Para 32)

Courts should interpret the NGT Act in such a way as to achieve the legislative purpose and intention. The interpretation should be forward looking and eschew procedural impediment. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects. (Para 36)

Bengal Immunity Co. Ltd. v. *State of Bihar*, 1955 SCC OnLine SC 2; *Heydon Case*, (1584) 3 Co Rep 7a : 76 ER 637; *Panama Refining Co.* v. *Ryan*, 1935 SCC OnLine US SC 3 (dissenting view of Justice Benjamin Cardozo, J.), *followed*

Sarah Mathew v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721; *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*, (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850, *referred to*

Justice G.P. Singh: *Interpretation of Statutes*; Francis Bennion: *Statutory Interpretation*; Justice Frankfurter of the US Supreme Court: "Some Reflections on the Reading of Statutes", (1947) 47 Columbia Law Review 527, *referred to*

IV. Salient statutory features of the NGT Act

Applying the purposive interpretation to the statutory layout of the NGT Act, Sections 2(1)(*c*), (*m*), 14 to 20, 25, 29 and 33 and Chapter III will require the Court's attention. (Para 37)

Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 makes it clear that NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto. (Para 38)

By choosing to employ a phrase of wide import i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses, inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be. (Para 39)

Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, NGT is conferred with the power of moulding any relief. The provisions show that NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties. (Para 40)

Another distinguishing feature of the environmental forum is on the aspect of locus standi which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organisation who may be interested in the subject-matter is permitted to approach NGT. (Paras 41 and 43)

The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by NGT, as was encapsulated in the 186th Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio de Janeiro Conventions towards the protection of the environmental rights under Article 21 of the Constitution. (Paras 42, 28 and 29)

V. Non-adjudicatory roles of NGT

Schedule I to the NGT Act is concerned with the implementation of few environmental related enactments such as the Water (Prevention and Control of Pollution) Act, 1974 ("the Water Act"), the Air (Prevention and Control of Pollution) Act, 1981 ("the Air Act"), the Environment (Protection) Act, 1986 ("the Environment Act"), the Forest (Conservation) Act, 1980 etc. As one looks at these enactments, an expanded role for NGT is clearly discernible. The activities of NGT are not only geared towards the protection of the environment but also to ensure

that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation. (Paras 44 and 43)

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647; *M.C. Mehta (Taj Trapezium Matter)* v. *Union of India*, (1997) 2 SCC 353, *referred to*

For the environmental forum, tasked with the implementation of the statutes mentioned in Schedule I to the NGT Act, the concept of lis, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or Government) disturbing the environment and the other one (could be an individual, a body or the Government itself), who has concern for the protection of the environment. Therefore, NGT is primarily concerned with the protection of the environment and also the preservation of natural resources. As the specialised forum, NGT would be expected to take preventive action, besides settling and adjudicating disputes and passing orders on all environment related questions. (Para 45)

NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report. (Para 46)

NGT is empowered to carry out restitutive exercises for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "*dispute*", but the formulation of *decisions*. (Para 47)

With the constitution of NGT, many cases pending before the High Courts were transferred to NGT. Apprehending the possibility of conflict between the High Courts and NGT (in matters concerning the environment and the statutes mentioned in Schedule I to the NGT Act), the Court highlighted NGT's role in said context. The Court mandated the transfer of all cases concerning the statutes mentioned in Schedule I to the NGT Act to the specialised forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered suo motu by the courts. (Para 48)

Bhopal Gas Peedith Mahila Udyog Sangathan v. *Union of India*, (2012) 8 SCC 326, *relied on*

VI. Exercise of suo motu power by NGT

The suo motu powers of NGT is somewhat distinct from those exercised by the constitutional courts. The constitutional courts can foray into any issues under their constitutional mandate but NGT cannot naturally travel beyond its environmental domain in reference to the Scheduled enactments. However, as long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude. The interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. (Paras 49 to 52)

Mantri Techzone (P) Ltd. v. *Forward Foundation*, (2019) 18 SCC 494, *followed*

Rajeev Suri v. *DDA*, (2022) 11 SCC 1, *clarified* and *distinguished*

There is a need for an expert body with extensive functions and the sources of inspiration behind it. From the very inception, the role of NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are

preventative, ameliorative or remedial in nature. The functional capacity of NGT was intended to leverage wide powers to do full justice in its environmental mandate. (Para 53)

A.P. Pollution Control Board v. *M.V. Nayudu*, (1999) 2 SCC 718, *referred to*

VII. Uniqueness of NGT vis-à-vis other tribunals

While many tribunals are functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory tribunals were categorised to fall under four sub-heads: Administrative Tribunals under Article 323-A of the Constitution; Tribunals under Article 323-B; specialised sector tribunals and most prominently; tribunals to safeguard rights under Article 21. The duties of NGT bring it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute. (Para 54)

The idea was to create a fairly proactive and responsive institution which could step into varying roles, as the situation demanded. (Para 55)

NGT, unlike other tribunals, has a duty to do justice while exercising a "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute. (Para 56)

NGT has been recognised as one of the most progressive tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. (Para 57)

State of Meghalaya v. *All Dimasa Students Union*, (2019) 8 SCC 177, *affirmed*

L. Hirday Narain v. *ITO*, (1970) 2 SCC 355, *cited*

Gill, G.: "Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?", Asian Journal of Law and Society, 7(1), 85-126 (2020), *referred to*

VIII. The sui generis role of NGT

The powers conferred on NGT are both reflexive and preventive. It is *an expert regulatory body* which can also issue general directions within the statutory framework. (Para 59)

As many of the cases transferred to NGT emanated in the superior courts it would be appropriate to assume that similar power to initiate suo motu proceedings should also be available with NGT. (Para 60)

NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge the role of the supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialised body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise. (Paras 58 to 61)

NHAI v. *Aam Aadmi Lokmanch*, (2021) 11 SCC 566, *followed*

Paramjit Kaur v. *State of Punjab*, (1999) 2 SCC 131 : 1999 SCC (Cri) 109, *affirmed*

IX. Authority with self-activating capability

Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its

domain and this should necessarily clothe it with the authority to take suo motu cognizance of matters, for effective discharge of its mandate. (Para 62)

Section 14 of the NGT Act is of great relevance. (Para 63)

The exercise of power by NGT is not circumscribed by receipt of the application by an aggrieved or interested party alone. Section 14(1) of the NGT Act, which deals with jurisdiction conspicuously omits to specify that an application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e. civil cases; involvement of substantial question of the environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. Thus, even in the absence of an application, NGT can self-ignite action either towards amelioration or towards prevention of harm. (Para 64)

Section 14(1) exists as a stand-alone feature, not constricted by the operational mechanism of the subsequent sub-sections. Section 14(2) functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise, Section 14(3) of the NGT Act refers to the period of limitation concerning applications, when they are addressed to NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention or maybe a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in a similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning. (Para 65)

Provisions of the NGT Act relating to jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum. (Para 66)

While dealing with contested cases, NGT is required to pass "*award*" and "*order*" and the statute repeatedly uses the word "*decision*". Therefore, it is appropriate to correlate the word "*decision*" to NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognised in *Aam Aadmi Lokmanch*, (2021) 11 SCC 566. (Para 67)

The duty to safeguard rights under Article 21 cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in the larger public interest. The specialised forum is bestowed with the responsibility to ensure the protection of the environment. To be effective in its domain, the Court needs to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. (Para 68)

State of Punjab v. *Shamlal Murari*, (1976) 1 SCC 719 : 1976 SCC (L&S) 118, *affirmed*

While discussing NGT's power and responsibility, it is essential to keep in mind Principle 10 of the Rio Declaration which speaks of three fundamental rights i.e. access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being

powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional. (Para 69)

X. The Precautionary Principle

The origin of the *precautionary principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies. (Para 71)

Section 20 of the NGT Act which includes the term "*decision"*, in addition to "*order*" and "*award*", also require the Tribunal to apply the "*precautionary principle*" along with the principles of sustainable development and the polluter pays principle. (Para 72)

The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other "*decisions*" or "*orders*" to governmental authorities or polluters when they fail to "*anticipate, prevent and attack the causes of environmental degradation*". Two aspects must therefore be emphasised i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for a full flow of the forum's power within the environmental domain. (Para 73)

It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial. The pre-emptive functions of NGT as a sui generis body can be noted. (Para 74)

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647, *followed*

S. Jagannath v. *Union of India*, (1997) 2 SCC 87; *Karnataka Industrial Areas Development Board* v. *C. Kenchappa*, (2006) 6 SCC 371, *affirmed*

Scott LaFranchi: "Surveying the Precautionary Principle's Ongoing Global Development: The Evolution of an Emergent Environmental Management Tool", 32 BC Envtl Aff L Rev 679 (2005); Ronnie Harding & Elizabeth Fisher: "Introducing the Precautionary Principle" in *Perspectives on the Precautionary Principle* (1999) at p. 4; Benjamin Cardozo: *The Nature of the Judicial Process*, *referred to*

XI. Environmental Justice and Environmental Equity

The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition. Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalised groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including the application of sustainable development principles. (Para 75)

There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people. (Para 77)

When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An "*equal footing*" conception may not, therefore, be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalised classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice. (Para 78)

The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which the Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach the heart of environmental concerns. Jurisdictional jurisprudence should be moulded in favour of larger societal interest, whether that be in the form of "public interest litigation" or widening the scope of locus standi. (Para 79)

In the backdrop of the above weighty concerns, the Court should advert to *the ideal of administering equal justice to everyone who comes to the courts, regardless of race, creed, or economic class.* The relevance of this concept is particularly apposite in the context of the inability of marginalised communities to access the legal machinery. (Para 80)

Schlosberg D.: *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press 2009); Jeff Todd: "A 'Sense of Equity' in Environmental Justice Litigation", 44 Harv Envtl L Rev 169, 193 (2020); Schiffer, L.J. & Dowling, T.J. (1997): "Reflections on the Role of the Courts in Environmental Law", 27(2) Environmental Law 327-42, *referred to*

XII. Environmental Jurisprudence in India

NGT can be comfortably placed within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of the Court in establishing the legal connection between matters of environmental concern and fundamental rights of citizens has produced much academic literature. The field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by the Court; moving the concept of Environment Law from the realm of torts to interlink it with fundamental rights, liberalising the concept of locus standi in environmental matters, exercising suo motu powers to reign in polluters, using expert committees to monitor implementation of court orders, etc. (Para 81)

By expanding the scope of Articles 21, 32, 48-A, 51-A(*g*) of the Constitution, the Court has guaranteed the right to a pollution-free environment for a holistic existence. Most crucially, the expansion of the right to life under Article 21 by the Court has become a touchstone to determine many environmental concerns. (Para 82)

Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited

by those who may not have much concern for environmental degradation. The creation of the "*Absolute Liability Principle*" by the Court is a well-recognised testament for this. It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of the Court's initiative. (Para 83)

It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly in developing a sui generis environmental discourse. There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the "*at risk*" nature of some populations. The creation of NGT itself was due in large part to the need expressed by the Supreme Court for such a forum. (Para 84)

The Court deliberated upon the larger societal concerns when dealing with environmental matters. (Para 85)

Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare-oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society-centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters stood transferred to NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior court was surely expected to be seen in the Tribunal's approach. (Para 86)

It is this environmental rule of law that has been encapsulated with NGT's creation at the Supreme Court's behest. (Para 88)

NGT is the institutionalisation of the developments made by the Court in the field of Environment Law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence. (Para 89)

H.P. Bus-Stand Management & Development Authority v. *Central Empowered Committee*, (2021) 4 SCC 309, *followed*

M.C. Mehta v. *Union of India*, (1987) 1 SCC 395, *relied on*

Subhash Kumar v. *State of Bihar*, (1991) 1 SCC 598, *affirmed*

M.C. Mehta v. *Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122; *Indian Council For Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212; *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718; *A.P. Pollution Control Board (2)* v. *M.V. Nayudu*, (2001) 2 SCC 62; *Rural Litigation & Entitlement Kendra* v. *State of U.P.*, (1985) 2 SCC 431; *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613; *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577, *referred to*

Armin Rosencranz & Shyam Divan: Environmental Law and Policy in India; M.A.A. Baig: *Environmental Law and Justice* (1996); Domenico Amirante: "Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India", 29 : 2 Pace Envtl L Rev 440 at p. 447 (2012); M.K. Ramesh: "Environmental Justice: Courts and Beyond", Indian Journal of Envtl Law 20 (2002); Maheshwara Swamy, N.: *Law Relating to Environmental Pollution and Protection*, India; *Thompson Reuters*, Vol. 1, Edn. 5; Justice T.S. Doabia: *Environmental & Pollution Laws in India*, 3rd Edn., Vol. 2 (2017); Domenico Amirante: "Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India", 29 Pace Envtl L Rev 441 (2012); Rajamani, Lavanya: "Public Interest Environmental Litigation in India:

Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability", Journal of Environmental Law (2007), *referred to*

XIII. Conclusion

The NGT Act, when read as a whole, gives much leeway to NGT to go beyond a mere adjudicatory role. Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of NGT's fabric. NGT must be seen as a sui generis institution and not *unus multorum*, and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of the Court. (Para 91)

The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish freshwater resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in the riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists with many countries declaring climate emergencies and many others being urged to follow suit. (Para 92)

Indian Network for Climate Change Assessment, Climate Change and India: A 4×4 Assessment — A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16-11-2010; Secretary General's remarks at the Climate Ambition Summit, United Nations. United Nations, 12-12-2020, *referred to*

Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long-term and very often irreparable environmental damage which are expected to be arrested by NGT, urge the Court to advert to what is termed as *the "Seventh Generation" sustainability principle*, or the "*Great Law of the Iroquois*" (as it originates from the Iroquois Tribe) which requires all decision-making to withstand for the benefit of seven generations down the line. (Para 93)

It is vital for the well-being of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter. (Para 94)

In circumstances where the adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*". Thus, an affirmative role, beyond mere adjudication at the instance of the applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of NGT. The Court cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice. (Para 95)

NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no one knocks on its door. The forum itself has correctly identified the need for a collective stratagem for addressing environmental concerns. Such a society-centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for NGT, when faced with exigencies requiring an immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice. (Para 96)

It would be procedural hair-splitting to argue (as it has been) that NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated. (Para 97)

When the Registry of NGT does indeed receive communication or letter, including matters published in media, it may cause to initiate suo motu action by inviting the attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist NGT in the course of the hearing and to substantiate the factual matters. It must also be said that the exercise of suo motu jurisdiction does not mean eschewing the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders. (Para 98)

One could admit to the argument of the danger of suo motu jurisdiction if NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedural safeguards clarified herein, the nature of the trigger itself viz. a letter or a "suo motu" initiation, cannot be the basis to curtail the role and responsibility of the specialised forum. (Para 99)

Institutions which are often addressing urgent concerns gain little from procedural nit-picking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. The Court must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective. (Para 100)

The National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. Thus it is declared that NGT is vested with suo motu power in the discharge of its functions under the NGT Act. (Para 101)

Having answered the common legal issue involved in all these cases regarding the suo motu jurisdiction of NGT, the Court directs delinking of these cases for now being heard separately on merits. Indeed, if the cases(s) emanate from the same/common order of NGT, such case(s) be heard together. The Registry may do the needful and post the matters on 25-10-2021 for direction and fixing date of hearing, before the Bench presided over by one of us (A.M. Khanwilkar, J.). For the purpose

of further hearing, the respective cases shall not be treated as part-heard before this Bench. (Para 102)

Standard Chartered Bank v. *Dharminder Bhohi*, (2013) 15 SCC 341 : (2014) 5 SCC (Civ) 243; *Transcore* v. *Union of India*, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116; *Rajeev Hitendra Pathak* v. *Achyut Kashinath Karekar*, (2011) 9 SCC 541 : (2011) 4 SCC (Civ) 781, *impliedly distinguished*

T.N. Pollution Control Board v. *Sterlite Industries (I) Ltd.*, (2019) 19 SCC 479; *BSNL* v. *TRAI*, (2014) 3 SCC 222, *held, impliedly distinguished*

Techi Tagi Tara v. *Rajendra Singh Bhandari*, (2018) 11 SCC 734, *impliedly overruled*

Ankita Sinha v. *State of Maharashtra*, 2018 SCC OnLine NGT 2937; *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2936; *Municipal Corpn. of Greater Mumbai* v. *Ankita Sinha*, 2019 SCC OnLine SC 2093; *Municipal Corpn. of Greater Mumbai* v. *Ankita Sinha*, 2019 SCC OnLine SC 2094, *referred to*

Prabhakar v. *Sericulture Deptt.*, (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149; *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, 1964 SCC OnLine SC 21; *Wilfred J.* v. *Ministry of Environment & Forests*, 2014 SCC OnLine NGT 6860, *cited*

Samuel Beckett: *Waiting for Godot*: *A Tragicomedy in Two Acts* (Grove Press Inc., New York 1954); *Halsbury's Law of England*, 3rd Edn., Vol. 9 at p. 349; *Black's Law Dictionary*, 5th Edn., p. 424, *referred to*

SS-D/68416/S

Advocates who appeared in this case :

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Sanjay Parikh, Nidhesh Gupta, Anand Grover and Gopal Sankaranarayanan, Senior Advocates [Gurmeet Singh Makker (Advocate-on-Record), Md. Shahid Anwar (Advocate-on-Record), C.K. Sasi (Advocate-on-Record), Mukesh Verma, Yash Pal Dhingra (Advocate-on-Record), S.J. Amith, Purushottam Sharma Tripathi (Advocate-on-Record), Mukesh Kr. Singh, Tahir Ashraf Siddiqui (Advocate-on-Record), Jogy Scaria (Advocate-on-Record), Ms Beena Victor, Ms M. Priya, Ravi Lomod, K. Parameshwar (Advocate-on-Record), Jobi Jose Kondody, Aex M. Scaria, Ms Usha Nandini V. (Advocate-on-Record), Biju P. Raman, Ms Saritha Thomas, James P. Thomas (Advocate-on-Record), Boby Thomas, Abhimanue Shrestha (Advocate-on-Record), Satwik Parikh, Divyansh Khurana, Zulfiker Ali P.S. (Advocate-on-Record), Faisal M. Aboobacker, Ms Lakshmi Sree P, Ms Sadiya Shakeel, Vanshdeep Dalmia, Ms Nishtha Kumar (Advocate-on-Record), Harish Vasudevan, Ms Japneet Kaur, Ms Vriti Gujral, Ms Pallavi Singh, Ms Astha Sharma (Advocate-on-Record), Ms Mantika Haryani, Simranjeet Singh Rekhi, Suvidutt M.S. (Advocate-on-Record), Ms Anu B., Ms Dhanya C., Ms Vijayalakshmi Raju, Advocates], for the Respondents.

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

35. (1985) 2 SCC 431, *Rural Litigation & Entitlement Kendra* v. *State of U.P.* 441*d*
36. (1976) 1 SCC 719 : 1976 SCC (L&S) 118, *State of Punjab* v. *Shamlal Murari* 437*g-h*
37. (1970) 2 SCC 355, *L. Hirday Narain* v. *ITO* 434*a*
38. 1964 SCC OnLine SC 21, *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964* 421*e-f*
39. 1955 SCC OnLine SC 2, *Bengal Immunity Co. Ltd.* v. *State of Bihar* 426*g-h*
40. 1935 SCC OnLine US SC 3 (dissenting), *Panama Refining Co.* v. *Ryan* 427*e*
41. (1584) 3 Co Rep 7a : 76 ER 637, *Heydon Case* 426*g*, 427*a-b*

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.—

"*Estragon: Let's go.*
Vladimir: We can't.
Estragon: Why not?
Vladimir: We're waiting for Godot."[1]

2. Leave granted in the special leave petitions. The consideration to be made in these matters is whether the National Green Tribunal (for short "NGT") has the power to exercise suo motu jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short "the NGT Act, 2010").

3. In the lead case in this group i.e. Civil Appeal No. 86 of 2019, NGT noticed an article titled "Garbage Gangs of Deonar: The Kingpins and Their Multi-Crore Trade" in the online news portal, *The Quint*. The article spoke of how mismanagement of solid waste had an adverse impact on the environment, public health and lives of individuals living in the vicinity of the dumping ground in Mumbai City.

4. NGT took suo motu cognizance of the above article vide order dated 7-8-2018[2] and directed that the article writer Ankita Sinha be the applicant in the case OA No. 510 of 2018, registered at NGT's instance. Thereafter, steps were taken for inspection of the Deonar dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of Greater Mumbai (for short "the MCGM"). Pursuant to the report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, NGT vide order dated 30-10-2018[3] noted that "*damage to the environment and public health is self-evident*" and ordered MCGM to pay compensation to the tune of Rs 5 crores.

1 Samuel Beckett, *Waiting for Godot*: *A Tragicomedy in Two Acts* (Grove Press Inc., New York 1954).
2 *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2937
3 *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2936

5. This Court while entertaining Civil Appeal No. 86 of 2019 of MCGM, ordered[4] stay on the operation of the order[3] passed by NGT and thereafter arranged for analogous consideration of the related cases where the common threshold jurisdictional issue arises on whether NGT has the power to exercise suo motu jurisdiction.

6. Mr Mukul Rohatgi, Mr Dushyant Dave, Mr Jaideep Gupta, Mr Dhruv Mehta, Mr Atmaram Nadkarni, Mr Krishnan Venugopal, Mr V. Giri, Mr Sajan Poovayya and Mr Sidhartha Dave, the learned Senior Counsel together with Mr E.M.S Anam, Ms Amrita Sharma, Mr S. Thananjayan have taken a common stand. They have argued that NGT is a tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act suo motu, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed.

7. The learned counsel also argue that NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, NGT by acting suo motu cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with NGT (which is available with superior courts) is highlighted to keep away suo motu power from NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in the latter part of this order.

8. Projecting the contrary view, Mr Nidhesh Gupta, the learned Senior Counsel appearing for the aggrieved party in SLP (C) No. 6732 of 2021, Mr Sanjay Parikh, learned Senior Counsel for the intervener in CA No. 86 of 2019 and Mr Gopal Sankaranarayanan, learned Senior Counsel appearing for the impleader in IA No. 71482 of 2021 in SLP (C) No. 6732 of 2021, by referring to the special role envisaged for NGT and the history of its incorporation, make equally powerful submission in support of exercise of suo motu jurisdiction, by NGT.

9. Mr Anand Grover, the learned Senior Counsel was appointed[5] as the Amicus Curiae to assist the Court and he was heard at length. The counsel acknowledges NGT's role and position under the Act and its wide jurisdiction over environmental matters but Mr Grover is of the view that NGT is incapable of triggering action on its own. In other words, NGT cannot act suo motu without someone moving the forum as otherwise the forum then would be perceived to be judging its own cause. Since suo motu power is not conferred under the NGT Act, the specialised tribunal has to be moved by an outside party. But the format of the application is not important and even a letter addressed by an interested party, will clothe NGT with power to take action is the concessional submission of Mr Grover.

4 *Municipal Corpn. of Greater Mumbai* v. *Ankita Sinha*, 2019 SCC OnLine SC 2093
3 *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2936
5 *Municipal Corpn. of Greater Mumbai* v. *Ankita Sinha*, 2019 SCC OnLine SC 2094

10. Representing the Central Government, Ms Aishwarya Bhati, the learned Additional Solicitor General of India submitted that suo motu power is not exercisable by NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed *National Environment Tribunal Act, 1995* (hereinafter referred to as "the NET Act").

11. The counsel refers to the provisions of the NGT Act and submits that the concept of locus standi was expanded for NGT's intervention under Section 18(2)(*e*) but the tribunal is not vested with suo motu power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, NGT can commence action on environmental matters. Thus, on exercise of epistolary jurisdiction by NGT, the ASG is on the same page as the Amicus Curiae but as earlier noted both the counsel argue for keeping away the suo motu power from NGT.

12. Having summarised the positions taken by the respective counsel, we may now refer to the specific grounds of challenge to keep away suo motu power from NGT. The counsel concerned project that NGT is a creature of the statute and just like other such statutory tribunals, NGT is also bound within statutory confines. They have relied upon *Standard Chartered Bank* v. *Dharminder Bhohi*[6] wherein, the provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debts Recovery Tribunal and Appellate Tribunal. From the analysis of Dipak Misra, J. (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus, Section 19(25) conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

13. Similarly, S.H. Kapadia, J. (as his Lordship then was) in *Transcore* v. *Union of India*[7], opined on behalf of a Division Bench that: (SCC p. 163, para 67)

> "*67.* … The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts."

14. The counsel also projects that in the context of Consumer Forums, Dalveer Bhandari, J. (as his Lordship then was) speaking for a three-Judge Bench in *Rajeev Hitendra Pathak* v. *Achyut Kashinath Karekar*[8], observed as under: (SCC p. 550, para 34)

> "*34.* On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State

6 (2013) 15 SCC 341 : (2014) 5 SCC (Civ) 243
7 (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116
8 (2011) 9 SCC 541 : (2011) 4 SCC (Civ) 781

Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised."

15. The second limb of contention is that the Act is applicable to "*disputes*" as, necessarily referring to a lis between two parties. The counsel has relied upon *Techi Tagi Tara* v. *Rajendra Singh Bhandari*[9] wherein the term "*substantial question relating to environment*" was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by NGT.

16. In the cited case the proposition is articulated in the following fashion: (*Rajendra Singh Bhandari case*[9], SCC pp. 749-50, paras 19-20)

> "*19*. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.
>
> *20*. … In *Prabhakar* v. *Sericulture Deptt.*[10] the following definition of "dispute" was noted in paras 34 and 35 of the Report: (SCC p. 21)
>
> > '*34*. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:
> >
> > " "*Dispute*".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;"
> >
> > *35*. *Black's Law Dictionary*, 5th Edn., p. 424 defines "dispute" as under:
> >
> > "*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined." ' "

17. The Amicus Curiae has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial system but not for any other ameliorative, restorative or preventative functions.

9 (2018) 11 SCC 734
10 (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149

18. Thirdly, the lack of general power of judicial review has been argued to show legislative intent to curb suo motu powers. The counsel have stated that NGT, as a tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of writ courts as under Article 226 and Article 32 of the Constitution of India.

19. In the relied upon judgment *T.N. Pollution Control Board* v. *Sterlite Industries (I) Ltd.*[11] R.F. Nariman, J. speaking about NGT for a Division Bench of this Court has observed the following: (SCC pp. 520 & 523-24, paras 41 & 43)

> "*41.* … Suffice it to say that NGT is not a tribunal set up either under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act. …
>
> * * *
>
> *43.* … In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(*b*) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*[12], made in the following words: (SCR p. 499 : AIR p. 789, para 138)
>
> > '*138.* We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.
> >
> > "Prima facie", says Halsbury, "no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court[13]".'

11 (2019) 19 SCC 479
12 1964 SCC OnLine SC 21 : (1965) 1 SCR 413 : AIR 1965 SC 745
13 *Halsbury's Law of England*, 3rd Edn., Vol. 9, p. 349.

For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by NGT. Following the judgment in *BSNL*[14], we are of the view that NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on NGT judgment dated 17-7-2014 in *Wilfred J.* v. *Ministry of Environment & Forests*[15] must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

The argument has been that the superior courts exercising discretionary powers under Article 32 and Article 226, to safeguard fundamental rights, can venture into judicial review. But such a power not being expressly conferred on NGT would suggest the limited nature of the forum's powers, which would exclude any suo motu exercise.

I. ***The backdrop of the National Green Tribunal***

20. In order to understand the contours of jurisdiction of NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which shaped the creation of NGT and the broad issues that they sought to address through the specialised institution should now be brought to the fore.

21. The precursor to the NGT Act was the 186th Report* of the Law Commission of India dated 23-9-2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialised court to deal with environmental issues:

"It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.

These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Article 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene

14 *BSNL* v. *TRAI*, (2014) 3 SCC 222
15 2014 SCC OnLine NGT 6860
* **Ed.**: Law Commission of India, 186th Report on Proposal to Constitute Environment Courts (September 2003)

on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Article 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert Commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.

It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts."

22. The above would suggest that the Law Commission was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialised forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court.

23. NGT, therefore, was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the courts. It was explicitly noted that the creation of NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialised forum. The 186th Law Commission Report provided the following reasoning:

"Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Article 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a civil court, in the Environmental Courts. If we vest powers of judicial review as under Article 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in *L. Chandra Kumar* v. *Union of India*[16].

No doubt, the Environment Court exercising powers of a civil court or as an appellate court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on

16 (1997) 3 SCC 261 : 1997 SCC (L&S) 577

the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."[17]

24. Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of NGT. This is how the proposed forum was made free from the rules of evidence and NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts, etc. The observance of the principles of natural justice was however mandated.

II. *The Preamble & Statement of Objects and Reasons*

25. The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 2, 3, 4, 5 and 6 of the Statement of Objects and Reasons being relevant are extracted hereinbelow:

> "**2.** India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.
>
> **3.** The right to healthy environment has been construed as a part of the right to life under Article 21 of the Constitution in the judicial pronouncement in India.
>
> **4.** The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.
>
> **5.** Taking into account the large number of environmental cases pending in higher courts and the involvement of multi-disciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the

17 Chapter IX, 186th Law Commission Report.

need for constitution of specialised environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to Environment Law.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialised tribunal to handle the multi-disciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

26. A reading of the Statement of Objects and Reasons shows that Para 4 thereof refers to the *National Environment Tribunal Act, 1995 ("NET")* which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher courts which involve multi-disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialised environmental courts.

27. Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life under Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186th Law Commission Report highlighting that the body so created, would aim to "*achieve the objectives of Articles 21, 47, 48-A, 51-A(g) of the Constitution of India by means of a fair, fast and satisfactory judicial procedure*". An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction.

28. Para 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon the Governments and peoples to exert common efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of NGT is therefore conceived to be of the widest amplitude and it is in the nature of a sui generis forum.

29. The United Nations Conference on Environment and Development held at Rio de Janeiro in June 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble to the Act significantly emphasised on construing the right to healthy environment as a part of the right to life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National

Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

30. The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of NGT.

III. ***The need for purposive interpretation***

31. While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in the latter parts of the judgment, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of NGT it is seen that NGT is intended to address wide-ranging societal concerns and these have prompted us to opt for purposive interpretation. The statute will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes*, authored by Justice G.P. Singh who explained thus:

> "When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.
>
> It is a rule now firmly established that the intention of the legislature must be found by reading the statute as a whole. The rule is referred to as an "elementary rule" by Viscount Simonds: a "compelling rule" by Lord Somervell of Harrow; and a "settled rule" by B.K. Mukherjea, J. "I agree" said Lord Halsbury, "that you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it"."

32. The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional courts flagging their environmental concerns.

33. The application of *Heydon*[18] rule could adequately aid us here as the rule directs adoption of that construction which "*shall suppress the mischief and advance the remedy*" as was pertinently observed by S.R. Das, J. for a seven-Judge Bench in *Bengal Immunity Co. Ltd.* v. *State of Bihar*[19],

18 *Heydon Case*, (1584) 3 Co Rep 7a : 76 ER 637
19 1955 SCC OnLine SC 2 : (1955) 2 SCR 603 : AIR 1955 SC 661

"*22.* … '4th. … the office of all the Judges is to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*.'*"

34. Francis Bennion in his book *Statutory Interpretation* described "purposive interpretation" as under:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by—

(*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

(*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose."

35. Justice Frankfurter of the US Supreme Court in "Some Reflections on the Reading of Statutes"[20], has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner:

"The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.

* * *

Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'."

Eventually, Justice Frankfurter relied upon Benjamin Cardozo, J.'s phraseology in *Panama Refining Co.* v. *Ryan*[21], and the same is taken as a lodestar in our quest: (SCC OnLine US SC para 50)

"*50.* … the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view".

36. The laudatory objectives for creation of NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfils the object of the Act.[22] The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

* **Ed.**: As observed in *Heydon case*, (1584) 3 Co Rep 7a (V).

20 (1947) 47 Columbia Law Review 527

21 1935 SCC OnLine US SC 3 : 79 L Ed 446 : 293 US 388 (1935) (dissenting)

22 *Sarah Mathew* v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721, *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*, (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850

IV. ***Salient statutory features of the NGT Act***

37. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention:

37.1. Section 2(1)(*c*) of the NGT Act defines the term "environment"; Section 2(1)(*m*) defines "substantial question relating to environment".

37.2. Chapter III relates to jurisdiction, power and proceedings of the Tribunal. Section 14 gives original jurisdiction to NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, NGT can direct restitution of property damage and restitution of environment for such area(s) "*as the Tribunal may think fit*". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments.

37.3. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, by Section 18(2)(*e*) "*any person aggrieved including any representative body/organisation*" and the locus standi is not limited only to the aggrieved party.

37.4. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in CPC and shall be bound by the principles of natural justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders.

37.5. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the civil court and for that purpose shall have all the powers of a civil court. Section 29 bars the jurisdiction of the civil court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

38. While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice and Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

> "**24.** ***Order and directions in certain cases***.—The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."

The said Rules make it clear that NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

39. By choosing to employ a phrase of wide import i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

40. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, NGT is conferred with power of moulding any relief. The provisions show that NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

41. Another distinguishing feature of the environmental forum is on the aspect of locus standi which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organisation who may be interested in the subject-matter is permitted to approach NGT.

42. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio de Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

V. *Non-adjudicatory roles of NGT*

43. As can be seen, Parliament intended to confer wide jurisdiction on NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See *Vellore Citizens' Welfare Forum* v. *Union of India*[23]; *M.C. Mehta (Taj Trapezium Matter)* v. *Union of India*[24], etc.]

44. Schedule I to the NGT Act is concerned with implementation of few environment related enactments such as the Water Act, the Air Act, the Environment Act, the Forest (Conservation) Act, etc. As one looks at these enactments, an expanded role for NGT is clearly discernible. The activities of NGT are not only geared towards the protection of the environment but also to

23 (1996) 5 SCC 647
24 (1997) 2 SCC 353

ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

45. For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I to the NGT Act, the concept of lis, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or Government) disturbing the environment and the other one (could be an individual, a body or the Government itself), who has concern for the protection of environment. Therefore, NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialised forum, NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

46. NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report:

> "The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. … The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

47. We have earlier discussed that NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "*dispute*", but the formulation of *decisions*.

48. With the constitution of NGT, many cases pending before the High Courts were transferred to NGT. Apprehending the possibility of conflict between the High Courts and NGT (in matters concerning environment and the statutes mentioned in Schedule I to "the NGT Act"), Swatanter Kumar, J. speaking for the three-Judge Bench in *Bhopal Gas Peedith Mahila Udyog*

Sangathan v. *Union of India*[25], highlighted NGT's role in the context, in the following words: (SCC p. 347, paras 40-41)

> "*40*. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.
>
> *41*. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of Environment Law and/or relating to any of the seven statutes specified in Schedule I to the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."

In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I to the NGT Act to the specialised forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered suo motu by the courts.

VI. *Exercise of suo motu power by NGT*

49. Let us now explore whether NGT in discharge of its functions, should also have suo motu power. The specialised tribunal's exercise of suo motu powers is somewhat distinct from those exercised by the constitutional courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but NGT cannot naturally travel beyond its environmental domain in reference to the Scheduled enactments. However, as long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude.

50. Explaining the purpose for constituting the Special Court to deal with environmental issues, in *Mantri Techzone (P) Ltd.* v. *Forward Foundation*[26], S. Abdul Nazeer, J. writing for the three-Judge Bench, made the following pertinent observations on the status of NGT: (SCC p. 517, para 40)

25 (2012) 8 SCC 326
26 (2019) 18 SCC 494

"*40*. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights."

As can be seen from the quoted passage, this Court recognised that NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

51. Elaborating further, in paras 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that: (*Mantri Techzone case*[26], SCC p. 518, para 46)

"*46*. … As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the scheduled enactments, cumulatively, leave no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction."

52. Such being the wide contour of NGT's powers, the exposition in *Rajeev Suri* v. *DDA*[27] was not to constrict the suo motu powers of NGT. To appreciate the implication of the ratio in *Rajeev Suri*[27], it must be noticed that it was in the specific context of "*Merits Review*" and NGT transgressing beyond its environmental mandate. This is why, one of us, A.M. Khanwilkar, J. observed that: (SCC p. 276, para 516)

"*516*. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject-matter traverse the scope of appeal from a grant of EC, the merits review by the Tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

26 *Mantri Techzone (P) Ltd.* v. *Forward Foundation*, (2019) 18 SCC 494
27 (2022) 11 SCC 1

Thus, the ratio in *Rajeev Suri*[27] to the quoted extent will not clash with the view propounded here as the exposition is not to allow any inherent power of residuary character for NGT. In its own domain, as crystalised by the statute, the role of NGT is clearly discernible.

53. The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *A.P. Pollution Control Board* v. *M.V. Nayudu*[28] where M. Jagannadha Rao, J. speaking for a Division Bench referred to a comparable court in Australia and noted the following: (SCC p. 736, para 44)

> "*44*. The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters."

The above would show that from the very inception, the role of NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of NGT was intended to leverage wide powers to do full justice in its environmental mandate.

VII. *Uniqueness of NGT vis-à-vis other tribunals*

54. While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory tribunals were categorised to fall under four sub-heads; Administrative Tribunals under Article 323-A; Tribunals under Article 323-B; specialised sector tribunals and most prominently; tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

55. The ideal was to create a fairly proactive and responsive institution which could step into varying roles, as the situation demanded. Commenting on the specialised and unique role of NGT, Ashok Bhushan, J. in *State of Meghalaya* v. *All Dimasa Students Union*[29], fittingly observed thus: (SCC p. 262, para 163)

> "*163*. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish

27 *Rajeev Suri* v. *DDA*, (2022) 11 SCC 1
28 (1999) 2 SCC 718
29 (2019) 8 SCC 177

before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain* v. *ITO*[30], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 13: (SCC p. 359)

> '*13.* … The High Court observed that under Section 35 of the Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen.' "

56. Reflecting on the expanded role of NGT unlike other tribunals, this Court so appositely observed in *All Dimasa Students Union case*[29] that the forum has a duty to do justice while exercising "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute.

57. During the course of its functioning, NGT has been recognised as one of the most progressive tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia:

> "NGT is an example of a specialised court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance."[31]

VIII. *The sui generis role of NGT*

58. NGT being one of its own kind of forum, commends us to consider the concept of a sui generis role, for the institution. The structure of sui generis institutions was explained in *Paramjit Kaur* v. *State of Punjab*[32], wherein S. Saghir Ahmad, J. spoke thus for a Division Bench: (SCC p. 137, para 14)

30 (1970) 2 SCC 355
29 *State of Meghalaya* v. *All Dimasa Students Union*, (2019) 8 SCC 177
31 Gill, G., "Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?", Asian Journal of Law and Society, 7(1), 85-126 (2020).
32 (1999) 2 SCC 131 : 1999 SCC (Cri) 109

"*14*. The concept of sui generis is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbiter is entrusted acts sui generis, that is, on its own and not under any law."

59. In *NHAI* v. *Aam Aadmi Lokmanch*[33], S. Ravindra Bhat, J. commenting on the sui generis role of NGT, so appropriately stated as follows: (SCC pp. 605 & 629, paras 37 & 73-74)

"*37*. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the First Schedule. Yet, that interpretation, in the opinion of this court, is not warranted.

* * *

73. The power and jurisdiction of NGT under Sections 15(1)(*b*) and (*c*) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the *nature of the abusive practice*, its powers can also be preventive.

74. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued." (emphasis in original)

In that case, this Court repelled the argument for a restricted jurisdiction for NGT, and fittingly observed in para 73 that the powers conferred on NGT are both reflexive and preventive and the role of NGT was recognised in para 74 as "*an expert regulatory body*", which can issue general directions also *albeit* within the statutory framework.

60. The above discussion would advise us to say that NGT was conceived as a specialised forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts

33 (2021) 11 SCC 566

and the Supreme Court. Many of those cases transferred to NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate suo motu proceedings should also be available with NGT.

61. NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialised body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

IX. *Authority with self-activating capability*

62. Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take suo motu cognizance of matters, for effective discharge of its mandate.

63. The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder:

> "**14.** ***Tribunal to settle disputes***.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
>
> (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
>
> (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:
>
> Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

64. Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e. civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. On these material aspects, NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by NGT is not circumscribed by receipt of application. When substantial

questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I to the Act, NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

65. In the same spirit, we find merit in the arguments that Section 14(1) exists as a stand-alone feature, not constricted by the operational mechanism of the subsequent sub-sections. Sub-section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub-section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

66. The other pertinent provisions relating to, inter alia, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. These crucial powers are expected to be exercised by NGT, would logically suggest that the action/orders of NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

67. It may also be relevant to bear in mind that while dealing with contested cases, NGT is required to pass "*award*" and "*order*" and the statute repeatedly uses the word "*decision*". Therefore, it is appropriate to correlate the word "*decision*" to NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognised in *NHAI*[33].

68. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialised forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, V.R. Krishna Iyer, J. speaking for a Division Bench in *State of Punjab* v. *Shamlal Murari*[34] has so correctly prioritised the substantive rights and observed succinctly: (SCC p. 722, para 8)

33 *NHAI* v. *Aam Aadmi Lokmanch*, (2021) 11 SCC 566
34 (1976) 1 SCC 719 : 1976 SCC (L&S) 118

"*8.* … We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

69. While discussing NGT's power and responsibility, it is essential to keep in mind the *Principle 10 of the Rio Declaration* which speaks of three fundamental rights i.e. access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. *The Precautionary Principle*

70. Tracing the origin of the *precautionary principle*, Scott Lafranchi in his treatise[35] has expounded on the proactive role of the authorities in the following passage:

"Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long-term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm."[36] The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies"."

71. The origin of the *precautionary principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

72. As earlier seen, Section 20 of the NGT Act which includes the term "*decision"*, in addition to "*order*" and "*award*", also require the Tribunal to apply the "*precautionary principle*" and the statutory mandate being relevant is extracted:

"**20.** ***Tribunal to apply certain principles***.—The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."

35 Scott LaFranchi, "Surveying the Precautionary Principle's Ongoing Global Development: The Evolution of an Emergent Environmental Management Tool", 32 BC Envtl Aff L Rev 679 (2005).

36 *See*, Ronnie Harding & Elizabeth Fisher, "Introducing the Precautionary Principle" in *Perspectives on the Precautionary Principle* (1999) at p. 4.

73. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other "*decisions*" or "*orders*" to governmental authorities or polluters, when they fail to "*to anticipate, prevent and attack the causes of environmental degradation*"[37]. Two aspects must therefore be emphasised i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

74. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, *The Nature of the Judicial Process*, stated thus:

> "It is true that codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

The above could be a pointer towards the pre-emptive functions of NGT as a sui generis body.

XI. *Environmental Justice and Environmental Equity*

75. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.[38] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalised groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

76. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer [then Assistant Attorney General, Environment and Natural Resources Division ("ENRD"), US Department of Justice] and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role*

37 *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647, *S. Jagannath* v. *Union of India*, (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board* v. *C. Kenchappa*, (2006) 6 SCC 371.

38 Schlosberg D., *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press 2009).

of the Courts in Environmental Law, wrote the following evocative passage on the concept of environmental justice:

> "Environmental justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity", which is understood to mean the fair distribution of environmental risks and protection from environmental harms."[39]

77. There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people:

> "Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school", whereas the people who reside there do little or nothing to harm their community."[40]

78. When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An "*equal footing*" conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalised classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

79. The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of "public interest litigation" or widening the scope of locus standi:

> "The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in

39 Schiffer, L.J. & Dowling, T.J. (1997), "Reflections on the Role of the Courts in Environmental Law", 27(2) Environmental Law 327-342.

40 Jeff Todd, "A 'Sense of Equity' in Environmental Justice Litigation", 44 Harv Envtl L Rev 169, 193 (2020).

minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."[39]

80. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the "*Blindfold of Lady Justice*", which symbolises "*the ideal of administering equal justice to everyone who comes to our courts, regardless of race, creed, or economic class*".[39] The relevance of this concept is particularly apposite when we consider the inability of most marginalised communities, to access the legal machinery.

IX. *Environmental Jurisprudence in India*

81. Proceeding with the above understating, we can comfortably place NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing—*Environmental Law and Policy in India*, have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environment Law from the realm of torts to interlink it with fundamental rights[41], liberalising the concept of locus standi in environmental matters, exercising suo motu powers to rein in polluters, using expert committees to monitor implementation of court orders, etc.[42]

82. By expanding the scope of Articles 21, 32, 48-A, 51-A(*g*), this Court has guaranteed the right to a pollution-free environment for a holistic existence.[43] Most crucially, the expansion of right to life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar* v. *State of Bihar*[44], this Court explicitly held the following: (SCC p. 604, para 7)

> "*7.* … Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life."

83. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be

39 Schiffer, L.J. & Dowling, T.J. (1997), "Reflections on the Role of the Courts in Environmental Law", 27(2) Environmental Law 327-342.

41 *Rural Litigation & Entitlement Kendra* v. *State of U.P.*, (1985) 2 SCC 431 : AIR 1985 SC 652, *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613, *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577

42 *See* M.A.A. Baig, *Environmental Law and Justice* (1996). Domenico Amirante, "Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India" 29:2 Pace Envtl L Rev 440 at p. 447 (2012). M.K. Ramesh, "Environmental Justice: Courts and Beyond", Indian Journal of Envtl Law 20 (2002).

43 Maheshwara Swamy, N., *Law Relating to Environmental Pollution and Protection*. India, Thompson Reuters, Vol. I, Edn. 5.

44 (1991) 1 SCC 598

exploited by those who may not have much concern for environmental degradation. Creation of the "*Absolute Liability Principle*"[45] by this Court is a well-recognised testament for this. It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative:

> "The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment.…The right was recognised as part of the right to life in 1991….The Court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."[46]

84. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a sui generis environmental discourse.[31] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the "*at risk*" nature of some populations. The creation of NGT itself was due in large part to the need expressed by this Court for such a forum.[47]

85. T.S. Doabia, J. in *Environmental & Pollution Laws in India*, has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters:

> "The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.
>
> … The courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned."[48]

45 *M.C. Mehta* v. *Union of India*, (1987) 1 SCC 395

46 Rajamani, Lavanya, "Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability", Journal of Environmental Law (2007).

31 Gill, G., "Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?", Asian Journal of Law and Society, 7(1), 85-126 (2020).

47 *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122, *Indian Council For Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212, *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718, *A.P. Pollution Control Board (2)* v. *M.V. Nayudu*, (2001) 2 SCC 62

48 Justice T.S. Doabia, *Environmental & Pollution Laws in India*, 3rd Edn., Vol. 2 (2017).

86. Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare-oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society-centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior court was surely expected to be seen in the Tribunal's approach.

87. Analysing the concept of the functioning of NGT and its role within the broader concept of the environmental rule of law, D.Y. Chandrachud, J. speaking for a three-Judge Bench in *H.P. Bus-Stand Management & Development Authority* v. *Central Empowered Committee*[49] so succinctly said that: (SCC pp. 335-36, para 49)

> "*49.* The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools — conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges — of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the "law" element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and Judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

88. It is this environmental rule of law that has been encapsulated with NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that:

> "With reference to the judicial enforcement of environmental law — which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order — the National Green Tribunal of India

49 (2021) 4 SCC 309

seems to be the most comprehensive and promising among the specialised environmental courts created in Asia over the last decade."[50]

89. NGT, therefore, is the institutionalisation of the developments made by this Court in the field of Environment Law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

X. *Conclusion*

90. Before we set out our conclusion, we acknowledge the able contribution of Mr Anand Grover as Amicus Curiae, assisted by Ms Astha Sharma, AoR who were requested to assist the Court on the central issue of suo motu jurisdiction of NGT.

91. The NGT Act, when read as a whole, gives much leeway to NGT to go beyond a mere adjudicatory role. Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of NGT's fabric. NGT must be seen as a sui generis institution and not *unus multorum*, and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

92. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists[51] with many countries declaring climate emergencies and many others being urged to follow suit[52].

93. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long-term and very often irreparable environmental damage which are expected to be arrested by NGT, urge this Court to advert to what is termed as *the "Seventh Generation" sustainability principle*, or the "*Great Law of the Iroquois*" (as it originates from the Iroquois Tribe) which requires all decision-making to withstand for the benefit of seven generations down the line.

50 Domenico Amirante, "Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India", 29 Pace Envtl L Rev 441 (2012).

51 Indian Network for Climate Change Assessment, Climate Change and India: A 4×4 Assessment — A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16-11-2010.

52 Secretary General's remarks at the Climate Ambition Summit, United Nations. United Nations, 12-12-2020.

94. It is vital for the well-being of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

95. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*".[35] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

96. NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society-centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

97. It would be procedural hair-splitting to argue (as it has been) that NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

98. When the Registry of NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate suo motu action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of suo motu jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

99. One could admit to the argument of danger of suo motu jurisdiction, if NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedurals safeguards

35 Scott LaFranchi, "Surveying the Precautionary Principle's Ongoing Global Development: The Evolution of an Emergent Environmental Management Tool", 32 BC Envtl Aff L Rev 679 (2005).

clarified above in play, the nature of the trigger itself viz. a letter or a "suo motu" initiation, cannot be the basis to curtail the role and responsibility of the specialised forum.

100. Institutions which are often addressing urgent concerns gain little from procedural nit-picking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

101. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that NGT is vested with suo motu power in discharge of its functions under the NGT Act.

102. Having answered the common legal issue involved in all these cases regarding the suo motu jurisdiction of NGT, we direct delinking of these cases for now being heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25-10-2021 for direction and fixing date of hearing, before the Bench presided over by one of us (A.M. Khanwilkar, J.). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

2022 SCC OnLine SC 1469

In the Supreme Court of India

(BEFORE B.R. GAVAI AND B.V. NAGARATHNA, JJ.)

Civil Appeal Nos. 2407-2412 of 2021

State of Uttar Pradesh and Others ... Appellant(s);

Versus

Uday Education and Welfare Trust and Others ... Respondent(s).

With

Civil Appeal Nos. 3144-3146 of 2022
Civil Appeal Nos. 3132-3134 of 2022
Civil Appeal Nos. 3135-3137 of 2022
Civil Appeal No. 3138 of 2022
Civil Appeal Nos. 4061-4062 of 2022
Civil Appeal No. 3141 of 2022
Civil Appeal Nos. 2547-2548 of 2020
Civil Appeal Nos. 3142-3143 of 2022
Civil Appeal Nos. 3147-3149 of 2022

Civil Appeal Nos. 2407-2412 of 2021, Civil Appeal Nos. 3144-3146 of 2022, Civil Appeal Nos. 3132-3134 of 2022, Civil Appeal Nos. 3135-3137 of 2022, Civil Appeal No. 3138 of 2022, Civil Appeal Nos. 4061-4062 of 2022, Civil Appeal No. 3141 of 2022, Civil Appeal Nos. 2547-2548 of 2020, Civil Appeal Nos. 3142-3143 of 2022 and Civil Appeal Nos. 3147-3149 of 2022

Decided on October 21, 2022

The Judgment of the Court was delivered by

B.R. GAVAI, J.:— A For the reasons stated in the applications for impleadment/intervention, the same are allowed.

2. This bunch of appeals challenges the order dated 18th February 2020, passed by the learned National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the learned NGT") in Original Application Nos. 313, 335 and 396 of 2019, thereby quashing and setting aside the notice dated 1st March 2019 issued by the State of Uttar Pradesh for establishing new wood based industries (hereinafter referred to as "WBIs") and also setting aside all the provisional licenses given in pursuance thereof.

3. The appeals also challenge the orders dated 18th March 2020, 2nd December 2020, and 21st December 2020 vide which the review applications filed by the State of Uttar Pradesh and the provisional license holders have been rejected.

4. Civil Appeal Nos. 2407-2412 of 2021 are filed by the State of Uttar Pradesh. The rest of the Civil Appeals are filed by the provisional license holders, who were granted licenses in pursuance of the notice dated 1st March 2019, issued by the State of Uttar Pradesh.

FACTUAL BACKGROUND

5. For the sake of convenience, we will refer to the facts as found in Civil Appeal Nos. 2407-2412 of 2021 filed by the State of Uttar Pradesh.

6. There are series of orders passed by this Court and the Central Empowered Committee (hereinafter referred to as "CEC") appointed by this Court, issuing various

directions for prohibiting/regulating the felling of trees as well as the establishment of WBIs. We will refer to them extensively in the subsequent paragraphs.

7. In pursuance of the order passed by this Court dated 5th October 2015 in Writ Petition (Civil) No. 202 of 1995 (*T.N. Godavarman Thirumalpad* v. *Union of India*), the Ministry of Environment and Forest and Climate Change ("MOEFCC" for short) issued Wood Based Industries (Establishment and Regulation) Guidelines 2016 (hereinafter referred to as "2016 Guidelines") vide Notification No. S.O. 3456 (E) dated 11th November 2016.

8. Subsequent to the 2016 Guidelines, timber assessment for Trees Outside Forest ("TOF" for short) in the State of Uttar Pradesh for WBIs was done for the period between February 2017 and December 2017 by the Forest Survey of India ("FSI" for short). The FSI thereafter submitted its report, which contains district wise, species wise and diameter class wise number of stems (trees), volume and annual potential production of timber from TOF in rural areas of all the districts of the State.

9. In pursuance of the 2016 Guidelines, the matter was placed before the State Level Committee ("SLC" for short) for grant of licenses to various WBIs. The SLC in its meeting held on 4th May 2018, considered the matter about the grant of licenses to various WBIs after taking into consideration the availability of wood in the State of Uttar Pradesh for determining the amount of timber available for new WBIs. In the said meeting, it was also decided that, in order to determine the correct number of new licenses to be issued to WBIs under different categories against the timber available in the State, a reassessment may be done by the Indian Plywood Industries Research and Training Institute ("IPIRTI" for short).

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

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

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

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

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

October 2019, the learned NGT directed the status quo to be maintained.

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

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

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

SUBMISSIONS

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

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

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

21. Shri P.S. Patwalia, learned Senior Counsel also submitted that the decision of the State Government was in tune with the decision of this Court dated 18th May 2007 and 5th October 2015 passed in Writ Petition (Civil) No. 202 of 1995 (*T.N. Godavarman Thirumulpad* v. *Union of India*). It is submitted that when an expert body like the FSI had done an elaborate study, there was no reason for the learned NGT to have sat in appeal over the same. He further submits that though a detailed affidavit has been filed on behalf of the State of Uttar Pradesh in compliance with the order of the learned

NGT dated 18th December 2019, regarding the availability of timber, the learned NGT has totally ignored the same.

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

23. Shri Vinay Navare, learned Senior Counsel, submitted that the timber used in the WBIs is from the trees which are agro-based. He submits that though the State of Uttar Pradesh had adopted an elaborate procedure right from June 2018 till the grant of licenses, the applicants before the learned NGT had taken no steps. Shri Navare submits that only after the provisional licenses were issued and 632 out of 1215 WBIs provisional license holders had already been established and commenced operations, the applications were entertained and the orders were passed to the prejudice of the WBIs. It is submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as "the NGT Act") mandates following of the principles of natural justice. It is submitted that though the applications for impleadment were made by the WBIs, the applicants were not granted an opportunity of being heard.

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

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

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

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

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

29. Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of the respondent No. 1, on the contrary, submits that this Court has repeatedly held that the principles of sustainable development, the precautionary principle and the polluter

pays principle are to be followed consistently. He raised a preliminary objection on the ground that in view of Section 22 of the NGT Act, the scope of an appeal before this Court could be limited to that of Section 100 of the Civil Procedure Code, 1908. It is, therefore, submitted that unless a substantial question of law is raised, the appeal could not be tenable.

30. Shri Dhruv Mehta submits that this Court vide order dated 12th December 1996 has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15th March 2005 to buttress his submission that WBIs can be permitted only if they exclusively use timber derived from poplar and eucalyptus species or agriculture waste products. It is submitted that the said guidelines also specifically provided that if the unit is found to have used any timber other than poplar and eucalyptus whether from a legal source or otherwise, the license granted to the unit shall be liable to be cancelled. He further relies on the report of CEC dated 12th October 2006. He submits that an assessment has to be done on the basis of the district-wise survey about timber availability from the TOF category. He submits that the said report of CEC itself would reveal that the assessment of the State is much less than what was initially projected by the State Government. He submits that unless the timber availability for the new WBIs is assessed and the SLC examines and recommends its approval, it is not permissible to establish new WBIs.

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

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

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

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

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

therefore, the survey itself is erroneous.

36. The learned Senior Counsel further submits that FSI, while conducting the survey, has not taken into consideration the rotation period and, therefore, the survey is erroneous on the said count also. Learned Senior Counsel, in support of his submissions, relies on the judgment of this Court in the cases of *Common Cause* v. *Union of India*[1], *Mantri Techzone Private Limited* v. *Forword Foundation*[2], *Municipal Corporation of Greater Mumbai* v. *Ankita Sinha*[3] and *Pragnesh Shah* v. *Dr. Arun Kumar Sharma*[4].

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

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

EARLIER ORDERS OF THIS COURT

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

40. This Court in the case of *T.N. Godavarman* (supra) passed an order on 12th December 1996. The relevant part thereof is as under:

> "6. Each State Government should within two months, file a report regarding -
>
> (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
>
> (ii) the licenced and actual capacity of these mills for stock and sawing;
>
> (iii) their proximity to the nearest forest;
>
> (iv) their source of timber.
>
> 7. Each State Government should constitute within one month, an Expert Committee to assess:
>
> (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;
>
> (ii) The number of existing saw mills which can safely be sustained in the State;
>
> (iii) The optimum distance from the forest, qua that State, at which the saw mill should be located."

41. Vide subsequent order dated 4th March 1997[5], this Court directed thus:

> "6. All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks."

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

43. Vide order dated 29th October 2002[6], this Court further directed thus:

> "44. No State or Union Territory shall permit any unlicensed sawmills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any sawmills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance with this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.
>
> 45. It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences."

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

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

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

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

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

> "The matters relate to Saw Mills, Plywood and Veneer Units.
>
> The CEC has considered the availability of wood for the industries, which was assessed as 43.70 lakh cu. mt from trees outside forests and 02.00 lakh cu. mt from Government Forests.
>
> It has also assessed the units into four categories.
>
> We accept the CEC's recommendations. The Saw Mills, Plywood and Veneer Units may be permitted, on the basis of the recommendations made by the CEC. Licences may be given by the State Level Committees.
>
> If there are any objections regarding grant of licences, the parties would be at liberty to submit their applications before the CEC for consideration."

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

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

> "The matter relates to the manufacturing of Medium Density Fiber board (MDF)

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

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

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

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

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

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

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

"CATEGORY I - MATTERS RELATING TO WOOD BASED INDUSTRIES:

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

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

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

Department not below the rank of the Chief Conservator of Forests/equivalent rank will immediately be constituted;

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

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

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

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

MOEFCC GUIDELINES

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

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

"The Indian Plywood Industry Research and Training Institute (IPIRTI), Bangalore an autonomous body under the Ministry of Environment, Forest and Climate Change has assessed the timber requirement per unit for peeling length of 4 feet and 8 feet size in the plywood/veneer units as 5 cu.mt and 11 cu.mt. respectively per day on an average of 8 working hours per day. By assuming that the peeling units work for 8 hours per day on an average for 300 days in a year the normal timber requirement of the peeling length of 4 feet size in veneer units is 1500 cu.mt. The total timber requirement for the stand alone veneer units may be assessed by calculating the equivalent number of 4 feet length machines and by taking its normal installed capacity as 1500 cu.mt. per annum.

The timber requirement of a plywood unit may be taken as 'nil' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as the raw material produced by the veneer units. The plywood units use presses of various sizes such as 8 × 4 × 6, 8 × 4 × 12, 8 × 4 × 15, 4 × 4 × 7, 4 × 4 × 10. A 8 × 4 × 10 capacity press can produce upto 10 plywood pieces of 8′ × 4′ size per hour whereas a 8 × 4 × 15 capacity press can produce upto 15 plywood pieces of 8′ × 4′ size per hour and so on. The normative installed capacity of the plywood units will accordingly depend upon the number and the type of presses. This number and type of presses installed in each of the plywood unit may be assessed and thereafter equivalent number or presses of 8 × 4 × 10 capacity may be calculated. The normative annual timber requirement for a integrated plywood unit having a 8 × 4 × 10 capacity press may be taken as 2000 cu.mt. per annum, and accordingly the total requirement of timber for the plywood units should be calculated."

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

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

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

62. On the basis of the decision of the SLC, e-lottery was held. After following the procedure, provisional licenses were issued to 1215 successful applicants in 8 categories of WBIs in February and March 2019. After the issuance of provisional licenses, on 1st March 2019, the State Government issued a Notice with regard to grant of provisional licenses to the newly selected WBIs which came to be challenged before the learned NGT by way of filing the aforesaid Original Applications by the respondents. The learned NGT after passing various interlocutory directions finally passed the impugned order and quashed and set aside the notice dated 1st March 2019 issued by the State Government and provisional licenses given in pursuance

thereof. As such we are required to examine the correctness of the decision of the learned NGT.

CONSIDERATIONS

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

(1) that the WBIs can be allowed to operate only after ensuring timber and raw material availability to sustain such industries and this has to be determined in actual terms and not on mere assumptions;

(2) that it is difficult to accept the stand of the State of Uttar Pradesh that there was availability of timber/raw material to sustain the new WBIs;

(3) that it is the stand of the State of Uttar Pradesh that the total potential availability of timber per year in the State of Uttar Pradesh is 80.30 lakh cubic meters, which includes 2.56 lakh cubic meters from the Government forests and 77.74 lakh cubic meters from TOF. Out of 80.30 lakh cubic meters, 71.8 lakh cubic meters were stated to be available from 22 species and 8.50 lakh cubic meters from the other species. Out of 22 species, there are 10 species that are prohibited from felling and as such, 20.75 lakh cubic meters from these 10 species are liable to be excluded;

(4) that the major contribution is from Eucalyptus (28 lakh cubic meters) and Poplar species (15 lakh cubic meters), a total of which is 43 lakh cubic meters. Thus, the figure is not actual but presumptive;

(5) that the standard error percentage adopted by the FSI is not correct and is much higher;

(6) that the total availability of timber for consumption including that from the government forests would not be more than 40-45 lakh cubic meters per year;

(7) that the potential availability of 77.74 lakh cubic meters from TOF as given in the affidavit has been overestimated.

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

65. One of the duties which was cast upon the SLC was to assess the availability of timber for wood based industrial units in the State. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute, once in five years. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. It will be relevant to refer to the relevant part of the Foreword of the said report of the FSI.

> "In the recent past, a number of requests were received for establishment of wood based industries in the state for which the raw material would come from outside the forest areas. Since accurate assessment of TOF is needed for effective planning & management, Uttar Pradesh Forest Department requested FSI to make Agro-Climatic zone wise assessment on the basis of inventory already done during its regular course of inventory conducted in the State. As per the final report, the

total stems as estimated from the study is 299.43 million with a volume of 79.40 m. cum. The total yield in the Uttar Pradesh is estimated 7.8 million cum.

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

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

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

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

"5.4 Estimates of Annual Potential Production of Wood from TOF (Rural)

Yield of a forest depends on several factors such as its structure, growth, density, productive capacity of site etc. The estimate of yield been generated for rural area using growing stock estimates. The Uttar Pradesh Forest Department was supplied the complete list of tree species which were found in the survey. The Uttar Pradesh Forest Department was asked to indicate tree species being used as 'timber' and 'non timber' and rotation period of specified timber species. *The Uttar Pradesh Forest Department informed that they do not have rotation period of all species and requested Forest Survey of India to use their rotation period used for estimation of annual potential production of wood.* The species are arranged into two groups; one containing the species having timber values and another containing rest by agro-climatic zone wise. The yield has been calculated using Von Mentel formula as given below:

Yield= 2GS/R

Where GS : Growing Stock

R : rotation period

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

[emphasis supplied]

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

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

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

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

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

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

> "5. Conclusion
>
> TOF play a significant role in the socioeconomic lives of people both in rural and urban areas of the country by enriching the people and society at large economically as well as ecologically. The management of TOF assumes high significance in the country for realizing much higher potential which it offers in generating wood based economy and ecosystem services including carbon sequestration. Periodic assessment of TOF resources including its spatial distribution is prerequisite for its scientific management in the country. FSI is mandated with this task however there is need for continuous improvement in the methodology and inclusion of more number of variables in the assessment. The organization will have to be further strengthened particularly in terms of man power, to address the emerging information needs on TOF. There has been regular refinement in methodologies in the last three decades to quantify TOF resources using various statistical designs and estimates with better precision. The advancement of technologies in the field of remote sensing, satellite image processing and availability of high resolution satellite data made the methodology much precise and easier. The progression of science may further refine the existing method of TOF assessment in near future.
>
> TOF also act as an important source for timber and fuel wood to meet the

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

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

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

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

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

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

78. It is further to be noted that in pursuance of the order of the learned NGT dated 28th March 2019, a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3rd August 2019. Not only this, but in pursuance of the directions issued by the learned NGT on 18th December 2019, another detailed affidavit was filed on behalf of the State Government on 21st January 2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and

80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs. 3000 crore in the State with the establishment of new WBIs. The same would employ more than 80000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the learned NGT.

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

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

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

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

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

83. It can thus be seen that the decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. The scope of judicial review has been succinctly explained by this court in the case of *Tata Cellular* v. *Union of India*[7], which has been consistently followed in a catena of cases. This Court, in the said case, observed thus:

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

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

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

(*i*) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(*ii*) Irrationality, namely, Wednesbury unreasonableness.

(*iii*) Procedural impropriety.

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

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

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

86. That leads us to consider the contention of the respondents that this Court has repeatedly emphasized the principles of sustainable development, the precautionary principle and the polluter pays principle. No doubt that the protection of the environment is of utmost importance. It is the duty of this generation to protect the environment for future generations.

CONCLUSION

87. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as

well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.

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

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

90. The report further goes on to show that on average 1500-1700 trucks/tractor trollies of the eucalyptus and popular wood from all over Haryana, Punjab, Himachal Pradesh and Uttar Pradesh go to Yamuna Nagar, Haryana daily. Out of the said trucks/trollies, approximately 300-350 tractor trollies and some other small vehicles per day come from Uttar Pradesh. The report shows that approximately 5 to 6 lakh metric tons of timber per year is exported to Yamuna Nagar. The said material belongs to the western districts of Uttar Pradesh, i.e. Muzaffarnagar, Saharanpur, Shamli, Baghpat and Meerut. It is stated that there is no sufficient market for this produce in the said area. The report further finds that the western districts of Uttar Pradesh, i.e. Meerut, Muzaffarnagar, Saharanpur, Baghpat and Shamli, etc. do not have sufficient number of plywood and veneer units and as such, they are not sufficient for the entire farmers' produce available in the said area. The report itself shows that the western districts need around 80-85 plywood and veneer units. The report goes on further to show that there is dissatisfaction among the already existing industrialists about the assessment made by the FSI.

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

92. It will be relevant to note that the Forest Research Institute, Dehradun, Uttarakhand has published 'Country Report of Poplars and Willows Period : 2012-2015'. The report states that the timber from poplar and willow is the backbone of vibrant plywood, board, match, paper and sports goods industries. The report further states that in tune with Indian Agroforestry Policy 2014, the plantation of poplar has been promoted. It further states that the Planning Commission of India has given special grants to certain States for the diversification of agriculture where farmers are advised to move away from paddy cultivation to sustain agricultural production. Poplar and eucalyptus are among the few trees promoted under this diversification plan. The report states that Poplar plays a significant role in rural development by generating employment for many categories of skilled, semi-skilled and unskilled workers.

93. The paper on "Trees Outside Forest Resources in India" published by the FSI,

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

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

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

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

97. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar,

learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.

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

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

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

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

(a) In the case of *Samatha* v. *State of A.P.*[8], a three-Judge Bench of this Court after referring to the earlier judgment in the case of *State of H.P.* v. *Ganesh Wood Products*[9] observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and

ecology.

(b) In the case of *Essar Oil Ltd.* v. *Halar Utkarsh Samiti*[10], this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in the case of *Indian Council for Enviro-Legal Action* v. *Union of India*[11] were quoted as under:

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

(c) In the case of *Maharashtra Land Development Corporation* v. *State of Maharashtra*[12] reference was made to *Glanrock Estate Private Limited* v. *State of Tamil Nadu*[13] wherein it was observed as under:

> "*27.* …. Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India* (Writ Petition No. 202 of 1995), it has been held that 'intergenerational equity' is part of Article 21 of the Constitution.
>
> *28.* What is intergenerational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then intergenerational equity would stand violated.
>
> *29.* The doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'polluter pays principle' flow from the core value in Article 21.
>
> *30.* The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about intergenerational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle."

(d) Of course, one cannot ignore one of the several dicta of this Court in *T.N. Godavarman Thirumulkpad* v. *Union of India*[14] wherein this Court enunciated the definition of "forest" in the following words:

> "4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof…"

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

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

104. Pending applications, if any, shall stand disposed of. No costs.

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[1] (2017) 9 SCC 499

[2] (2019) 18 SCC 494

[3] 2021 SCC OnLine SC 897

[4] 2022 SCC OnLine SC 79

[5] (1997) 3 SCC 312

[6] (2008) 16 SCC 337

[7] (1994) 6 SCC 651

[8] AIR 1997 SC 3297 : (1997) 8 SCC 191

[9] (1995) 6 SCC 363

[10] (2004) 2 SCC 392

[11] (1996) 5 SCC 281

[12] (2011) 15 SCC 616

[13] (2010) 10 SCC 96

[14] (1997) 2 SCC 267 : AIR 1997 SC 1228

can easily be said to have been justified under Regulation 47 of the Reserve Bank of India (Staff) Regulations, 1948 for it is thereunder the penalty was imposed. An additional method of recovery is available in Regulation 8 of the Reserve Bank of India Guarantee Fund Regulations. The High Court was thus right in concluding that the regulation did not make it obligatory on the Bank to recover the loss suffered from the Fund and not the employee held responsible for it, and further that the regulation was an enabling one conferring a right on the Bank to reimburse itself from the Fund, placing no restriction on its right to recover it from the employee. That right of the Bank has roots in Regulation 47 of Reserve Bank of India (Staff) Regulations, 1948. In this view of the matter, the judgment and order of the High Court requires no interference.

3. Accordingly, there is no merit in this appeal which is dismissed with no order as to costs.

1991 Supp (2) Supreme Court Cases 647

(BEFORE B.C. RAY, K. JAGANNATHA SHETTY AND J.S. VERMA, JJ.)

MURARILAL JHUNJHUNWALA .. Appellant;

Versus

STATE OF BIHAR AND OTHERS .. Respondents.

Criminal Appeal No. 627 of 1990†, decided on November 16, 1990

Criminal Law — Mens rea — Absence of — Strict liability statute — Prosecution for carrying on business without licence under Essential Commodities Act — Appellant granted licence initially but in next four years no licence in fact granted though licence fee paid each year by appellant and accepted by the department — Held, appellant no way to be blamed having done all he could under the law — It was the Licensing Authority which was to be blamed for failure to perform its statutory duties — Appellant was not asked to perform anything more — Prosecution arbitrary and unjustified in every aspect and be quashed — Appellant entitled to a licence — Essential Commodities Act, 1955 — Section 7 — Constitution of India, Articles 21, 14 and 300-A — Frivolous and vexatious prosecution by State — Relief — Tort — State liability for inaction

R/A/10893/SR

[Ed.: The Supreme Court's dismay and anguish at the inaction of the State to perform its statutory duty and blatant attempt to cover it by launching prosecution against a citizen is apparent from the Court's order. But the Court has neither awarded any costs nor damages against the department or the officials personally nor has it directed the State to proceed at least departmentally against the negligent officials for their malicious and vexatious prosecution.

† Arising out of SLP (Crl.) No. 2900 of 1988

The Court found the action "arbitrary on the face of it and unjustified on every aspect of it", thereby holding violation of Article 14 on count of arbitrariness. The action lacked fairness and justness and so violated Article 21 — personal liberty of the appellant was imminently endangered by the prosecution not "according to procedure established by law", as imprisonment is mandatory under the Essential Commodities Act, 1955. Personal liberty in its true sense was seriously affected by the appellant's inability to carry on his avocation normally and to live peacefully and normally owing to the pending prosecution for over two years till the decision of the Supreme Court. The harassment, mental agony, disruption of normal business and family life, expense of no mean order to engage defence counsel before the High Court and the Supreme Court amount to serious violations of the personal liberty of the person — far more grave than the impounding of passport in *Maneka.*

The Court has in recent past been extremely solicitous of the citizen's rights and awarded punitive damages in cases of gross violation of personal liberty. It was only meet that in the present case damages should have been awarded to the appellant recoverable personally from the offending officials.]

ORDER

1. Special leave granted.

2. The appellant is prosecuted for contravention of Section 7 of the Essential Commodities Act i.e. for carrying on his business without licence. He has unsuccessfully approached the High Court for quashing the proceedings and he is therefore, now before us.

3. It is not disputed that the appellant initially had licence for carrying on his business up to 1983. On April 19, 1984 the Bihar Trade Articles (Licences Unification) Order, 1984 was brought into force. Consequently, the appellant applied for the grant of new licence under the said order, with the payment of licence fees and he was allotted licence No. 100/84 and with the allotment of the new licence number the appellant was left with no doubt in his mind that he had no licence. The licensing authority neither rejected his claim nor pointed out any defects in his application. Bona fide believing that he had not done any illegality the appellant went on every year applying for licence according to law with the payment of licence fees. The Authority also went on accepting the applications and the licence fees but did not grant the licence sought for.

4. The Authority however, prosecuted the appellant for carrying on his business without licence. It appears the Collector of Giridih, who is the Licensing Authority under the Licences Unification Order directed the District Supply Officer to prosecute the appellant for violation of Section 7 of the Essential Commodities Act. The question is whether there is any justification for prosecuting the appellant.

5. Technically, the authorities may be justified in prosecuting the appellant for carrying on the business without obtaining the licence. But

the facts of the case reveal that the appellant is not to be blamed. If there is anybody to be blamed in this case it is only the Licensing Authority who has failed to perform its statutory duties. The appellant has done all that he could do under the law. He has not been told at any time that he is required to do anything more than what he has already done. For successive four years the Licensing Authority went on accepting the application for licence with the necessary licence fees, and at no time it denied the claim of the appellant. Its silence seems to demonstrate the total lack of awareness to the rights of the appellant. To cover up its own inaction and lethargic attitude, it seems to have directed the prosecution of the appellant. The attitude of the Licensing Authority is beyond our comprehension. It is arbitrary on the face of it and unjustified on every aspect of it. We fail to understand why the appellant should be prosecuted when he on his part has done everything for obtaining the licence. The appellant was legitimately entitled to the licence which has been unreasonably withheld from him. It would be indeed wrong on the part of the Licensing Authority to prosecute the appellant.

6. In the circumstances of the case, we allow the appeal; set aside the order of the High Court and quash the proceedings against the appellant pending in the Court of Special Judge, Giridih, (Bihar) in Complaints (EC) Case No. 1 of 1988. We further direct that the appellant be granted licence forthwith for which he has already applied according to law.

1991 Supp (2) Supreme Court Cases 649

(BEFORE RANGANATH MISRA, C.J. AND M.H. KANIA AND KULDIP SINGH, JJ.)

ISHAR SINGH .. Appellant;

Versus

NATIONAL FERTILIZERS AND ANOTHER .. Respondents.

Civil Appeal No. 2186 of 1991†, decided on April 26, 1991

Civil Procedure Code, 1908 — Section 9 — Jurisdiction to entertain suit for correcting date of birth — Workman seeking injunction against impending superannuation and ancillary reliefs — Ouster contended on the basis of Section 2-A, Industrial Disputes Act, 1947, being an individual's industrial dispute — Held, for ouster the events necessary for application of Section 2-A should have arisen on the date of filing the suit — Not being so, the civil court had jurisdiction

On the date of filing the suit none of the situations contemplated under Section 2-A had happened so as to give the appellant a cause of action to

† Arising out of SLP (C) No. 2202 of 1991

(2011) 4 Supreme Court Cases 180

(BEFORE ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.)

DELHI DEVELOPMENT AUTHORITY . . Petitioner;

Versus

RAM PRAKASH . . Respondent.

SLP (C) No. 27278 of 2009†, decided on March 15, 2011

Administrative Law — Administrative action — Administrative or Executive function — Delay — Issuance of show-cause notice for breach of rules — Failure to take action within reasonable time — Principles of limitation — Applicability of — Respondent along with his mother and wife purchased premises from appellant and was put in possession thereof — It was noticed on 8-8-1983 that respondent was using premises in contravention of rules — Show-cause notice issued on 8-8-1983 — No action taken against respondent — Fresh show-cause notice issued on 28-6-1990 — Series of show-cause notices issued to respondent in intervening time but no action initiated against respondent — In 2004, appellant demanding about ₹1.8 crores towards misuser charges — High Court quashing demand for misuser charges as appellant raised demand after lapse of almost 25 years — Propriety of

— Held, records indicate that respondent had taken steps to rectify errors committed by him or his tenants and one of the tenants had already been evicted — Appellant did not take any follow-up action for almost 25 years after issuing show-cause notice — It would be inequitable to allow appellant, which had sat over the matter, to take advantage of its inaction in claiming misuser charges — Further held, even where no period of limitation is indicated, statutory authority is required to act within a reasonable time — What would be a reasonable time, depends on facts and circumstances of each case — Hence, it would not be fair to respondent if such demand is allowed to be raised after 25 years, on account of inaction of appellant — Demand quashed — Town Planning — Allotment/Auction of Flats/Plots/Houses/Shops by Housing Board/ Development Authority — Misuser of premises — Delayed response by Authority — Effect

(Paras 21 and 22)

State of Punjab v. *Bhatinda District Coop. Milk Producers Union Ltd.*, (2007) 11 SCC 363, *relied on*

SLP dismissed G-D/47547/CV

Advocates who appeared in this case :

A. Sharan, Senior Advocate [Vishnu B. Saharya (for M/s Saharya & Co.), Advocate, for the Petitioner;

Ram Prakash, Respondent-in-Person.

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

1. (2007) 11 SCC 363, *State of Punjab* v. *Bhatinda District Coop. Milk Producers Union Ltd.* 185*e-f*

† From the Judgment and Order dated 2-5-2008 of the High Court of Delhi at New Delhi in LPA No. 22 of 2008

The Judgment of the Court was delivered by

ALTAMAS KABIR, J.— Delhi Development Authority, hereinafter, referred to as "DDA", is the petitioner in this special leave petition, which is directed against the judgment and order dated 2-5-2008 passed by the Delhi High Court in LPA No. 22 of 2008.

2. The respondent herein, along with his mother and wife, purchased a property in No. 7, Community Centre, East of Kailash, New Delhi, in an open auction conducted by DDA on 10-8-1969. Possession of the plot was made over to the purchasers on 5-3-1972, and a lease deed in respect of the said plot was executed on 5-4-1972. In terms of the lease deed, the auction-purchasers were required to construct the building upon the demised plot within two years from the date of delivery of possession.

3. It appears that on a routine inspection by the petitioner's staff on 8-8-1983, it was noticed that the respondent was using the basement of the building for office purposes which was in contravention of the prescribed usage. A show-cause notice was issued on the same day calling upon the respondent to show cause within 10 days as to why action for cancellation of lease should not be taken for violation of Clause II(13) of the lease deed. The respondent replied to the said show-cause notice on 10-8-1983, denying misuse of the property.

4. No further action was taken on the said show-cause notice till seven years later when on 28-6-1990, another show-cause notice was issued stating as to why the lease should not be determined for violation of Clause II(13) of the lease deed on the ground that the basement of the building was being misused as an office for Frooti/Atash Industry, instead of storage, and the mezzanine floor was being used for the office of M/s Ferrow Alloys Forging and M/s Green Land, instead of storage. In response to the second show-cause notice the respondent replied stating that the portion in question had been leased to the abovenamed companies for storage purposes and their failure to abide by the terms of the lease has been brought to the notice of the tenants for taking appropriate steps.

5. Since the reply was not found to be satisfactory, further show-cause notices were issued to the respondent on 3-9-1990 and 11-12-1990 in relation to the violation of the provisions of the lease deed and to remove the breaches which had been pointed out, in default whereof the lease would be determined. The respondents replied to the show-cause notice dated 3-9-1990 on 5-11-1990 stating that the tenant was using the basement for storage of Frooti juices and was not operating any office therefrom. It was also mentioned that the tenant in the mezzanine floor had not yet replied to the notice which had been issued to him.

6. However, on the basis of another inspection of the premises conducted in December 1990, where it was noticed that both the floors were still being misused, notices were issued for joint inspection which was fixed for 18-2-1991, 12-3-1991 and 22-4-1991. However, the respondents did not join the inspection and ultimately an inspection was carried out on 24-4-1991 and

another show-cause notice was issued to the respondents on 8-5-1991. In response to the said show-cause notice the respondents wrote back on 21-5-1991 that they have no control over the tenants, except to inform them of their violations.

7. Ultimately, the respondent in its letter dated 9-7-1991 stated that the mezzanine floor was being used as offices. In reply to the said letter written on behalf of the respondent, the petitioner informed the respondent that as per architectural design the mezzanine floor could be used only for storage and unless the misuse was stopped the lease would have to be determined. In response on 13-11-1991 the respondent once again asserted that the mezzanine floor in the Community Centre was not being misused. Thereafter, there was a series of correspondence exchanged on the same subject.

8. In the meanwhile, Smt Kamla Ahluwalia, the wife of the respondent, died on 23-4-1994, as did Smt Saraswati Devi on 6-8-1994. On 20-5-2004 the respondent applied to DDA for mutation of the property in favour of the legal heirs of the deceased co-auction-purchasers. In response thereto the respondents were asked by a letter dated 20-5-2004 to pay misuser charges and were called upon to clear the dues in respect thereof.

9. Aggrieved by the said demand notice the respondents filed a writ petition, being WP No. 8464 of 2006, in the High Court for quashing the demand of misuser charges amounting to ₹1,78,85,001. The same was allowed by the High Court on 17-8-2007 and the demand of misuser charges raised by DDA, by its letter dated 20-5-2004, was quashed. DDA filed letters patent appeal, being LPA No. 22 of 2008 on 12-12-2007, challenging the order of the learned Single Judge dated 17-8-2007, which was dismissed on 2-5-2008. It is against the said order of dismissal of the LPA by the Delhi High Court that this special leave petition has been filed by DDA.

10. Appearing for DDA, Mr A. Sharan, learned Senior Advocate, submitted that, although, under the terms of the lease deed, the respondent was allowed to use the premises for commercial purposes, he had misused the same and that the premises was being used for running an office. Furthermore, a construction had been raised on the terrace which was unauthorised and in direct violation of the lease agreement. It was submitted that the misuser of the property came to the notice of DDA during inspection, as such misuser of the demised premises had been carried on without notice to and the leave of DDA.

11. Mr Sharan also submitted that as many as fourteen show-cause notices had to be issued to the respondent on account of such misuser. Since the respondent failed to comply with the requisitions contained in the said notices, DDA issued a notice for ₹1,78,85,001, on account of misuser charges against which the respondent filed a writ petition, being WP (C) No. 8464 of 2006, which was allowed by the learned Single Judge and the demand of misuser charges raised by the petitioner by its letter dated 20-5-2004, was quashed.

12. DDA filed Letters Patent Appeal No. 22 of 2008 against the said order of the learned Single Judge before the Division Bench which dismissed the same on the ground that while according to the petitioner Authority, a portion of the premises was being used for office premises, according to the respondent the said portion of the premises was being used only to store computers. There was no office as such, but a small establishment was maintained by the tenant for accounting purposes of the goods brought to the premises for storage purposes only. It was not as if a regular office was being run from the said premises.

13. As far as the other part of alleged misuse relating to construction raised on the terrace of the premises is concerned, it was stated on behalf of the respondent that such construction had been raised by the tenant without obtaining the sanction of the lessee and consequently, the respondent had initiated action against the said tenants for their eviction therefrom.

14. What also weighed with the Judge is the fact that the first show-cause notice issued to the petitioner was in regard to alleged misuse of the basement from 30-7-1983, the mezzanine floor from 20-6-1990, and the terrace from 7-9-1992, till 13-1-2003. However, although, the first show-cause notice was issued to the respondent on 8-8-1983, regarding misuse of the basement and a reply was also submitted by the respondent on 10-8-1983, no decision was taken by DDA on the said show-cause notice. On the other hand, in June 1990, upon an alleged inspection by DDA, another show-cause notice was issued to the respondent on 28-6-1990, only in respect of the alleged misuse of the basement and the mezzanine floor. Despite a reply being sent, again no action was taken by DDA except for issuing final notices to the respondent on 3-9-1990 and 11-12-1990, requiring him to stop violation of the conditions of the lease deed, failing which it would be terminated. The respondent sent a reply to the first final notice on 5-11-1990, but again no decision was taken on any of the two final notices which had been sent to the respondent. Periodical inspection was thereafter carried out, but no action was at all taken by DDA and its authorities against the respondent for alleged misuse of the premises in question.

15. Ultimately, on a question of limitation being raised in respect of the demand of misuser charges, the Division Bench observed that where no period of limitation is prescribed, action has to be taken by the authorities within a reasonable period of time, but by no stretch of imagination, could it be said that after a lapse of almost 25 years DDA had not acted arbitrarily or at least unfairly insofar as the respondent is concerned. In addition, the respondent was never informed by DDA that he was required to pay any misuser charges. On the basis of such reasoning, the Division Bench of the High Court dismissed the appeal and upheld the order of the learned Single Judge.

16. Mr Sharan submitted that both the learned Single Judge and the Division Bench had misconstrued the principles relating to limitation in holding that DDA had acted arbitrarily and unfairly insofar as the respondent

was concerned, and, in any event, the respondent was never informed by DDA that he was required to pay misuse charges. Mr Sharan urged that both the Single Judge and the Division Bench of the High Court failed to consider the core issue relating to the user of the premises in keeping with Para 13 of the lease deed executed by DDA in favour of the respondent on 5-4-1972.

17. In this regard Mr Sharan referred to Para 13 of the lease deed which reads as follows:

> "13. The lessee shall not without the written consent of the lessor carry on or permit to be carried on, on the plot or in any building thereon any trade or business of manufacture which in the opinion of the lessor may be noisy, noxious or offensive or the same or permit the same to be used for any purpose other than those specified or do or suffer to be done therein any act or thing whatsoever which in the opinion of the lessor may be a nuisance, annoyance or disturbance to the lessor or the person living in the neighbourhood.
>
> Provided that, if the lessee is desirous of using the said plot or the building thereon for a purpose other than those specified the lessor may allow such change or user on such terms and conditions including payment of additional premium and additional rent, as the lessor may in his absolute discretion determine."

18. Mr Sharan submitted that having regard to the above, the respondent was not entitled to use the demised premises in a manner which was contrary to Para 13 of the lease deed. It was contended that the respondent was carrying on a business in the demised premises in respect whereof there was no feedback whatsoever from the lessee. Mr Sharan urged that the order of the learned Single Judge dated 17-8-2007, could not be sustained and the same was liable to be set aside, along with the order of the Division Bench impugned in the special leave petition.

19. Appearing in person, the respondent, on the other hand, submitted that after the show-cause notices were issued no action whatsoever was taken on the basis thereof and all of a sudden the exorbitant misuser charges, amounting to ₹1,78,85,001 was demanded from him. Professor Ram Prakash submitted that from 1983, nothing had been done by DDA on the basis of the show-cause notices which had been issued, to which the respondent had promptly replied stating that the construction on the terrace had been effected by the tenants and not by him and in respect whereof proper proceedings had been initiated for their eviction from the premises. The respondent submitted that it is only under severe compulsion, that he had to move the writ court for relief in relation to the demand of misuser charges of ₹1,78,85,001. The respondent submitted that for the last 25 years he had been made to face various problems and uncertainties, but that it was entirely unjustified on the part of DDA to raise the claim of alleged misuser charges of ₹1,78,85,001. The respondent submitted that after a long period of 25 years, a quietus was required to be given to the matter.

20. The respondent submitted that after issuance of show-cause notices, DDA should have taken further steps in the matter within a reasonable time and that too relating to misuser chargers where he was not at fault. The respondent submitted that he had taken prompt steps not only to reply to the show-cause notices issued to him, but to initiate action against the tenants who had used the property in a manner which was different from the purpose for which the property had been let out. The respondent submitted that this was a case where both the learned Single Judge and the Division Bench decided the matter in the crucible of events peculiar to the facts of this case, having particular regard to the length of the period for which the misuser charges had been demanded.

21. Having considered the submissions made on behalf of DDA and by the respondent appearing in person, and also having considered the reasoning of the learned Single Judge and the Division Bench in repudiating the claim of misuser charges by DDA, we are unable to convince ourselves that the decisions rendered by the High Court, both by the learned Single Judge as also the Division Bench, require any interference in these proceedings. The materials on record will show that the respondent took prompt steps against the tenants for their transgression. During arguments it was indicated that, in fact, one of the tenants had already vacated the portion of the premises occupied by him. It is also very clear that after issuing the show-cause notices, the petitioner did not take any follow-up action thereupon. Instead, after a lapse of 25 years, the petitioner set up a claim on account of charges for the entire period. It would be inequitable to allow the petitioner which had sat over the matter to take advantage of its inaction in claiming misuser charges.

22. Even as to the contention raised on behalf of the petitioner that there was no limitation prescribed for making a demand of arrear charges, the Division Bench relying on the decision of this Court in *State of Punjab* v. *Bhatinda District Coop. Milk Producers Union Ltd.*[1], observed that even where no period of limitation is indicated, the statutory authority is required to act within a reasonable time. In our view, what would construe a reasonable time, depends on the facts and circumstances of each case, but it would not be fair to the respondent if such demand is allowed to be raised after 25 years, on account of the inaction of the petitioner.

23. We do not, therefore, find any reason to interfere with the judgment either of the learned Single Judge or of the Division Bench of the High Court and the special leave petition is, accordingly, dismissed. There will, however, be no order as to costs.

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1 (2007) 11 SCC 363

LPA 895/2010

Delhi Pollution Control Committee v. Splendor Landbase Ltd.

2012 SCC OnLine Del 400

(BEFORE PRADEEP NANDRAJOG AND PRATIBHA RANI, JJ.)

LPA 895/2010

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Splendor Landbase Ltd. ..... Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

With

LPA 1/2011 & CM No. 6781/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Sachdeva Buildon Pvt. Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 6/2011 & CM No. 6779/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Vardhman Properties Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

With

LPA 7/2011 & CM No. 6780/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Vardhman Properties Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

With

LPA 8/2011 & CM No. 6782/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Vardhman Properties Ltd. & Ors. ..... Respondents

Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala, Ms. Praneeta Vir and Mr. Sanjay Goswami, Advocates

With

LPA 9/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Manish Buildwell Pvt. Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

With

LPA 10/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Manish Buildwell Pvt. Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

With

LPA 11/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Vardhman Land Developers Pvt. Ltd. & Anr. ..... Respondents

None

With

LPA 22/2011 & CM No. 6824/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Pankaj Buildwell Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 23/2011 & CM No. 6832/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Rajesh Projects India Pvt. Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 24/2011 & CM No. 8168/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Best Realtors (India) Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,

Advocates for UOI

With

LPA 25/2011 & CM No. 6828/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Best City Developers (India) Pvt. Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 26/2011 & CM No. 6831/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Home Linkers Pvt. Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 27/2011 & CM No. 6833/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Rajesh Projects India Pvt. Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 28/2011 & CM No. 6826/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Vardhman Properties Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 45/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Jindal Biochem Pvt. Ltd. & Ors. ..... Respondents

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 46/2011 & CM No. 8164/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

As Buildwell Pvt. Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 47/2011 & CM No. 6825/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Maitri Mutual Benefits Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 48/2011 & CM No. 6823/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Nirvan Hire Purchase Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 50/2011 & CM No. 6827/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Nipun Builders & Developers Pvt. Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 51/2011 & CM No. 6829/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Vardhman Properties Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 53/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

ESS CEE CEE & Associates (India) Pvt. Ltd. ..... Respondent

Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala, Ms. Praneeta Vir and Mr. Sanjay Goswami, Advocates

With

LPA 54/2011 & CM No. 6004/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Fargo Estates Pvt. Ltd. ..... Respondent

Mr. Ankit Jain, Advocate

With

LPA 58/2011 & CM No. 6830/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Vardhman Properties Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 94/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

DLF Retailer Developers Ltd. ..... Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

With

LPA 95/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Laxmi Buildtech Pvt. Ltd. & Anr. ..... Respondents

Mr. Kailash Vasdev, Sr. Advocate with Ms. Neoma Vasdev Gupta, Ms. Ekta Mehta and Ms. Joanne Pudussery, Advocates for respondent No. 1.

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With

LPA 96/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Manish Buildwell Pvt. Ltd. & Ors. ..... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With
LPA 97/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Brightways Housing & Development Ltd. & Anr. ..... Respondents

Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala and Ms. Praneeta Vir, Advocates for R-1.

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

With
LPA 98/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

DLF Commercial Developers Ltd. ..... Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

With
LPA 99/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Galleria Property Management Services Pvt. Ltd. ..... Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

With
LPA 100/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Prosperous Estates Pvt. Ltd. ..... Respondent

None

With
LPA 101/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Regency Park Property Management Services Pvt. Ltd. ..... Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

With
LPA 102/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Paliwal Developers Ltd. ..... Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

With
LPA 103/2011

Delhi Pollution Control Committee ..... Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Ridge View Construction Pvt. Ltd. ..... Respondent
Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala and Ms. Praneeta Vir, Advocates.

With
LPA 104/2011

Delhi Pollution Control Committee ..... Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

R.C. Sood & Co. Pvt. Ltd. ..... Respondent
Mr. Shobhit Chandra, Advocate

With
LPA 709/2011

Delhi Pollution Control Committee ..... Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Lodhi Property Co. Ltd. ..... Respondent
Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

With
LPA 710/2011

Delhi Pollution Control Committee ..... Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Bharti Realty Ltd. ..... Respondent
Mr. Dushyant Manocha and Ms. Tarunima Vijra, Advocates

With
LPA 866/2011

Delhi Pollution Control Committee ..... Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Anush Finlease & Construction Pvt. Ltd. ..... Respondent
Mr. Ajay Kumar and Mr. Naveen Tayal, Advocates

And
LPA 867/2011

Delhi Pollution Control Committee ..... Appellant
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Tirupati Infraprojects Pvt. Ltd. ..... Respondent
Mr. Ajay Kumar and Mr. Naveen Tayal, Advocates

LPA 895/2010; LPA 1/2011; CM No. 6781/2011 (Cross Objections); LPA 6/2011; CM No. 6779/2011 (Cross Objections); LPA 7/2011; CM No. 6780/2011 (Cross Objections); LPA 8/2011; CM No. 6782/2011 (Cross Objections); LPA 9/2011; LPA 10/2011; LPA 11/2011; LPA 22/2011; CM No. 6824/2011 (Cross Objections); LPA

23/2011; CM No. 6832/2011 (Cross Objections); LPA 24/2011; CM No. 8168/2011 (Cross Objections); LPA 25/2011; CM No. 6828/2011 (Cross Objections); LPA 26/2011; CM No. 6831/2011 (Cross Objections); LPA 27/2011; CM No. 6833/2011 (Cross Objections); LPA 28/2011; CM No. 6826/2011 (Cross Objections); LPA 45/2011; LPA 46/2011; CM No. 8164/2011 (Cross Objections); LPA 47/2011; CM No. 6825/2011 (Cross Objections); LPA 48/2011; CM No. 6823/2011 (Cross Objections); LPA 50/2011; CM No. 6827/2011 (Cross Objections); LPA 51/2011; CM No. 6829/2011 (Cross Objections); LPA 53/2011; LPA 54/2011; CM No. 6004/2011 (Cross Objections); LPA 58/2011; CM No. 6830/2011 (Cross Objections); LPA 94/2011; LPA 95/2011; LPA 96/2011; LPA 97/2011; LPA 98/2011; LPA 99/2011; LPA 100/2011; LPA 101/2011; LPA 102/2011; LPA 103/2011; LPA 104/2011; LPA 709/2011; LPA 710/2011; LPA 866/2011; and LPA 867/2011

Decided on January 23, 2012

PRADEEP NANDRAJOG, J.

1. A batch of 38 writ petitions was decided by a learned Single Judge vide order dated September 30, 2010. The said decision has been followed subsequently by another learned Single Judge. Instant appeals lay a challenge to the said decisions pronounced by the learned Single Judges of this Court; and since the reasoned decision is the one which was pronounced on September 30, 2010, learned counsel for the parties conceded that it is said decision which needs to be reflected upon by us in the appeal (s).

2. Writ petitions were filed challenging notices issued by the Delhi Pollution Control Committee (DPCC) to the writ petitioners or penalties levied, which were paid under protest or bank guarantees submitted by the writ petitioners, which were under threat of being invoked. The petitions have succeeded, not in full, but in part. Directions have been issued to DPCC to take action afresh and guided by the decision of the learned Single Judge.

3. The buildings with respect whereto action was proposed to be taken or was taken by DPCC, are of three kinds: (i) Residential Housing Complexes, (ii) Commercial Shopping Complexes, and (iii) Shopping Malls. Actions were initiated or decisions were taken on the allegation that with respect to the buildings constructed, the writ petitioners had not obtained a '*consent to establish*' as required under The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Water Act') and '*consent to operate*' as required under The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'the Air Act').

4. Issues have been debated before the learned Single Judge and even before us with reference to Sections 2(g), 2(gg), 2(k), Section 25 and Section 33A of the Water Act, and Sections 2(a), 2(j), 2(k), Section 21 and Section 31A of the Air Act. Thus, we begin our chartered journey by noting the said provisions.

5. Section 2(g), 2(gg), 2(k), relevant part of Section 25 and Section 33A of The Water (Prevention and Control of Pollution) Act, 1974 read as under:-

"2. Definitions.- In this Act, unless the context otherwise requires,-

(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

(gg) 'sewer' means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;

(h) .....

(i) .....

(j) .....

(k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage.

25. Restrictions on new outlets and new discharges.-

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,-

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) .....

(c) .....

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) .....

(3) .....

(4) .....

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to

establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) ……..

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) …….

33A. Power to give directions.- Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service."

6. Section 2(a), 2(j), 2(k), relevant part of Section 21 and Section 31A of The Air (Prevention and Control of Pollution) Act, 1981 read as under:-

2. Definitions.- In this Act, unless the context otherwise requires,-

(a) 'air pollutant' means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) …..

(c) …..

(d) …..

(e) …..

(f) …..

(g) …..

(h) …..

(i) …..

(j) 'emission' means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) 'industrial plant' means any plant used for any industrial or trade purposes and

emitting any air pollutant into the atmosphere;

21. Restrictions on use of certain industrial plants.- (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) .....

(3) .....

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5) .....

(6) .....

(7) .....

31A. Power to give directions.- Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, office or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.

7. With reference to the Water Act as originally framed in the year 1974 and as amended in the year 1988 and with reference to the Statement of Objects and Reasons of the Amending Act, the learned Single Judge has opined that the legislative amendments carried out in the original Water Act were intended to expand the scope of the Water Act. The learned Single Judge has highlighted that the expression

'*establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent*' in clause (a) of Sub-Section (1) of Section 25 made it clear that the requirement to obtain previous consent to establish any industry, operation or process was no longer restricted to trade effluent being discharged but would also encompass if 'sewage effluent' was discharged and with reference to the definition of 'sewage effluent' as per Section 2(g), has held that the same would include sewage of any kind, including domestic sewage. The learned Single Judge has also noted the expanded definition of 'trade effluent' as per Section 2(k) of the Water Act. Noting the definition of the words 'operation' and 'process' in para 12 of the decision, and thereafter noting the decisions that purposive construction needs to be followed where the mischief which existed before passing the statute was detected and was intended to be remedied, the learned Single Judge has concluded that *collective operation or process of bathing in the bathroom and such processes as take place in the toilet and cooking and washing in the kitchen would be operations and processes contemplated by Section 25(1)(a) of the Water Act for its applicability to residential complexes*. This is the conclusion arrived at in para 16, but in the immediate next para i.e. para 17, the learned Single Judge has lodged a caveat by stating that he was not answering the question with reference to single storeyed constructions.

8. With reference to the commercial complexes i.e. Commercial Shopping Complexes and Shopping Malls, the learned Single Judge has held that the definition of 'trade effluent' as per Section 2(k) would encompass all kinds of non-domestic sewage and has thus held that these buildings would be governed by clause (a) of Sub-Section 1 of Section 25 of the Water Act.

9. As regards the very act of constructing a building, in paras 19 and 20, the learned Single Judge has held that the very act of constructing a commercial shopping complex, shopping mall or a residential complex would make applicable clause (a) of Sub-Section 1 of Section 25 and for which the reasoning of the learned Single Judge is that construction of commercial shopping or residential complexes is likely to have impact on water pollution because large quantities of water are used during construction and are also discharged.

10. Since, in all the cases, DPCC rose from the slumber after buildings were completed and put to use, the learned Single Judge opined that DPCC could not levy penalties and for which remedial action, as per the learned Single Judge, was as provided in Sub -Section 5 of Section 25 of the Water Act.

11. The argument of DPCC that the power to give directions under Section 33A of the Water Act has been negated by the learned Single Judge, with reference to various decisions cited which hold that the power to levy penalty has to be expressly conferred by the statute.

12. Pertaining to the Water Act, the learned Single Judge has summarized the legal position, in para 29 as under:-

"29. The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:

(i) Section 25(1) of the Water Act is intended to cover not just 'industry' which discharges 'trade effluent' but any 'process or operation' that results in a discharge of 'sewage' not limited to trade effluent.

(ii) The words 'operation or process' occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *ejusdem generis* is therefore inapposite in the context.

(iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25(1)(a) of the Water Act.

(iv) The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.

(v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.

(vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25(5) of the Water Act, issue show cause notices setting out the conditionalities required to be complied with within a time frame and upon failure to do so, invoke the powers to issue directions under Section 33A Water Act.

(vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.

Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot obviously thereafter be enforced."

13. Discussing the applicability of the Air Act, as conceded to by learned counsel for the parties at the hearing of the appeal, the learned Single Judge has inadvertently referred to the pre-amended provisions of the Air Act, though the learned Single Judge has referred and noted the fact that the Air Act of 1981 was amended in the year 1988.

14. Pertaining to residential complexes, the learned Single Judge has noted the unamended Section 21 of the Air Act which did not have the word 'establish' and had only the word 'operate' in Sub-Section 1 thereof, and thus the learned Single Judge has held that no permission from DPCC is needed to establish residential complexes, but on the same reasoning as followed in paras 19 and 20 pertaining to the Water Act, has held that during construction phase of residential complexes, permission under the Air Act has to be obtained. Qua shopping complexes and shopping malls, it has been held that under the Air Act, for these complexes, to operate them, prior permission has to be obtained as also during construction phase.

15. The learned Single Judge has summarized the position under the Air Act, in para 41 as under:-

"41. The position under the Air Act may be summarized:

(i) A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.

(ii) The definition of 'air pollution' under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21 (1) of the Air Act.

(iii) As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.

(iv) During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.

(v) Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31A Air Act."

16. A perusal of Section 25 of the Water Act would reveal, on a bare reading thereof, that without the previous consent of the State Pollution Board, 'no person could establish or take any steps to establish <u>any industry, operation or process</u>,…….. which is likely to discharge sewage or trade effluent'. Thus, even if sewage effluent as defined in Section 2(g) was discharged from any industry, operation or process intended to be established, the requirement of prior consent would be necessary and to this extent the view taken by the learned Single Judge is correct.

17. But, what would encompass '*any industry*, operation or process'?

18. The Water Act does not define, 'industry', 'operation' or 'process'. As held in the decisions reported as 1993 (3) SC 2529 *Commissioner of Income Tax Orissa* v. *N.C. Budhiraja & Co.* and 2010 (320) ITR 420 (Delhi) *Ansal Housing & Construction Ltd.* v. *Commissioner of Income Tax*, the ordinary dictionary meaning of 'industry' or an 'industrial undertaking' would not include the activity of construction. The word 'operation' is defined, as noted by the learned Single Judge, in the New Shorter Oxford English Dictionary (Lesie Brown Ed.) as follows:

"operation: An action, deed; exertion of force or influence; working, activity; an act of a practical or technical nature, esp one forming a step in a process."

19. The same dictionary defines 'process', as noted by the learned Single Judge, as under:-

"process: The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end."

20. As noted herein above, applying purposive construction, the learned Single Judge

has held, in para 15, that the two words 'operation' and 'process' have to be given their widest amplitude and meaning. The purposive construction applied by the learned Single Judge is that widest amplitude needs to be given to Section 25(1)(a) of the Water Act.

21. The error committed by the learned Single Judge is to mechanically note the definition of '*operation*' and '*process*', and ignore the sweep of the span of the two words. We do so. Operation is defined as an *activity or an act of a practical or technical nature*, with emphasis of the acts forming '*a step in a process*'. The word '*process*' is a going on action or a continuous series of actions '*directed at a particular end*'. Thus, an operation would be a working or an activity, where the core of the act constituting the activity is of a practical or technical nature especially one forming a step in a process, and since process is an going on action or a continuous series of action directed at a particular end, the conjoint reading of an operation and a process or even if the two have to be read disjunctively would mean that the expression '*establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent*' would mean to take steps to establish any industry, establishment or undertaking where the operation or process i.e. activity is of a practical or technical nature, at the core of which are ongoing acts, in a series, directed at a particular end. Thus, the act of ablution in the toilet or washing vegetables and dishes in the kitchen of a residential complex, within the precincts of residential flats, by no stretch of imagination can be called or labeled as an operation or a process.

22. The view taken by the learned Single Judge pertaining to shopping malls and commercial shopping complexes on the applicability of the Water Act is accordingly upheld and the view taken pertaining to the applicability of the Water Act to residential housing complexes is incorrect.

23. A building where shops would be made and in which shops goods or services would be sold as also shopping malls would be buildings where operation and or process is carried on for the reason they would be places where the activity carried on is of a practical or a technical nature and at the core of which activity would be ongoing acts, in a series, directed at a particular end i.e. if goods are purchased and sold, the sale and purchase of goods; and if service is rendered, the rendition of service directed towards a particular end. If from these buildings sewage is discharged, since sewage effluent as defined in Section 2(k) of the Water Act means effluent from any sewage system, if these buildings are intended to be established, necessary permission would be required from the Board under the Water Act.

24. With respect to the decisions reported as 1993 (3) SC 2529 *Commissioner of Income Tax Orissa* v. *N.C. Budhiraja & Co.* and 2010 (320) ITR 420 (Delhi) *Ansal Housing & Construction Ltd.* v. *Commissioner of Income Tax*, where it has been held that constructing a building per-se is not an industrial activity the view taken by the learned Single Judge that constructing a building, whether to be used for a residential purpose or to be used for a commercial shopping complex or for shopping malls would be an industrial activity; running contrary to the aforesaid judgments is incorrect.

25. The reasoning of the learned Single Judge to expand the scope of Section 25(1)(a) of the Water Act; that the object of the Water Act was to control water pollution in its widest amplitude and hence the reasoning that while constructing buildings, water is used and sometimes discharged thus requiring a wider meaning to be given, ignores that the Environment (Protection) Act 1986 deals with this larger issue in the context of 'environment' therein being defined to include water, air and land and the inter

relationship which exists amongst them and human beings and other living creatures, plants and micro-organisms. The said Act and the Rules framed under the said Act are wide enough to cover exploitation of water and the impact thereof on environment and we see no vacuum in the fight against environmental degradation, by understanding the various expressions and their meaning in Section 25(1)(a) of the Water Act as adopted by us.

26. A word on purposive construction. It simply means that while adopting a purposive approach, Courts should seek to give effect to the true purpose of legislation and must keep in view all material that bears on the background against which a legislation was effected and where more than one construction is possible, the one which eliminates the mischief identified should be favoured. But, where only one construction is possible, the Court is not to strain backwards and then bend forward followed by leaning to the left and then to the right to appropriate a space not intended to be appropriated by the legislation. The Water Act requires prior permission to establish any industry, operation or process which is likely to discharge sewage or trade effluent. It is not intended to apply to all and sundry establishments. It is restricted to only when a building, housing an industry is sought to be established or a building in which an operation or a process is intended to be carried on where effluent or trade effluent would be discharged.

27. To summarize the position under the Water Act the position may be summarized thus: 'Section 25(1) of the Water Act would apply where a building is proposed to be constructed to set up an industry or carry on an operation or a process as explained in para 21 above and this would mean that the Water Act would not apply to buildings housing residential apartments/units. It would apply to all other buildings where effluent or trade effluent is discharged, be they where manufacturing activity is carried on, sale or purchase of goods is carried on or services are provided.

28. Pertaining to the Air Act, there is a material difference in the language used in Section 21 of the said Act, vis-à-vis the language used in Section 25 of the Water Act. Whereas the Water Act requires a permission to establish any industry, operation or process, the Air Act restricts its span to prior permission being necessary only where it is intended to establish or operate any industrial plant.

29. Since the learned Single Judge has referred to the unamended provision and has ignored the amendments carried out to the Air Act in the year 1988, we note that as per the amended Section 21, the obligation to obtain the consent of the State Pollution Control Board is only to establish or operate any industrial plant in an Air Pollution Control Area. Section 2(k) defines an 'industrial plant' to mean any plant used for any industrial or trade purposes and emitting any air pollutant.

30. The learned Single Judge has read the unamended Section 21 of the Air Act to mean that prior consent is needed to operate an industrial plant. Since the decision of the learned Single Judge has not noted the language of the amended Section where the words 'establish or' have been inserted prior to the word 'operate', we need to re-look into the issue.

31. Highlighting the definition of the words 'industrial plant' as defined in Section 2(k) of the Air Act, the learned Single Judge has noted that the definition expands the meaning of the words 'industrial plant' to include a building used for a trade purpose and with reference to Section 21 of the Air Act has held that a building where trade is carried on the prior consent would be required to operate the building.

32. Since the learned Single Judge has noted the unamended Section 21 and since the amended Section 21 requires prior consent even to establish an industrial plant in an Air Pollution Control Area, agreeing with the reasoning of the learned Single Judge that in view of the extended definition of the expression 'industrial plant', which includes a building where trade is carried on, the inevitable conclusion has to be that prior consent under the Air Act would be needed where a building is proposed to be constructed wherefrom trade would be carried on and since from a shopping mall and from a commercial shopping complex trade is carried on, we hold that prior consent under the Air Act would be required when commercial shopping complexes and shopping malls are established i.e. at the commencement of the process of establishment i.e. before the building construction activity commences.

33. As noted herein above, the learned Single Judge has held construction per-se as requiring prior permission, both under the Water Act and the Air Act, and thus the learned Single Judge has held that under the Air Act, consent during construction phase would have to be obtained.

34. For our reasoning herein above pertaining to the Water Act, the said reasoning of the learned Single Judge pertaining to the Air Act is overruled, but would make no difference to the final conclusion arrived at by us pertaining to the applicability of the Air Act when construction activity commences in respect of shopping malls and commercial shopping complexes for the reason, prior consent to establish the same is required on the language of Section 21 of the Air Act in view of the expanded definition of the expression 'industrial plant'. But, for residential complexes, we hold that neither to establish nor to operate, (in fact the concept of 'to operate' is not even applicable to a residential complex), any permission is required under the Air Act.

35. The learned Single Judge has held that neither the language of Section 33A of the Water Act nor the language of Section 31A of the Air Act contemplates the power on the State Pollution Boards to levy any penalty.

36. The learned Single Judge has noted the decisions reported as 1975 (2) SCC 22 *Khemka & Co. (Agencies) Pvt. Ltd.* v. *State of Maharashtra*, 1994 (4) SCC 276 *J.K. Synthetics Ltd. & Birla Cement Works* v. *Commercial Taxes Officer* 1997 (6) SCC 479 *India Carbon Ltd.* v. *State of Assam* to opine that power to levy penalty has to be conferred by a substantive provision in the enactment.

37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act, and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent Jurisdiction and no more.

38. We would be failing not to note that on the issue of a delegatee not being

empowered (by law) to further sub-delegate the delegated power, learned counsel for DPCC conceded to said position and thus we leave undisturbed the view taken by the learned Single Judge on the subject.

39. Since our reasoning aforesaid results in the finding, by way of interpreting the provisions in the Water Act and the Air Act, as requiring prior consent to establish and operate shopping malls and commercial shopping complexes and the provisions being not applicable to residential complexes, we declare void actions initiated by DPCC pertaining to residential complexes and we further hold that said writ petitions are allowed in terms of the prayers made. The impugned decision(s) by the learned Single Judge(s) qua residential complexes is set aside. Qua shopping malls and commercial shopping complexes, since we have held that prior permission is required under both Acts to establish shopping malls and commercial shopping complexes as also to operate them and noting that even DPCC was not too sure of the legal position and thus misinformed a few applicants that no permission was required and qua most persons permitted them to commence and complete construction of shopping malls and commercial shopping complexes, the question which now needs to be answered is: Whether, pertaining to the Water Act, Sub-Section 5 of Section 25 is the answer to what needs to be done and in the absence of a similar provision in the Air Act, what action needs to be directed to be taken.

40. The language of Sub-Section 5 of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application seeking prior consent; and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act, is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution, DPCC would be authorized to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act, notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping commercial complexes and pertaining to air pollution, if any deficiencies are found, to notify the same to the owner requiring corrective action to be taken. Needless to state, if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the Courts of Competent Jurisdiction, which Courts would alone have the power to impose fine and additionally impose sentence of imprisonment upon the offending persons.

41. On the issue of Air Pollution, we would like to pen a post-script pertaining to shopping complexes and shopping malls for the reason the only activity of air pollution in these buildings would be through the air conditioning plants and generators installed to supply electricity to the buildings in case of power cuts, for the reason the trade of sale and purchase of goods in these complexes does not entail any activity which causes air pollution. We find that pertaining to DG sets, permissions in any case have to be obtained from DPCC if the capacity of the DG set is beyond a prescribed wattage and thus DPCC may suitably reconsider all shopping complexes and shopping malls where consent of DPCC has been obtained with respect to DG sets installed as also air-conditioning plants installed in the buildings, for if for the DG sets and air-conditioning plants, sanctions have already been obtained, nothing further remains to

be got sanctioned under the Air Act.

42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as 1997 (5) SCC 536 *Mafatlal Industries Ltd.* v. *UOI*, under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld.

43. The appeals filed by DPCC are dismissed and the cross objections filed are allowed in terms of paras 27, 33, 34 and 39 above.

44. We leave the parties to bear their own costs.

45. All interim orders stand vacated.

(1967) 65 ITR 34 : 1967 SCC OnLine SC 6

In the Supreme Court of India

(BEFORE K. SUBBA RAO, C.J. AND J.C. SHAH, S.M. SIKRI, V. RAMASWAMI (I) AND C.A. VAIDIALINGAM, JJ.)

Civil Appeal No. 1038 of 1965

S.G. JAISINGHANI … Appellant;

Versus

UNION OF INDIA AND OTHERS … Respondents.

C.K. TIKKU, APPELLATE ASST. COMMISSIONER OF INCOME TAX … Intervener.

And

Writ Petition No. 5 of 1966

(Under Article 32 of the Constitution of India for enforcement of the Fundamental Rights).

MOHAN CHANDRA JOSHI … Petitioner;

Versus

UNION OF INDIA AND OTHERS … Respondents.

C.K. TIKKU, APPELLATE ASST. COMMISSIONER OF INCOME TAX … Intervener.

Civil Appeal No. 1038 of 1965 and Writ Petition No. 5 of 1966[*]

Decided on February 22, 1967

S. V. Gupte, Solicitor-General of India and *N. S. Bindra*, Senior Advocate (*R. Ganapathy Iyer*, *R. H. Dhebar* and *R. Thigarajan*, Advocates, with them), for respondents Nos. 1 to 3 in C.A. No. 1038 of 1965.

A. K. Sen and *N. S. Bindra*, Senior Advocates (*R. Ganapathy Iyer* and *R. Thiagarajan*, Advocates, with them), for respondent No. 4 in C.A. No. 1038 of 1965.

A. K. Sen, Senior Advocate (*R. Ganapathy Iyer* and *R. Thiagarajan*, Advocates, with him), for respondents Nos. 5 and 6 in C.A. No. 1038 of 1965.

M. N. Shroff, Advocate, for *I. N. Shroff*, Advocate, for respondents Nos. 12,22,25,28,29,38,40,43,54,79,86,107 and 117 in C.A. No. 1038 of 1965.

Niren De, Additional Solicitor-General of India (*R. Ganapathy Iyer* and *R. Thiagarajan*, Advocates, with him), for respondents Nos. 20,116 and 123 in C.A. No. 1038 of 1965.

Respondent No. 34 in C. A. No. 1038 of 1965 in Person.

R. Gopalakrishnan, *Bishamberlal Khanna* and *H. K. Puri*, Advocates, for the Intervener in C.A. No. 1038 of 1965.

H. R. Gokhale and *A. S. R. Chari*, Senior Advocates (*A. N. Sinha*, Advocate and *J. B. Dadachanji*, *O. C. Mathur* and *Ravinder Narain*, Advocates of J. B. Dadachanji and Co., with him), for the petitioner in W. P. No. 5 of 1966.

S. V. Gupte, Solicitor-General of India and *N. S. Bindra*, Senior Advocate (*R. Ganapathy Iyer*, *R. H. Dhebar* and *R. Thiagarajan*, Advocates, with them), for respondents Nos. 1 to 4 in W.P. No. 5 of 1966.

S. V. Gupte, Solicitor-General of India (*R. Ganapathy Iyer* and *R. Thiagarajan*, Advocates, with him), for respondents Nos. 6,7,9,12 to 17,19,22,24,26,30,31,35,37,41,42,44 to 50,52 to 61,63,64,66,68 to 70,72 to 74,80,82 to 85,87,91,95 and 96 in W.P. No. 5 of 1966.

A. S. R. Chari, Senior Advocate (*R. Gopalakrishnan*, *Bishamberlal Khanna* and *H. K. Puri*, Advocates, with him), for the Intervener in W.P. No. 5 of 1966.

The Judgment of the Court was delivered by

V. RAMASWAMI (I), J.— This appeal is brought, by certificate, from the judgment of the High Court of Punjab dated March 11, 1964 dismissing the writ petition of the appellant — Civil Writ No. 189-D of 1962.

2. In his petition under Article 226 of the Constitution, the appellant, S.G. Jaisinghani, challenged the constitutional validity of what has been described as the "seniority rule" in regard to Income Tax Service, Class I Grade II along with the improper implementation of the "quota" recruitment to that Service as infringing the guarantee of Articles 14 and 16(1) of the Constitution. The original respondents to the petition were the Union of India, Secretary to the Government of India in the Ministry of Finance and the Central Board of Revenue — Respondents 1 to 3. Subsequently, Respondents 4 to 126 were added and those are promotees in the Income Tax Service who will be affected by the result of the petition.

3. In order to improve the Income Tax administration the Government of India, on September 29, 1944, reconstituted and classified the existing Income Tax Services as Class I and II. The reorganisational scheme provided for recruitment of Income Tax Officers, Class I Grade 11 Service partly by promotion and partly by direct recruitment. The reorganisational scheme was set out in Government of India, Finance Department (Central Revenues) letter dated September 29, 1944 (Ex. B). It created two classes of Income Tax Service, Class I with Grade I and Grade II and Class II Service with Grade III. Recruitment to Class I Grade II Service was to be made : (*a*) by direct recruitment through a competitive examination, and (*b*) by promotion from Class II Grade III the ratio prescribed in para 2(*d*) of the letter being 80 per cent by direct recruitment and 20 per cent by promotion from Class II Grade III Service, and in case sufficient number of suitable candidates was not suitable for promotion, surplus vacancies

would be filled by direct recruitment. In Government of India, Ministry of Finance (Revenue Division) letter dated January 24, 1950 (Ex. G to the writ petition) the rules of seniority were laid down. These rules laid down the principle for determination of seniority (*a*) as between direct recruits recruited on the result of the combined competitive examination; (*b*) as between promotees selected from Class II and (*c*) as between the direct recruits who complete their probation in a given year and the promotees in the same year for appointment to Class I. These Rules were revised on September 5, 1952 by the Government of India, Ministry of Finance, Revenue Division, Letter No. F. No. 58(3)-Ad.IT/50, dated September 5, 1952. The relevant Rule viz. Rule 1(*f*) as framed in 1950 was as follows:

> "The seniority of direct recruits recruited on the results of the examinations held by the Federal Public Service Commission in 1944, and subsequent years shall be reckoned as follows:
>
> (*i*) Direct recruits of an earlier examination shall rank above those recruited from subsequent examination.
>
> (*ii*) Direct recruits of any one examination shall rank inter se in accordance with the ranks obtained by them at that examination.
>
> (*iii*) The promotees who have been certified by the Commission in any calendar year shall be senior to all direct recruits who complete their probation during that year or after and are confirmed with effect from a date in that year or after.
>
> Provided that a person initially recruited as Class II Income Tax Officer, but subsequently appointed to Class I on the results of a competitive examination conducted by the Federal Public Service Commission shall, if he has passed the departmental examination held before his appointment to Class I Service, be deemed to be promotee for the purpose of seniority."

The Rule, as revised in 1952 was to the following effect:

> "The seniority of direct recruits recruited on the results of the examinations held by the Federal Public Service Commission in 1944, and subsequent years shall be reckoned as follows:
>
> (*i*) Direct recruits of an earlier examination shall rank above those recruited from a subsequent examination.
>
> (*ii*) Direct recruits of any one examination shall rank inter se in accordance with the ranks obtained by them at that examination.
>
> (*iii*) Officers promoted in accordance with the recommendation of the Departmental Promotion Committee before the next meeting of the Departmental Promotion Committee shall be senior to all direct recruits appointed on the results of the examinations held by the Union Public Service Commission during the calendar year in which the Departmental Promotion Committee met and the three previous years.

(*iv*) Notwithstanding anything contained in clause (*iii*) a Class II Income Tax Officer subsequently appointed to Class I on the results of a competitive examination conducted by the Federal Public Service Commission shall, if he has passed the departmental examination held before his appointment to Class I Service be deemed to be a promotee for the purpose of seniority."

Clause (*iv*) of the 1952 Rule is almost a reproduction of the proviso to clause (*iii*) of the Rule framed in 1950 and clause (*iii*) has been recast in somewhat different language, though in substance it contains what the main body of clause (*iii*) of the Rule of 1950 stated. The effect of clause (*iii*) of 1952 Rule is that the promotee becomes senior to the direct recruit who has completed a probationary period of two years in the very year in which the Departmental Promotion Committee meets recommending the officers in Class II for promotion to Class I. The following illustrations clarify the application of the Rule:

Illustration 'A'

Year of Com-petitive Exam	Year of appointment by direct recruitment	Year of completion of 2 years' Probation	Departmental Promotion Committee met	Position of direct recruit	Promotees seniority
1	2	3	4	5	6
(1947) the three pre-vious years	1948	1950		Has completed probation.	Senior
(1948)	1949	1951		Has not completed probation.	do.
(1949)	1950	1952		Has not completed probation.	
(1950)	1951	1953	1950	do.	do.

Illustration 'B'

Year of com-petitive Exam.	Year of appointment by direct recruitment	Year of completion of 2 years' Probation	Departmental Promotion Committee met	Position of direct recruit	Promotees seniority
1	2	3	4	5	6
(1950) the three	1951	1953		Has completed probation.	Senior

pre-vious years (1951)	1952	1954		Has not completed probation.	do.
(1952)	1953	1955		do.	do.
(1953)	1954	1956	in 1953	do.	do.

4. A Class II Officer when directly recruited had to be on probation for two years during which period he had to undergo a course of theoretical and practical training and had to pass a departmental examination for being confirmed. After a minimum period of three years of work as Income Tax Officer (after his probation of two years) he is considered by the Departmental Promotion Committee for promotion to Class I. That is to say that he has to have a minimum service of 5 years in all in Class II before he is qualified for being considered for promotion to Class I, Grade II Service. Clause (*iv*) of Rule 1(*f*) deals with a special situation in which an officer initially appointed to Class II Service is given seniority in the same manner as a departmental promotee if subsequent to his passing the departmental examination in Class II he is appointed to Class I on the results of the combined competitive examination held by the Union Public Service Commission.

5. On October 18, 1951 the recruitment quotas of 80 per cent and 20 per cent under the reorganisation scheme dated September 29, 1944 were revised. Under the revised Recruitment Quota Rule 66 ⅔ per cent of the vacancies in Grade II Class I would be filled by direct recruitment and the remaining 33⅓ per cent by promotion from Grade III Class II Service. Any surplus vacancies which could not be filled by promotion for want of suitable candidates were to be added to the quota of vacancies to be filled by direct recruitment.

6. Rule 4 of the Rules of Promotions at p. 251 of the Central Board of Revenue Office Procedure Manual has also been the subject-matter of controversy in this appeal and is set out below:

> "*Income Tax Officer, Class I (Grade I).*—Promotions to this grade are made from the grade of Income Tax Officers Class I, Grade II. The promotions are made on the basis of seniority subject to fitness, and not by selection. Normally promotions from Class II are made to Grade II of Class I only in the first instance. However, in the initial stages of the re-organisation of the Income Tax Services, several senior officers were promoted direct from Class II to Class I, Grade I, but such promotions will not ordinarily take place in future.
>
> *Note.*— The Union Public Service Commission has ruled that the promotion to Class I, Grade I of officiating ITOs, Class I, Grade II —

whose retention in that grade has been approved by the Departmental Promotion Committee would also be in the nature of promotion from ITO, Class II, Grade III to ITO, Class I, Grade I and require consultation with the Commission, even though the promotion from ITO, Class I, Grade II to Class I, Grade I is made on the basis of seniority-cum-fitness without reference to the Departmental Promotion Committee. Appointments to Class I, Grade I should, therefore, be referred to the Commission for approval so long as the officers have not been confirmed in the Class I, Grade II post.

Basis of promotion is seniority-cum-fitness and prescribed minimum service is five years gazetted service including one year in Class I, Grade II."

7. The Full Bench of the Punjab High Court rejected the writ petition of the appellant holding that the principles for determining seniority between direct recruits and promotees laid down in Rule 1(*f*)(*iii*) and (*iv*), 1952 were not discriminatory and there was no infringement of Articles 14 and 16(1) of the Constitution. It was also decided by the Full Bench that the quota Rule announced by the Government of India was merely a policy statement and had no statutory force and departure from the quota did not give rise to any justiciable issue. It was further observed that the promotion Rule from Class I, Grade II to Class 1, Grade 1 was not discriminatory and ultra vires of Articles 14 and 16 of the Constitution.

8. The first question to be considered in this appeal is whether Rule 1(*f*)(*iii*) of the seniority Rules as framed in 1952 violates the guarantee under Articles 14 and 16 of the Constitution. It was contended on behalf of the appellant that the impugned Rule was based upon an unjustifiable classification between direct recruits and promotees after they had entered into Class I, Grade II Service and on the basis of that classification promotees are given seniority with weightage over direct recruits of the same year and three previous years. It was contended that there was a discrimination between officers of Class I, Grade II Service after their recruitment and the actual working of the rule kept on pushing down the direct recruits and postponing their chances of promotion to higher posts in Class 1 Service. It was submitted that all officers appointed to Class I, Grade II Service formed one class and after the officers have been once recruited there could be no distinction between direct recruits and promoters. In other words it was contended that the promotees and direct recruit became one class immediately on entry and thereafter there cannot be any class within that class. We are unable to accept the contention of the appellant as correct. In our opinion, it is not right to approach this problem as if it is a case of classification of one service into two classes for the purpose of promotion and as the promotion rule operating to the disadvantage of one of the two classes. It is really a case of recruitment to the Service from two different sources and then adjustment of seniority

between the recruits coming from the two sources. So far as Article 16(1) is concerned, it cannot be said that the Rule of seniority proceeds on an unreasonable basis. The reason for the classification is the objective of filling the higher echelons of the Income Tax Service by experienced officers possessing not only a high degree of ability but also first rate experience. Having regard to the particular circumstances of this case, we are of opinion that the seniority rule is not unreasonable when read with the quota Rule which provides for a special reservation of a small percentage of posts for the promotees who are selected by a special Committee, which determines the fitness of the candidates for promotion after they have put in at least three years of service as Income Tax Officers. A Rule which gives seniority to outstanding officers with considerable experience, and selected on merit and limiting the promotion to a percentage not exceeding the prescribed limit cannot per se be regarded as unreasonable. As we have already pointed out, the direct recruits joining Class I, Grade II Service have to undergo a period of two years training and thereafter they become qualified for confirmation. A promotee having already undergone the very same training during the period of probation of Class II, Grade III, joins Class I, Grade II with three years period of assessment and working experience of the Income Tax Department. It is necessary to add that the selection of a promotee to Class I is based on merit and great weightage is given by the Departmental Promotion Committee to outstanding qualifications, record of work and the ability of the candidate, so that those who come to Class I, Grade II are officers who have shown outstanding capability as Income Tax Officers in Class II Service. The statement in Annexure 2 of the affidavit on behalf of Respondents 1 to 4 in Writ Petition No. 5 of 1966 shows that the standards of selection are very stiff inasmuch as a very small proportion officers considered for selection is actually promoted. The net effect of Rule 1(*f*)(*iii*) therefore is that three years of outstanding work in Class II is equated to two years of probation in Class I Service and on consideration of this aspect of the matter the promotee is given seniority over a direct recruit completing the period of probation in the same year.

9. The relevant law on the subject is well-settled. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the

other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification. Dealing with the extent of protection of Article 16(1) of the Constitution, this Court observed in *General Manager, Southern Railway* v. *Rangachari*[1].

> "It would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Article 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression 'matters relating to employment' in Article 16(1). What Article 16(1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment illustrated by us as well as to an appointment to any office as explained by us. The three provisions Article 16(1), Article 14 and Article 15(1) form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment."

This Court further observed in that case:

> "Article 16(2) prohibits, discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Article 16(1). The words, in respect of any employment used in Article 16(2) must, therefore, include all matters relating to employment as specified in Article 16(1). Therefore, we are satisfied that promotion to selection posts is included both under Article 16(1) and (2)."

10. We next proceed to consider the argument of the appellant that the Rule of promotion from Income Tax Officers Class I, Grade II to Class I, Grade I is discriminatory in character. It was contended that while a direct recruit has to put in 5 years as Income Tax Officer Class I, Grade II, a promotee officer gets into Grade I with a minimum of one year's service in Class I, Grade II, the other four years being counted in Class II, Grade III". It was therefore submitted that the Rule operated against the direct recruit in a discriminatory manner. In our opinion, there is no substance in the contention of the appellant. Once it is held that the Rule of seniority enacted in Rule 1(*f*) (*iii*) is legally valid, the Rule of promotion i.e. Rule 4

of Chapter IX of the Central Board of Revenue Office Procedure Manual cannot be held to lead to any discrimination between direct recruits and promotees. Rule 4 states that the prescribed minimum service for Class I, Grade II Officer in the matter of promotion to Grade I of that Service is five years gazetted service including one year in Class I, Grade II. For a promotee therefore the minimum period of service for promotion to Class I, Grade I is actually 4 years service in Class II, Grade III and one year service in Class I, Grade II. The object of the Rule is really to carry out the policy of Rule 1(*f*)(*iii*) of the Rules of Seniority and not allow it to be defeated by the requirement of five years service in Class I, Grade II itself before consideration for promotee to Class I, Grade I. The promotee is placed senior to a direct recruit who completes probation in the year in which the promotee is selected by the Departmental Promotion Committee. If it should be laid down that the past service as Income Tax Officer in Class II is not to be counted, then Rule 1(*f*)(*iii*) would be nullified, because directly recruited officers junior to the promotees would go to Grade I earlier than the promotee officers. For example, a promotee certified fit by the Departmental Promotion Committee in 1952 will be senior to the direct recruits who complete their probation in that year. And if it is to be laid down that the promote officer shall not count his period of service in Class II for the purpose of promotion to Grade 1. Class I he will have to wail till 1957 or 1958 to go to Grade I, Class I, while direct recruits who completed their probation in 1952 or 1953 would have gone to Grade 1, Class I in 1955 or 1956, counting the five years period from the date on which they were placed on probation. To remove this anomaly the promotion Rule has been framed and we are unable to accept the argument of the appellant that there is any discrimination in the working of this Rule. The Rule of promotion is inextricably linked with the Rule of weightage and seniority in Grade II. If in the Rule of promotion the service in Grade III is not to be taken into account, seniority in Grade II would be an empty formality.

11. In regard to Rule 1(*f*)(*iv*) of the Seniority Rules, there are only three respondents i.e. Respondents 4, 5 and 6 who have been promoted as "deemed promotees" under this clause of the Rule. Each one of them was appointed in Class II, Grade III Service in 1947 and was appointed in Class I, Grade II Service in 1951 after having successfully competed in the competitive examination of the year 1950, the same year in which the appellant was successful. The appellant also joined Class I, Grade II Service in 1951. The three respondents have been shown as senior to the appellant in the seniority list. The objection of the appellant is that while they qualified in the same competitive examination, they had become senior to him because of the operation of the artificial rule by which the are treated as "deemed promotees"; otherwise they would have, remained junior to him. On behalf of these respondents it was argued by Mr Bindra

that they had been appointed to Class II, Grade III Service in 1947 and completed 5 years service in that class by the year 1952 and if the Departmental Promotion Committee met in 1953, as it actually did meet, and if it recommended their promotion to Class I, Grade II, each one of them would have become senior to the appellant by the operation of clause (*iii*) to Rule 1(*f*). There was also the further consideration that if Rule 1(*f*)(*iv*) did not exist there was no incentive to a promotee of this type to sit for the competitive examination. It should also be taken into account that if the service of the promotees in Class II, Grade III is entirely ignored and if they join the Class I, Grade II Service as direct recruits they might well find themselves becoming Junior to those who were left behind in Class II. Grade III Service by the operation of Rule 1(*f*)(*iii*). We are accordingly of the opinion that Rule 1(*f*)(*iv*) is based on a reasonable classification and does not offend the guarantee under Article 14 or Article 16(1) of the Constitution.

12. We proceed to consider the next question arising for consideration in this appeal viz. the allegation of the appellant that there was excessive recruitment of promotees in violation of the quota rule. Rule 3 of the Income Tax Officers (Class 1, Grade II) Service Recruitment Rules is to the following:

> "The Service shall be recruited by the following methods:
>
> (*i*) By competitive examination held in India in accordance with Part II of these Rules.
>
> (*ii*) By promotion on the basis of selection from Grade III (Class II Service) in accordance with Part III of these Rules."

Rule 4 reads:

> "Subject to the provisions of Rule 3, Government shall determine the method or methods to be employed for the purpose of filling any particular vacancies, or such vacancies as may require to be filled during any particular period, and the number of candidates to be recruited by each method."

Rule 5 states:

> "Vacancies in the Service which are filled otherwise than by promotion shall be apportioned between the various communities in India in accordance with the provisions of the Government of India (Home Department) Resolution No. F. 14/17-B/33-Ests. dated 4th July, 1934 (regarding communal representation in the services) and No. 23/5/42-Ests.(*S*) dated 11th August, 1943 (regarding representation of Scheduled Castes in the Services) and the supplementary instructions connected therewith."

In the letter of the Government of India dated September 29, 1944 (Ex. B to the writ petition of the appellant) it is stated that the recruitment to Grade II of Class I will be made partly by promotion and partly by direct

recruitment and that "80 per cent of the vacancies arising in the Grade will be filled by direct recruitment through the Indian Audit and Allied Service Examination and the remaining 20 per cent vacancies will be filled on the basis of promotion by selection provided suitable number of men are available for promotion". It was also stated in the letter that if there are any vacancies which could not be filled by promotion for want of suitable candidates, these will be added to the quota of vacancies to be filled by direct recruitment. The quota was altered by the Government of India subsequently in their letter dated October 18, 1951 (Ex. E to the writ petition). In this letter the Government of India said that they had decided in consultation with the Union Public Service Commission that for a period of five years, in the first instance 66⅔ per cent vacancies in Class I Grade II will be filled by direct recruitments and the remaining 33⅓ per cent vacancies on the basis of promotion and any surplus vacancies which cannot be filled for want of suitable candidates will be added to the quota of vacancies to be filled by direct recruitment. There has been no argument, in this case, with regard to the operation of the Rule between the years 1945 and 1950, though in the petition the appellant has alleged that in those years also there were excessive recruitments of promotees. It appears from the affidavit of Respondent 1 that these were formative years of the Income Tax Service and reorganisation of the Department was being completed and the initial period of reorganisation lasted uptil 1950. The argument was confined to the years 1951 to 1956. According to the appellant, there was excessive recruitment of 71 promotees more than the figure permitted by the quota rule. In the judgment under appeal the High Court has examined the matter and found that the excess number of promotees was 31 for the four years 1951 to 1954. During the hearing of the appeal we had ordered the Secretary of the Finance Ministry to furnish the number of vacancies which had arisen from year to year from 1945 onwards, the nature of the vacancies — permanent or temporary and the chain of vacancies and such other details which are relevant to the matters pending before this Court. In his affidavit dated January 31, 1967 Mr R.C. Dutt said that he was not able to work out, in spite of his best endeavours, the number of vacancies arising in a particular year. However, a statement, Ex. E, was furnished showing the number of officers recruited by the two methods of recruitment to Class I Service during the relevant years:

Year		UPSC Exam recruits	War Service candidates	Officers selected from Class II
1951	... ...	50	..	..
1952	... ...	..	2	49
1953	... ...	52	..	38
1954	... ...	44	..	30
1955	... ...	45	..	24

1956 25

It is not clear from the affidavit of Mr R.C. Dutt whether the quota rule was strictly followed for the years in question. In the counter-affidavits of Respondents 1 to 4 in Writ Petition No. 5 of 1966 there is however an assertion that the quota rule "has been substantially complied with".

13. The Solicitor-General on behalf of Respondents 1, 2 and 3 submitted that the quota rule was merely an administrative direction to determine recruitment from two different sources in the proportion stated in the rule and a breach of that quota Rule was not a justiciable issue. The Solicitor-General said that there was, however, substantial compliance with the quota rule. But in the absence of figures of permanent vacancies in Class 1, Grade II for the relevant years the Solicitor-General was unable to say to what extent there had been deviation from the rule. We are unable to accept the argument of the Solicitor-General that the quota rule was not legally binding on the Government. It is not disputed that rule 4 of the Income Tax Officers (Class 1, Grade II) Service Recruitment rules is a statutory Rule and there is a statutory duty cast on the Government under this Rule to determine the method or methods to be employed for the purpose of filling the vacancies and the number of candidates to be recruited by each method. In the letter of the Government of India dated October 18, 1951 there is no specific reference to Rule 4 but the quota fixed in their letter must be deemed to have been fixed by the Government of India in exercise of the statutory power given under Rule 4. Having fixed the quota in that letter under Rule 4, it is not now open to the Government of India to say that it is not incumbent upon it to follow the quota for each year and it is open to it to alter the quota on account of the particular situation (See para 24 of the counter affidavit of Respondents 1 to 3 in Writ Petition No. 5 of 1966). We are of opinion that having fixed the quota in exercise of their power under Rule 4 between the two sources of recruitment, there is no discretion left with the Government of India to alter that quota according to the exigencies of the situation or to deviate from the quota, in any particular year, at its own will and pleasure. As we have already indicated, the quota Rule is linked up with the seniority Rule and unless the quota Rule is strictly observed in practice, it will be difficult to hold that the seniority Rule i.e. Rule 1(*f*)(*iii*) and (*iv*), is not unreasonable and does not offend Article 16 of the Constitution. We are accordingly of the opinion that promotees from Class II, Grade III to Class I, Grade II Service in excess of the prescribed quotas for each of the years 1951 to 1956 and onwards have been illegally promoted and the appellant is entitled to a writ in the nature of mandamus commanding Respondents 1 to 3 to adjust the seniority of the appellant and other officers similarly placed like him and to prepare a fresh seniority list in accordance with law after adjusting the recruitment for the period 1951 to 1956 and onwards in accordance with the quota Rule prescribed in the letter of the Government

of India No. F. 24(2). Admn.I.T./51 dated October 18, 1951. We, however, wish to make it clear that this order will not affect such Class II Officers who have been appointed permanently as Assistant Commissioners of Income Tax. But this will apply to all other officers including those who have been appointed Assistant Commissioners of Income Tax provisionally pursuant to the orders or the High Court.

14. In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should now where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the Rule of law. (See Dicey — *Law of the Constitution* — 10th Edn., Introduction ex). "Law has reached its finest moments," stated Douglas, J. in *United States* v. *Wunderuck*[2], "when it has freed man from the unlimited discretion of some ruler.... Where discretion, is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield slated it in classic terms in the case of *John Wilkes*[3], "means sound discretion guided by law. It must be governed by Rule, not by humour : it must not be arbitrary, vague, and fanciful".

15. We should also like to suggest to the Government that for future years the roster system should be adopted by framing an appropriate rule for working out the quota between the direct recruits and the promotees and that a roster should be maintained indicating the order in which appointments are made by direct recruitment and by promotion in accordance with the percentages fixed under the statutory rule for each method of recruitment.

16. For these reasons we allow this appeal in Part and order that a writ in the nature of mandamus should be granted to the appellant to the extent indicated above. There will be no order as to costs in this appeal.

Writ Petition No. 5 of 1966:

17. The questions arising for determination in this case are similar in character to the questions which have been the subject-matter of consideration in Civil Appeal No. 1038 of 1965. For the reasons given in that case, we hold that thus petition should be allowed and a writ in the nature of mandamus under Article 32 of the Constitution should be granted commanding Respondents 1 to 3 to adjust the seniority of the petitioner and other officers similarly placed like him and to prepare a fresh seniority list in accordance with law after adjusting the recruitment

for the period 1951 to 1956 and onwards in accordance with the quota rule prescribed in the Letter No. F. 24(2) Admn.I.T./51 dated October 18, 1951 of the Government of India. There will be no order as to costs.

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* Appeal from the Judgment and Order dated 11th March, 1964 of the Punjab High Court, Circuit Bench at Delhi in Civil Writ Petition No. 189-D of 1962

[1] 1962 (2) SCR 586, 596-98

[2] 342 US 98

[3] (1770) 4 Burr 2528 at 2539

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ITEM NO.28 COURT NO.4 SECTION XIV

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

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2013

CC 1842-1845/2013

(From the judgement and order dated 23/01/2012 in LPA Nos.709,710,866, and 867 of 2011 of the HIGH COURT OF DELHI AT NEW DELHI)

DELHI POLLUTION CONTROL COMMITTEE Petitioner(s)

VERSUS

LODHI PROPERTY CO. LTD. ETC. Respondent(s)

IA Nos. 1-4 (With appln(s) for c/delay in filing SLP and office report)

Date: 28/01/2013 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s)
Mr. D.N. Goburdhan, Adv.
Mr. Ayush Chandra, Adv.
For Respondent(s)
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Pravin Bahadur, Adv.
Ms. Mallika Joshi, Adv.
Mr. Amit Agarwal, Adv.
Mr. Rajan Narain, Adv.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.
Leave granted.
Hearing expedited.
In case the writ petition fails, the appellant shall be liable to refund the penalty amount deposited by the respondent, along with interest at a suitable rate, as may be determined by the Court.

|(N.S.K. Kamesh) | |(Sneh Bala Mehra) |

|Court Master | |Court Master |

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 3280 of 2020

Star Cement Limited & Ors .... Appellant(s)

Versus

State of Meghalaya & Ors ....Respondent(s)

WITH

Civil Appeal No 4144 of 2020

Civil Appeal No 2302 of 2021

Civil Appeal No 2355 of 2021

Civil Appeal Nos 2726-2727 of 2021

Civil Appeal Nos 4991-4992 of 2021

Civil Appeal No 781 of 2022

Civil Appeal No 3528 of 2022

Civil Appeal No 4962 of 2022

O R D E R

1 This batch of appeals arises from a judgment of the National Green Tribunal[1] dated 17 January 2020.

2 In 2012, the Gauhati High Court registered a public interest litigation *suo motu* on the basis of a news item in the month of July, stating that several labourers were trapped inside a coal mine resulting in large scale deaths. The proceedings before the Gauhati High Court were transferred to the NGT and were numbered as Original Application No 110 (THC)/2012.

3 In the meantime, in 2014, All Dimasa Students Union Dima Hasao District Committee instituted Original Application No 73 of 2014 before the Principal Bench of the NGT making serious allegations against 'rat-hole' mining operations which were being carried out in Jaintia Hills of the State of Meghalaya without regulation under the law.

4 The NGT issued an order on 17 April 2014 directing the State of Meghalaya to ensure the cessation of rat-hole mining forthwith and of the illegal transportation of coal.

5 During the pendency of the proceedings, a Committee was constituted on 9 June 2014 to quantify the coal that had already been extracted before the ban and to assess its location and value. The Committee was also to prescribe the mode of transportation. This was followed by subsequent orders of the NGT. On 31 August 2018, the NGT constituted a Committee chaired by a former Judge of the

1 "NGT"

Gauhati High Court to look into the restoration of the environment and rehabilitation of the victims. The Committee was also to supervise issues pertaining to receivership / custodianship of the already extracted coal, including environmental issues arising out of storage and remedial steps. The Committee furnished a report on 2 January 2019, which was considered by the NGT in an order dated 4 January 2019.

6 The order also took note of another tragic incident which had taken place on 13 December 2018, despite the earlier ban by the NGT.

7 From the impugned order of the NGT, it emerges that the Committee had submitted three reports on 2 January 2019, 31 March 2019 and 2 August 2019, which were dealt with by the NGT in its orders dated 4 January 2019, 11 April 2019 and 22 August 2019. The Committee thereafter submitted reports dated 31 August 2019, 2 December 2019 and 3 December 2019. The gist of these reports was set out by the NGT. The Committee, in the course of its fifth interim report dated 2 December 2019, arrived at the conclusion that there was a huge gap in the quantity of coal required to produce the reported quantity of clinker and/or power and the coal reported to have been purchased from legal sources by the cement manufacturing plants and thermal power plants in the State of Meghalaya for which an audit was completed by the Committee. The Committee estimated the year-wise quantity of the coal required to produce the reported quantities of clinker and/or power, the coal actually purchased from legal sources and the gap between them for 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19. Having carried out this exercise, the Committee estimated in the case of nine industrial units:

(i) The quantity of illegal coal used in metric tonnes;

(ii) The royalty payable;

(iii) The contribution required to be made to the Environmental Protection and Restoration Fund; and

(iv) GST/VAT payable.

The Committee submitted its sixth interim report dated 3 December 2019 to deal with the objections raised by the State of Meghalaya.

8 From the impugned order of the NGT, it emerges that the proceedings before the NGT came up for hearing on 9 January 2020 and the impugned order was uploaded on the website on 17 January 2020. After setting out the gist of the reports, the NGT dealt with the objections which were filed by the State of Meghalaya to the reports submitted by the Committee on 31 August 2019 and 3 December 2019. After rejecting the objections of the State of Meghalaya, the NGT proceeded to issue its directions, accepting all the recommendations of the Committee in the fourth interim report dated 31 August 2019, fifth interim report dated 2 December 2019 and sixth interim report dated 3 December 2019. The directions which have been issued by the NGT are summarized thereafter in paragraph 23, which is extracted below:

> "23. Without in any manner meaning to dilute the exhaustive recommendations of the Committee, the substance of the recommendations of the Committee can be summed up to include monitoring of illegal raising and transportation of coal by the Chief Secretary of the State; steps for punitive measures for illegal mining — filling up gaps in the regulatory regime; action for preventing

> minimizing and mitigating environment pollution by acidic water from coal depots; electronic recording of movement of coal including by way of GPS and RFID Tags and having a central server for the purpose; inspection of wings of BSF and vigilance department; establishing and supervising check posts and weigh bridges; utilization of the compensation amount for legitimate purposes in terms of the recommendations in the report; continuing Prof. A.K. Singh, nominee, IIT-ISM, Dhanbad as member of the Committee; monitoring of sourcing of illegally mined coal by cement manufacturing/thermal power plants for enforcement of mining law, including punitive and remedial actions for sourcing of illegally mined material, as found by the Committee; conducting necessary audit; study of land use and land cover analysis; drilling of bore holes in Khlihirt-Sutnga area in East Jaintia Hill District; preparation of geological report and feasibility report for scientific coal mining; compiling information about location of dumps of coal; finalizing mode and manner of handling of coal and its disposal including e-auction; transfer of coal to Coal India Limited; monitoring of illegal export of coal to Bangladesh by an independent agency; adopting satellite surveillance systems; action by the State PCB for enforcement of environmental norms; verification of claims of victims and disbursement of payments to them in the manner suggested by the Committee; implementing action plan prepared by the Committee by the State PCB etc. Compliance of all the recommendations may need to be closely monitored by the Committee."

9 None of the appellants were parties to the proceedings before the NGT. It is common ground that the appellants were called upon to submit information to the Committee appointed by the NGT. According to the appellants, the fifth interim report dated 2 December 2019 was uploaded on 8 January 2020 at 1655 hours, following which a hearing took place on 9 January 2020. Neither were the appellants impleaded as parties to the proceedings nor was any notice issued to them to submit objections to the interim reports which were filed before the NGT. Eventually, the NGT, as noted earlier, accepted the recommendations of the Committee.

10 Section 19(1) of the National Green Tribunal Act 2010 provides that the NGT shall not be bound by the procedure laid down by the Code of Civil Procedure 1908, but shall be guided by the principles of natural justice. The National Green Tribunal (Practices and Procedures) Rules 2011 provide in Rule 15 for service of notice and processes and in Rule 16 for the filing of replies and other documents by respondents.

11 The appellants were not parties before the NGT and did not have the opportunity to deal with the contents of the reports of the Committee appointed by it. The NGT had assigned a fact finding and recommendatory role to the Committee. The ultimate decision on the reports of the Committee had to be taken by the NGT, which could only be arrived at after considering the submissions of the parties, who would be directly affected by the findings of the Committee if they were to be accepted by the NGT.

12 Reading the impugned order of the NGT, we do not find any independent application of mind. The Committee, which was chaired by a former Judge of the High Court, had in the view of the NGT, carried out a copious exercise. But that would not obviate the need for the NGT to arrive at its own independent findings after furnishing the parties, who would be directly affected, an opportunity of being heard. The NGT having not done so, we would have to restore the proceedings in relation to the appellants back to the file of the NGT, at the stage, at which they stood prior to the passing of the impugned judgment dated 17 January 2020. Consequently, and to facilitate the above exercise, we set aside the impugned judgment dated 17 January 2020 in relation to its applicability to the appellants before this Court and direct that:

(i) The appellants shall submit their responses to the interim reports of the Committee appointed by NGT within a period of four weeks;

(ii) NGT shall furnish to the appellants an opportunity of being heard, after which it shall proceed to pass orders after dealing with the suggestions and objections of the appellants in accordance with law;

(iii) NGT shall take a final decision in three months; and

(iv) The appellants would be at liberty to apply to the NGT for inspection of records, including the underlying documents which were submitted by the Committee.

13 The appeals shall accordingly stand disposed of.

14 Pending application, if any, stands disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

New Delhi;
May 02, 2023
-S-

ITEM NO.11 COURT NO.1 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).3280/2020

STAR CEMENT LIMITED & ORS. Appellant(s)

VERSUS

THE STATE OF MEGHALAYA & ORS. Respondent(s)

(WITH IA No. 101983/2020 - APPLICATION FOR PERMISSION, IA No. 119002/2022 – CLARIFICATION/DIRECTION, IA No. 87559/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 101998/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 87560/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 87558/2020 - STAY APPLICATION)

WITH
C.A. No. 4144/2020 (XVII)
(WITH IA No. 120345/2020 - EX-PARTE STAY, IA No. 120344/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 2302/2021 (XVII)
(WITH IA No. 69802/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 69801/2021 - STAY APPLICATION)

C.A. No. 2355/2021 (XVII)
(WITH IA No. 72268/2021 - EX-PARTE STAY, IA No. 72271/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 72270/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 72274/2021 - PERMISSION TO FILE LENGTHY LIST OF DATES)

C.A. No. 2726-2727/2021 (XVII)
(WITH IA No. 76856/2021 - EX-PARTE STAY, IA No. 76860/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 76858/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4991-4992/2021 (XVII)
(WITH IA No.91889/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.91888/2021-EX-PARTE STAY and IA No.91887/2021-PERMISSION TO FILE APPEAL)

C.A. No. 781/2022 (XVII)
(WITH IA No.3537/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.3536/2022-STAY APPLICATION and IA No.3534/2022-

PERMISSION TO FILE APPEAL)

C.A. No. 3528/2022 (XVII)
(WITH IA No.60554/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.60553/2022-EX-PARTE STAY and IA No.60555/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.60552/2022-PERMISSION TO FILE SLP)
C.A. No. 4962/2022 (XVII)
(WITH IA No. 85588/2022 - STAY APPLICATION)

Special Leave Petition (Civil) Diary No(s). 22753/2022 (XIV)
(FOR ADMISSION and I.R. and IA No.123797/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.123795/2022-PERMISSION TO FILE SLP, IA No. 187837/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 02-05-2023 These matters were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s) **Mr. Shyam Divan, Sr. Adv.**
Mr. Udayaditya Banerjee, AOR
Mr. Sudipto Sircar, Adv.
Ms. Shreya Bhojnagarwala, Adv.

Mr. Pinaki Misra, Sr. Adv.
Mrs. Vanita Bhargava, Adv.
Mr. Ajay Bhargava, Adv.
Mr. Shantanu Chaturvedi, Adv.
Ms. Prerna Singh, Adv.
M/S. Khaitan & Co., AOR

Mr. Dhruv Mehta, Sr. Adv.
Mr. Nawneet Vibhaw, Adv.
Mr. Himanshu Pabreja, Adv.
Mr. S. S. Shroff, AOR

Mr. Huzefa A Ahmadi, Sr. Adv.
Mr. E. C. Agrawala, AOR

Dr. Ashok Saraf, Sr. Adv.
Mr. Kaushik Choudhury, AOR

Mr. Manpreet Singh Lamba, Adv.
Mr. Pulkit Agarwal, AOR
Mr. Sanampreet Singh, Adv.

Mr. Shivani Sharma, Adv.
Mr. Ashutosh Kumar, Adv.
Mr. Palav Agarwal, Adv.
Mr. Aditya Mishra, Adv.

For Respondent(s) Mr. Avijit Mani Tripathi, AOR

Mr. Saurabh Mishra, AOR
Mr. Nirbhaya Tewari, Adv.
Mr. Rakesh Chander, Adv.
Mr. Abhishek Pandey, Adv.
Ms. Priya Kaushik, Adv.

Mr. Avneesh Arputham, AOR
Ms. Anuradha Arputham, Adv.

Ms. K. Enatoli Sema, AOR
Mr. Amit Kumar Singh, Adv.
Ms. Chubalemla Chang, Adv.
Mr. Prang Newmai, Adv.

Ms. Richa Kapoor, AOR
Mr. Kunal Anand, Adv.
Ms. Tusharika Sharma, Adv.

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

1 The appeals are disposed of in terms of the signed order.

2 Pending application, if any, stands disposed of.

Special Leave Petition (Civil) Diary No 22753 of 2022

3 In view of the order which has been delivered in the batch of appeals[2] listed together with the Special Leave Petition, Mr Shyam Divan, senior counsel, seeks the permission of the Court to withdraw the Special Leave Petition so as to pursue appropriate remedies before the High Court.

2 Civil Appeal No 3280 of 2020 etc.

4 The application for permission to file the Special Leave Petition and the Special Leave Petition are dismissed as withdrawn.

(SANJAY KUMAR-I) **(SAROJ KUMARI GAUR)**
DEPUTY REGISTRAR **ASSISTANT REGISTRAR**
(Signed order is placed on the file)